



Washington State
Minority and Justice Commission

**Racial and Ethnic Disparities in Sentencing Outcomes
for Drug Offenders in Washington State:
FY1996 to FY1999**

FINAL REPORT

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TABLE OF CONTENTS

Table of Contents

	Page
List of Tables	iv.
Executive Summary	1
Introduction	5
Literature Review	8
Drug Offender Sentencing Options in Washington State	17
Methods: Data Collection and Analysis Plan	22
Results	
Drug Conviction and Sentencing Outcomes in Washington State	26
Sentence Length and Type	32
Use of Alternative Sanctions	41
Discussion and Conclusions	52
References	60
Tables	63
Appendices	79

List of Tables

Table	Page
Table 1. Convictions by County Superior Court and Type of Drug Offense	62
Table 2. Convictions by County Superior Court and Race/Ethnicity of Offender	63
Table 3. Convictions by Type of Offense and Race/Ethnicity	64
Table 4. Convictions by County Superior Court and Sentence Type	65
Table 5. Convictions by County Superior Court and Sentencing Alternatives	66
Table 6. Convictions Statewide by Race and Sentence Type	67
Table 7. Convictions Statewide by Race by Sentencing Alternatives	67
Tables Part B: Sentence Length and Type	
Table 8. OLS Regressions Predicting Sentence Length (Months of Incarceration): All Offenders (n=23,443)	68
Table 9. OLS Regressions Predicting Sentence Length (Months of Incarceration): White versus Minority Offenders	69
Table 10. Multinomial Logistic Regression of a Jail or Prison Sentence vs. Probation	70
Table 11. White and Nonwhite Multinomial Logistic Regression Models of a Jail or Prison Sentence vs. Probation	71
Tables Part C: Sentencing Alternatives	
Table 12. Logistic Regression of a DOSA Sentence on Extra-Legal and Legal Case Characteristics, and Alternative Sanctions.	72
Table 13. Logistic Regression of FTOW Sentences on Extra-Legal and Legal Case Characteristics, and Alternative Sanctions.	73
Table 14. Logistic Regression of a Work Camp Sentence on Extra-Legal	74

and Legal Case Characteristics, and Alternative Sanctions.	
Table 15. Logistic Regression of Mitigated Exceptional Sentence on Extra-Legal and Legal Case Characteristics, and Alternative Sanctions.	75
Table 16. Logistic Regression of Aggravated Exceptional Sentence on Extra-Legal and Legal Case Characteristics, and Alternative Sanctions.	76

Executive Summary

Consistent with national trends, drug offenses have become increasingly common on court dockets that have become steadily larger in recent years in Washington State. Drug offenders in 1997 represented a substantially larger percentage of total cases than in 1987, as well as a larger percentage of offenders sentenced to prison. Drug offenders clearly pose a tremendous and increasing burden on an already overcrowded criminal justice system in Washington State. Racial and ethnic minorities appear to account for a large part of this burden, representing an increasingly disproportionate number of drug offenders and of drug offenders sentenced to prison. This report addresses questions about the over representation of minority offenders among those incarcerated for drug crimes in Washington in recent years.

This study assesses the extent of racial and/or ethnic disparities in the severity of sentencing of drug offenders in Washington State, including the use of sentencing alternatives, and examines some possible explanations for the differences that exist. Statistical analyses of sentencing outcomes for felony drug offenders sentenced between July 1, 1995 and December 31, 1998 explore the following questions:

1. Does an individual's race or ethnicity affect the severity of punishment (e.g., sentence length, jail time/prison)?
2. Does an individual's race or ethnicity affect the courts' use of various alternative sanctions for drug offenders (First-time Offender Waiver, DOSA, WEC, and/or exceptional sentences outside the standard range)?

3. Do courts differ in their use of various sentencing options, and does such variation contribute to, or explain, overall disparities by race?
4. Does the impact of individual offenders' race or ethnicity vary across courts?

The analysis of racial and ethnic disparities in sentencing is presented in three parts. Part A presents a descriptive overview of drug convictions sentencing statewide, and differences in conviction offenses and sentencing outcomes by race and ethnicity. Part B presents multivariate analyses of sentence length and the types of sentences ordered among all felony drug-offenders. Part C presents multivariate analyses of the use of sentencing alternatives (First-time Offender Waiver, Drug Offender Sentencing Alternative, Work Ethic Camp and Exceptional sentences) for drug offenders.

Central findings related to the severity of punishment for drug offenders include:

- *While, on average, minority offenders do receive longer sentences than white offenders, those differences are mostly eliminated once legally-relevant case characteristics are statistically controlled.*
- *Hispanic and African American offenders are much more likely than White offenders to receive jail or prison sentences as opposed to only community supervision, even after other extra-legal and legal variables are included.*

Central findings related to the use of alternative sanctions for drug offenders include:

- *Significant differences by race and ethnicity in the use of alternative sanctions exist even controlling for legal and extra-legal characteristics at the sentencing stage.*

Central findings related to county differences in sentencing of drug offenders include:

- *In general, courts in smaller counties give somewhat longer sentences, are more likely to use prison as opposed to probation, are more likely to use DOSA, FTOW, and aggravated exceptional sentences, and are less likely to use WEC than courts in larger counties.*
- *Inclusion of county size in models predicting sentencing decisions does not reduce the effects of race and ethnicity on sentencing.*

Central findings related to the variation among counties in the influence of race and ethnicity on sentencing decisions for drug offenders include:

- *For sentence length, the influence of county size is relatively small, and is similar for Whites and minorities.*
- *For sentence type, there are substantial differences by county size in how white offenders are sentenced, but no significant differences for racial or ethnic minorities.*
- *Differences by race/ethnicity in the use of sentencing alternatives also vary by county size, with larger counties more likely to use certain alternatives for certain groups, and smaller counties more likely to use others.*

Two general findings of this study emerge as most central. First, while legally-relevant factors are the primary determinants of sentencing decisions, those factors do not entirely explain differences between white and minority offenders in sentencing outcomes. Second, the relationship between race/ethnicity and sentencing varies across county courts. This study provides evidence that race and ethnicity continue to affect the sentencing of drug offenders in Washington State. This is true both for the severity of the sanction and the use of alternative sanctions. The use of these different types of sanctions varies by county class across the state and to some extent the relationship between race and ethnicity and sentencing varies across counties. This study clearly demonstrates that the process through which race and ethnicity affect sentencing is extremely complex, and further research must be conducted that takes a wide range of issues into account.

I. Introduction

Consistent with national trends, drug offenses have become increasingly common on court dockets that have become steadily larger in recent years in Washington State. Over the last ten years, drug offenders have moved from representing 17% (2,102) of all felony offenders (12,089) in Washington State in 1987, to 34% (7,138) of all felony offenders (21,326) in 1997. Drug offenders represent a substantial burden not only to the courts, but also to the state's prisons. Whereas in 1987 drug offenders accounted for 14% of offenders sentenced to prison in Washington State, 36% of those sentenced to prison in 1997 were drug offenders. Drug offenders clearly pose a tremendous and increasing burden on an already overcrowded criminal justice system in Washington State. As a result, the importance of policies and practices affecting sentencing of drug offenders increases as well.

Racial and ethnic minorities appear to account for an increasingly large part of this burden. In 1987, 23% of convicted drug offenders belonged to racial or ethnic minority groups, increasing to 29% in 1997. Importantly, the overrepresentation of minority groups among drug offenders sentenced to prison has increased as well. Among those offenders, 38% were racial or ethnic minorities in 1987, compared to 50% in 1997. These trends raise several important questions about drug offending, race/ethnicity, and sentencing. This study cannot address the questions of why drug convictions have increased, or why the racial makeup of drug offenders coming before the Washington State courts has changed over time. This report does address questions about the

over representation of minority offenders among those incarcerated for drug crimes in Washington in recent years.

Numerous researchers have explored the question of whether the overrepresentation of racial and ethnic minorities among incarcerated populations results from differential involvement in crime or from discriminatory practices by agents in the criminal justice system (see recent reviews by Daly and Tonry 1997, and Sampson and Lauritsen 1997). While few researchers argue that there are no biases operating in the criminal justice system, some argue that the disparity is due mostly to the relatively high rates of crime, and disproportionately serious crimes, committed by racial and ethnic minorities (Blumstein 1982; Wilbanks 1987). Others argue that differential punishments are a result of officials' perceptions of minority offenders as more prone to criminal behavior, regardless of the severity of their offenses or their prior offense record (Bridges, Crutchfield, and Simpson 1987).

This study assesses the extent of racial and/or ethnic disparities in the severity of sentencing of drug offenders in Washington State, including the use of sentencing alternatives, and examines some possible explanations for the differences that exist. Statistical analyses of sentencing outcomes for felony drug offenders sentenced between July 1, 1995 and December 31, 1998 explore the following questions:

- a. Does an individual's race or ethnicity affect the severity of punishment (e.g., sentence length, jail time/prison)?

- b. Does an individual's race or ethnicity affect the courts' use of various alternative sanctions for drug offenders (First-time Offender Waiver, DOSA, WEC, and/or exceptional sentences outside the standard range)?
- c. Do courts differ in their use of various sentencing options, and does such variation contribute to, or explain, overall disparities by race?
- d. Does the impact of individual offenders' race or ethnicity vary across courts?

In this study we first review the literature on racial disparities in the sentencing of drug offenders at the federal, state and local levels. This section is followed by a description of the sentencing laws and options available for felony drug offenders in Washington State. We then describe our analyses of data provided by the state's Sentencing Guidelines Commission, and our assessment of the influence of legal and extra-legal factors, in particular race and ethnicity, on sentencing of drug offenders in Washington State. We conclude with a summary of our findings and a discussion of some possible explanations for those findings, some limitations of the current research, and questions for future study.

II. Literature Review

Academics, like many others, have long been concerned about the differential treatment of minorities by the criminal justice system. Racial and ethnic disparities occur in the criminal justice system when individuals, because of their racial or ethnic identity, are given different sentences than members of the majority. To examine racial and ethnic disparities, most researchers have focused on comparing the average sentences of racial minorities with those of Whites. If the severity of the crime and the criminal history of the offenders are statistically controlled and differences are still found between groups, this is seen as evidence that disparities are present in the system. Most criminological theory and public concern have focused on the possibility that racial and ethnic minorities are discriminated against and given longer or harsher sentences than Whites. However, some research has found that, in some cases, minority members are given more lenient sentences. Still other research finds little or no differential treatment in sentence length between groups. The term “disparity” is used in this report to identify either situation, indicating simply a difference in the handling of white and minority offenders. However, the directions of the differences are noted in the text.

Determinate sentencing laws at the federal and state levels, including Washington State’s 1981 Sentencing Reform Act (SRA), resulted in part from concerns about racial and ethnic disproportionality in sentencing. Research on the impact of race on sentencing decisions, both prior to and since the movement to sentencing guidelines, has produced mixed results, and

demonstrated that the role of race/ethnicity in sentencing is complex. In this section we review research on the impact of race/ethnicity on the sentencing of drug offenders in federal and state courts, including research in Washington State, highlighting some important factors that may impact racial and ethnic disparities in sentencing.

Research on Federal Courts

A number of studies have focused on the differential treatment of minority drug offenders in federal courts. In an important study by Peterson and Hagan (1984), the authors attempt to help explain why previous research has provided inconsistent findings with regard to race/ethnicity and sentencing. They observe that, while theoretical perspectives such as conflict theory predict disparate treatment of Whites and minorities (Quinney 1970; Chambliss and Seidman 1971), much of the empirical research conducted has not supported this prediction (Hindelang 1969; Hagan 1974; Kleck 1981). Peterson and Hagan argue that inconsistencies in empirical findings, and the lack of strong evidence of race effects, may occur because much of the research done has assumed static and overly simplistic conceptions of race and drug offenders. They argue that, at different times, different kinds of drug offenders have been seen as either villains or victims; the former deserving harsh punishments, and the latter deserving compassion and treatment. Race, they argue, may affect decision-making processes differently over time for these different types of offenders.

Peterson and Hagan's analyses of federal data suggest that among "ordinary offenders" (most drug users), minority offenders on average receive more lenient sentences than Whites. Alternatively, among "big dealers," African American offenders receive much longer sentences than comparable White offenders. Their study suggests that, when assessing racial disparities in the sentencing of drug offenders, both the context (time and place) and the interaction between race and offense/offender seriousness need to be taken into account.

More recently, McDonald and Carlson (1993) provide a detailed analysis of the sentences drug traffickers received in federal courts between January 20, 1989 and June 30, 1990. Their basic results suggest that, on average, courts sentence minority drug offenders more harshly than Whites even when the drug type is controlled (i.e., crack vs. powder cocaine). However, more sophisticated analyses indicate that those differences were largely due to the quantity of drugs involved, and to the influence of some extreme cases (outliers). Taking those factors into account, their results suggest that differences by race are relatively small and not always statistically significant.

Even more recently, Albonetti (1997) analyzed federal sentencing data for 1991-1992. She found both main effects of race/ethnicity (African American and Hispanic) controlling for legally relevant factors, as well as interactive effects whereby race modifies the relationship between other legal and extra-legal factors. Although she did not control directly for the amount of drugs being delivered, she did control for the type of drug, the number of counts, and the

offense severity score, all of which should provide robust controls for the legally relevant case characteristics. That the effects of race were still significant with the added controls suggests that there are important differences in the sentencing of racial and ethnic minorities at the federal level. She also found significant differences in the probability of imprisonment and sentence length across circuits, reinforcing Peterson and Hagan's assertion that accounting for context is critical in studies of race and sentencing.

Taken as a whole, these studies suggest that it is important to: 1) control, as best possible, for legally relevant factors when making comparisons in the sentences of Whites, African Americans and Hispanics; 2) test for interaction effects between race and other legal and extra legal factors; and 3) examine jurisdictional variation in sentencing that might influence the role of race in decision-making.

Research on State Courts and Single Jurisdictions

A number of studies have examined the relationship between race and sentencing at the state level, including in states with determinate sentencing (see Meithe and Moore 1986; Kramer and Steffensmeier 1993; Steffensmeier, Ulmer and Kramer 1998). While those studies generally find that the effects of race are small once legally-relevant factors are taken into account (i.e., offense seriousness and prior offending), few studies have focused specifically on drug offenders.

Some evidence, however, suggests that race/ethnicity may be particularly significant in the sentencing of drug offenders. Klein, Petersilia, and Turner (1990) analyze data on over 11,000 offenders convicted of assault, robbery, burglary, forgery, theft, and drug crimes in 1980. They conclude that: "Taken together, our findings indicate that California courts are making racially equitable sentencing decisions." However, *drug crimes were an exception*. Specifically, they found that, even controlling for numerous legal and extra-legal factors, Latinos convicted of drug offenses had a higher probability of receiving a prison sentence than did Whites, although there was no difference for the length of sentence received.

In another important contribution to this literature, Unnever and Hembroff (1989) provide a theory that predicts the types of cases in which race and/or other extra-legal factors are most likely to influence judges' sentencing decisions. They argue that when the legally relevant evidence clearly suggests either incarceration or, on the other end of the spectrum, probation, race/ethnicity will most likely not influence judicial decisions. However, when case-related attributes are inconsistent, and the decision about what to do is less clear, the influence of race/ethnicity will become apparent and minority defendants will suffer harsher sentences.

Unnever and Hembroff test their theory with data on 313 male drug offenders in Miami, Florida. Their analyses support their hypotheses in that race and ethnicity do appear to influence judges' decisions to incarcerate rather than order probation in cases where the evidence of what to do is inconsistent. In

contrast, in cases where the evidence clearly suggests incarceration, there are no differences by race/ethnicity. While they could not test the power of their theory to predict sentence length, they argue that their theory would offer a similar hypothesis (that minorities will receive longer sentences than Whites in cases where what one ought to do is less clear).

Like the Peterson and Hagan (1984) study at the federal level, Myers (1989) attempted to assess the impact of the war on crime on sentencing in Georgia from 1977 to 1985. She examined the influence of legislative changes on the sentencing of drug offenders and racial disparities in sentencing over time. She found that, although legal variables explained most of the variance in sentencing decisions, there were also significant race effects whereby African Americans were more likely to be incarcerated than Whites. Furthermore, African American offenders were more likely to be incarcerated for all types of drug offenses (use, sale, and trafficking), although the disparities were greatest for trafficking. She also found that racial disparities in sentencing varied over time, with disparities being reduced after 1982. She suggests that “this decline could reflect an erosion in the intensity of the crusade against drugs and a growing judicial awareness of litigation alleging racial discrimination in the imposition of the death penalty in Georgia” (1989: 313).

As with studies at the federal level, these analyses suggest that, while it is important to examine the direct effects of race, it is also important to examine interaction effects to see how and where race conditions the influence of other factors affecting sentencing decisions. These studies also suggest that there

may be specific cases in which race becomes an important variable (e.g., when legally relevant factors do not conclusively suggest whether to incarcerate or not, or determine the length of the sentence). This finding has important implications for sentencing in Washington State, particularly with respect to the use of sentencing alternatives. Those alternatives require that judges exercise discretion based on considerations other than (or in addition to) factors inherent in the law. Because the “appropriate” sentence is necessarily less clear in those cases, race/ethnicity may be more important, on average, in such decisions than in decisions where the sentencing options are limited. Finally, this review suggests that the relationship between race/ethnicity and judicial decisions may vary across jurisdiction.

Research on Washington State Courts

Washington State has been a leader in exploring and addressing concerns over the differential treatment of minorities by the criminal justice system. Although a number of studies have examined racial and ethnic disparities at various stages of the criminal justice system in Washington State (Litchenstein 1982; Crutchfield and Bridges 1986; Bridges 1993; Crutchfield, Weis, Engen and Gainey 1993; Crutchfield, Weis, Engen and Gainey 1995), these studies have not typically focused specifically on drug offenders (but see Engen and Steiger 1995). In this section, we briefly review the research on racial disparities in sentencing in Washington State, paying specific attention to analyses of drug offender sentencing.

Lichtenstein (1982) conducted an early study in King County before sentencing guidelines were implemented. Case files of 826 defendants were reviewed to collect data on 58 variables between June 1976 and January 1977. The sentences of African Americans and Whites were compared for 13 different offenses. Only two of the comparisons were statistically significant, showing that African Americans receive harsher sentences for theft and drug crimes. While the racial differences were reduced to insignificance when other control variables were included for theft, the differences remained for the drug offenses.

Crutchfield et al. (1995) conducted a study on prosecutorial discretion in King County. They found that controlling for legally relevant factors (number of counts, prior referrals, offense severity, criminal history), African Americans were more likely than Whites to have bail recommended and to have longer sentences recommended by the prosecution. Furthermore, African Americans were less likely to be offered an alternative sentence (i.e., a sentence converted to partial confinement or community service). This finding is particularly important for the present study, as alternative sentences are becoming an increasingly important part of the state's response to drug offenders. Although the primary analyses focused on all offenders, analyses that focused specifically on drug offenders found that drug charges were somewhat more likely to be filed in cases involving African Americans (70%) and Native Americans (79%) than Whites (63%).

Crutchfield et al. (1993) examined the use of exceptional sentences and other sentence departures (i.e., sentences above or below the standard range) for all offenders, providing some bivariate comparisons among drug offenders.

Because sentence departures were relatively rare (about 7.5% of drug sentences), differences between groups were relatively small. Among drug offenders, Hispanics were the most likely to receive sentences above the standard range (2.31%) and the least likely to receive sentences below the standard range (3.51%). In comparison, white drug offenders were less likely to receive sentences above the standard range (1.95%) and more likely to receive sentences below the standard range (6.54%). Consistent with some research reviewed above, that study also showed that the frequency of sentences outside the standard range, and differences by race/ethnicity, vary across counties in Washington, tending to be greater in smaller than in larger counties.

Finally, Engen and Steiger (1997) provided an evaluation of the Drug Offender Sentencing Alternative (DOSA) in Washington State from July 1995 to April 1996. The primary focus of that study was to assess the overall use and implementation of this sentencing option, but they also provide some racial and ethnic comparisons. Because the number of cases receiving DOSA was relatively small, statistical comparisons should be viewed with caution. The results suggest that, while African Americans are somewhat more likely to receive a DOSA sentence than are Whites, Hispanic offenders are less likely to receive this treatment option. That study also found, however, that sentencing decisions regarding the use of DOSA are determined by a complex set of factors, especially plea agreements, sentencing recommendations, and an apparent preference among many court actors (and defendants) for WEC as an alternative sentence. Furthermore, that study reported evidence that the

sentencing of Hispanic offenders is complicated by the fact that some (perhaps more than other minority groups) are not legal US residents, and may be subject to deportation.

While research on the impact of race on drug offender sentencing in Washington State is limited, these studies suggest that there is reason to be concerned with unwarranted racial and ethnic disparities, even with the advent of determinate sentencing, and that further research exploring those differences is needed. Furthermore, these studies suggest that these disparities may be particularly apparent among drug offenders where various sentencing and treatment options are available.

III. Drug Offender Sentencing Options in Washington State

The Sentencing Reform Act

In 1984, Washington State implemented its Sentencing Reform Act (SRA), which established specific rules for the sentencing of persons convicted of felony crimes in Washington State (RCW 9.94A). The SRA provides a determinate sentencing model, with presumptive ranges determined by the Offense Seriousness Level (I to XV) and the Offender Score, which represents prior histories and concurrent charges. With a few exceptions, which we discuss below as they pertain to drug offenders, judges must order a specific term of incarceration within the presumptive, or “standard” range.

The offenses relevant to this report (all felony drug offenses) include: Manufacture, Deliver, Possess with Intent to Manufacture or Deliver, and

Possession of Narcotics and Nonnarcotics listed in Schedules I-V of the Uniform Controlled Substances Act (RCW 69.50). Most commonly, these crimes involve heroin, cocaine, methamphetamine, and marijuana. Offense seriousness levels range from Level I for a Forged Prescription for a Controlled Substance up to Level X for Delivery of Schedule I or II Narcotics to someone under the age of 18 (see Appendix A).

There are several ways in which the SRA differs for drug offenses compared to other crimes. First, in calculating an individual's offender score for crimes involving drug delivery, prior and concurrent drug deliveries count as *three* points each, compared to one point for non-drug offenses. Thus, while a first-time offender convicted of one delivery charge has an Offender Score of 0, the same offender has a score of 3 if convicted of two deliveries, and a score of 6 if convicted of three deliveries. Because of these scoring rules, the relative increase in the standard range for multiple or repeat drug deliveries is greater than for most other types of offenses.

The second difference in sentencing drug offenders is that the Legislature has also added sentence enhancements for drug offenses if the crime occurred in an area defined as a *protected area*. Protected areas include school zones (within 1,000 feet of a school or school bus route), public parks, transit vehicles, transit stop shelters, and other areas designated by local government. This enhancement, often referred to simply as the *school zone enhancement*, adds 24 months to the standard range sentence. Enhancements of between 12 and

18 months may also be imposed for drug offenses committed in county jails and state correctional facilities (see Appendix B).

Third, the SRA does not specify an Offense Seriousness Level for all felony crimes. Anticipatory drug offenses (defined as any *attempt* or *conspiracy* to commit a felony drug offense) are unranked offenses (*State v. Mendoza*, 63 Wn. App. 373). For sentencing purposes, these *unranked* offenses have a standard range of 0 to 12 months, regardless of the number of prior or current convictions. *Solicitation* to commit a drug offense, however, receives a standard range sentence that is 75% of that for a completed offense, following the general rule for the sentencing of anticipatory offenses (see Appendix C).

Sentencing Alternatives for Drug Offenders

The SRA also provides a number of alternatives to the “standard range” sentence for certain types of offenses and offenders. These alternatives include *Exceptional* sentences, the *Drug Offender Sentencing Alternative (DOSA)*, the *First-time Offender Waiver (FTOW)*, and *Work Ethic Camp (WEC)*. While some of those alternatives apply to all types of offenders, others are available only for certain types of drug offenders.

Exceptional Sentences

For any type of offender, judges may, under “substantial and compelling circumstances,” order an *exceptional sentence* outside the presumptive range. If a judge imposes an exceptional sentence, he or she must justify in writing the

reasons for the exception. Mitigating factors (that might justify a sentence below the presumptive range) include factors such as the defendant's capacity to understand his or her wrongdoing, and the defendant's peripheral involvement in the crime (i.e., someone else was the primary actor). Aggravating factors related specifically to drug offenses (that might justify a sentence above the presumptive range) include factors such as the quantity of drugs involved, repeat offending, and the defendant's position in the hierarchy of the drug trade.

The Drug Offender Sentencing Alternative

The Drug Offender Sentencing Alternative (DOSA), effective April 1995, gives judges the ability to order drug treatment, along with a reduced prison sentence, to certain first-time drug offenders. Specifically, an offender is eligible for DOSA if he or she is convicted of delivery of schedule I or II narcotics (e.g., heroin or cocaine, but *not* methamphetamine), has no prior felony convictions or deadly weapon enhancement, and when the midpoint of the standard range is greater than one year. The requirement that the midpoint of the standard range be greater than one year precludes the use of DOSA for offenders convicted of unranked anticipatory drug deliveries. Offenders convicted of solicitation to deliver heroin or cocaine, however, are eligible.

If those legal criteria are met, and the judge determines both that the offense involved a small quantity of drugs, and that the offender and the community will benefit from the use of DOSA, the judge has the option of waiving the standard range sentence and ordering a DOSA sentence. That sentence

includes: total confinement in a state facility for a period equal to one-half the midpoint of the standard range; comprehensive substance abuse assessment and appropriate treatment while in the state facility; and one year community placement and supervision, following release (see Appendix D).

First-time Offender Waiver

According to the SRA, offenders are eligible for the First-time Offender Waiver (FTOW) if they have no prior felony convictions, have never received deferred prosecution for a felony, and are not convicted of a violent offense, a sex offense, or Manufacture, Delivery, or Possession with Intent to Manufacture or Deliver a Schedule I or II Narcotic or Methamphetamine. An FTOW sentence may include up to 90 days confinement, plus 2 years community supervision, with additional sentencing requirements optional (see Appendix E).

While the FTOW definition excludes most of the offenders who would be eligible to receive DOSA, it does *not* specifically exclude first-time offenders convicted of *anticipatory* delivery of narcotics. Therefore, an offender with no prior felonies who is convicted of an attempt or conspiracy to commit a drug offense is currently eligible for the First-time Offender Waiver. The same offender convicted of solicitation is also eligible for DOSA.

Work Ethic Camp

Many drug offenders, including most of those who are eligible for DOSA, are also eligible for Work Ethic Camp (WEC) as an alternative to a

straight standard range sentence. Currently, WEC is available for any offender with no current or prior convictions for violent or sex offenses, and whose sentence is from 16 to 36 months. Offenders sentenced to WEC receive a standard range sentence, but if they complete all requirements successfully they are credited with 3 days for each day in WEC, and are released to community custody upon completion of the 120- to 180-day program. Participation in WEC is contingent upon the offender's custody level, physical and mental capacity and agreement to participate. For that reason, judges can only *recommend* that the offender's sentence be served in WEC. Ultimately, admission to the program is determined by the Department of Corrections (see Appendix F). Therefore, while a WEC recommendation most often results in a substantially reduced prison term, that reduction is by no means guaranteed.

IV. Methods

A. Sentencing Data

In this report we examine all sentences ordered for offenders whose primary offense at conviction was a felony violation of the Uniform Controlled Substances Act (RCW 69.50) from July 1, 1995 to December 31, 1998 (fiscal years 1996, 1997, 1998, and the first six months of fiscal year 1999).¹

Sentencing data were provided by the Washington State Sentencing Guidelines Commission (SGC). The SGC research staff maintain a comprehensive

¹ Data for this report are limited to the first six months of FY1999 because those were the most recent complete data available at the time these analyses were performed.

database of all felony sentences ordered in the state, which they record directly from the individual Judgement and Sentence forms submitted monthly by each county superior court. While the data are limited to the information that is provided on each Judgement and Sentence, the SGC staff take a number of steps to ensure that those data are complete and accurate.

All of the measures presented in this analysis derive directly from the information available in the SGC database. Those measures, which are described below, include the type and number of crimes (present and past) for which offenders were convicted, offender characteristics, and details of the sentence ordered.

Offense Characteristics:²

Offense Type

Delivery (i.e., manufacture, delivery, or possession with intent to deliver)

Anticipatory Delivery (i.e., attempt, conspiracy and solicitation to deliver)

Non-delivery (all other VUCSA offenses)

² Violations of the Uniform Controlled Substance Act (VUCSA) include a large number of specific offenses and different types of drugs. However, the amount of detail that is available in the data is limited, and differs depending the type of drug crime. We compute these measures to describe the nature and seriousness of those crimes based on the level of detail that is available for most cases. (See Appendix A for the specific offenses included in each category). Because deadly weapon and protected-zone enhancements are extremely rare (1.8% of all cases), we do not specifically include measures of those. For the cases that receive enhancements, however, that is reflected in the presumptive sentence.

Drug Type

Hard Drugs (Schedule I to V narcotics or methamphetamine)

Other drug offenses (marijuana, imitation and unspecified substances)

Total Counts (number of current crimes convicted)

Total Priors (number of prior felony convictions)

Presumptive Sentence (the midpoint of the standard range, based on the seriousness level of the primary offense and the offender score, and including any enhancements for use of a deadly weapon or selling drugs in a protected zone)

Extra-legal Characteristics:

Race/Ethnicity (White, African American, Asian American, Native American, Hispanic, Unknown)

Sex

Age (age, in years, at the time of sentencing)

County Class (Class A to Class E, based on population)

Mode of Conviction (Pled Guilty versus either bench trial or jury trial)

Sentencing Outcomes:

Sentence Length (total confinement ordered, in months)

Sentence Type

Prison (total confinement greater than 12 months)

Jail (total confinement of up to 12 months)

Community Supervision only

Alternative Sentences

Work Ethic Camp (WEC)

Drug Offender Sentencing Alternative (DOSA)

FTOW

Exceptional Mitigated

Exceptional Aggravated

B. Analysis Plan

The analysis of racial and ethnic disparities in sentencing is presented in three parts. Part A presents a descriptive overview of drug convictions sentencing statewide, and differences in conviction offenses and sentencing outcomes by race and ethnicity. Part B presents multivariate analyses of sentence length and the types of sentences ordered (prison vs. jail vs. supervision) among all felony drug-offenders. These analyses assess the extent to which the severity of sentencing is related to extra-legal characteristics, especially offenders' race/ethnicity, once legally relevant factors are taken into account. Part C presents multivariate analyses of the use of sentencing alternatives (FTOW, DOSA, WEC and Exceptional sentences) for drug offenders, assessing the extent to which the likelihood of receiving one of those alternative sentences is related to offenders' race or ethnicity, controlling for differences in offending.

V. Results

Part A: Drug conviction and sentencing outcomes in Washington State

Conviction Offenses

Table 1 presents total convictions by type of offense for each superior court and for the state as a whole. From July 1, 1995 to December 31, 1998, there were 25,030 convictions for felony drug offenses in Washington. Of those, 7,209 (29%) were delivery convictions; 2,716 (11%) were for anticipatory drug deliveries; and the remaining 15,105 (60%) were for non-delivery offenses, primarily felony possession of controlled substances. A large majority (88%) of felony drug convictions involved hard drugs. The number and types of conviction offenses vary considerably, however, among the 30 superior courts in Washington. Because the number of convictions is relatively small in many counties, especially when disaggregated by offense type, comparisons between specific counties should be made cautiously. Also, for that reason, we compute offense characteristics for groups of counties, based on population size (County Class), rather than for individual counties. All county comparisons are made on this basis.

Comparisons by county class indicate that convictions involving drug delivery (or anticipatory delivery) are most common in the large urban (Class A) counties (44%) and in the smallest (Class E) counties (40%). Large (Class A) counties are much more likely than other counties, on average, to convict offenders of anticipatory drug deliveries (14%). The prevalence of convictions involving hard drugs is also related to county size, being most common (89%) in

Class A and Class B counties. While determining the reasons for these differences is beyond the scope of the present study, it is likely that they are largely a reflection of differences across counties in the nature of drug offending. They may also, however, reflect differences in law enforcement practices or differences in the charging and conviction of drug offenders.

Offender Characteristics

Table 2 presents the number of convicted offenders, by race/ethnicity, for each superior court, and statewide, as recorded in the SGC data. According to those data, 62 percent of felony drug offenders were White, 20 percent were African American, and 10 percent were of Hispanic origin. Native American and Asian American offenders each comprise about 1 percent of those convicted. Race and ethnicity are unknown (i.e., not reported) in about 6 percent of cases statewide. While in most counties the largest racial/ethnic group among offenders is White, the number and proportion of offenders who are members of each group differ greatly across counties. For example, in King County, 46 percent are African American, compared to only 39 percent White, while in Yakima County a majority (51%) are Hispanic.³ With the exception of Hispanic offenders, minority offenders tend to be concentrated in a small number of counties in western Washington. In fact, 93 percent of all African American drug

³ A previous study (Crutchfield et al., 1995) found that in King County, ethnicity is often not recorded, so many offenders who are white and of Hispanic origin are counted as white, and not as Hispanic. Therefore, in that county, and perhaps in others as well, the total number of Hispanic offenders is underestimated.

offenders are convicted in King, Pierce, Snohomish and Spokane counties (the Class A counties). Those same counties account for 72 percent of Asian American drug offenders, and 59 percent of Native American offenders. To the extent that counties differ in the sentencing of drug offenders (e.g., being generally more or less punitive), the distribution of minority offenders across counties may be important in explaining statewide disparities in sentencing outcomes.

In addition to differences in *where* minority offenders are convicted and sentenced, there are also important differences in the *types of offenses* for which offenders in each racial and ethnic group are typically convicted (see Table 3). While majorities of White (67%), Asian American (57%) and Native American offenders (62%) are convicted of *non-delivery* offenses, the majority of African American (55%) and Hispanic offenders (57%) are convicted of either completed or anticipatory deliveries. Most importantly, *delivery* offenses are more common among African American, Asian American, and Hispanic offenders than among Whites or Native Americans. There are also modest, but important, differences by race/ethnicity in conviction of crimes involving *hard drugs*. *Hard drug* offenses make up 86 percent of convictions among White and Asian American offenders, but 92 percent of convictions for African Americans and Native Americans, and 95 percent of Hispanic offenders. Because the sentencing guidelines prescribe more severe sentences for delivery offenses and for offenses involving hard drugs, these differences in convictions should result in

more severe sentences, on average, for the groups most likely to be convicted of those crimes.

Sentencing Outcomes

We examine several different measures of sentencing outcomes statewide, by county court, and by race and ethnicity of offenders. Table 4 presents the average length of sentence ordered (months of incarceration) and the proportions of offenders sentenced to prison, jail, or community supervision (i.e., probation), by county, county class (size), and for the state as a whole. Statewide, felony drug offenders are more likely to receive jail sentences (44%) than prison sentences (30%) or sentences of supervision only (26%).⁴ Overall, sentence lengths averaged nearly 12 months. Sentences tend to be more severe, on average, in the largest counties (Class A). This is due largely to King

⁴ While judges ordered at least some incarceration for nearly every offender, many of those sentences are very short and probably reflect time served before sentencing. For example, 94 percent of offenders who were not sentenced to prison received a jail sentence. However, of that 94 percent, 6 percent have sentences of about 1 day; 14 percent have sentences of one week or less. Because we are primarily interested in sentences to incarceration post-conviction, we chose 30 days as the minimum sentence to operationally define a post-conviction jail sentence. This decision was based in part on a study by Bell and Fallen (1989) that showed that convicted felons in Washington State served an average of 25 days pre-sentencing and that the average amount of time was increasing with rising caseloads. For the same reason, we define a sentence of “supervision only” as one where community supervision is ordered, but total confinement ordered is less than 30 days. Overall, 96 percent of all offenders, including those sentenced to prison or jail, received community supervision.

County, which sentenced a larger proportion to prison (50%), a smaller proportion to supervision only (9%), and ordered longer sentences (mean=19 months) than any other county. Jail sentences were most common in the Class B and Class D counties, which sentenced about 60 percent of offenders to jail. Sentences to community supervision only were, overall, more common in the Class C and Class E counties.

The number and percentages of specific alternative sentences ordered appear in Table 5. While not all offenders are eligible for any of those alternatives, the frequencies shown there indicate the prevalence of those sentencing alternatives overall. Statewide, 10 percent of felony drug offenders were sentenced to Work Ethic Camp, while only 1 percent received the Drug Offender Sentencing Alternative. Of the 30 percent of all offenders who received a prison sentence, about one third received one of these prison-based alternative sentences. FTOW, the only non-prison based sentencing alternative (other than an exceptional sentence) was used more often, in 14 percent of all cases.

Again, differences appear by county, with WEC being used more often in the larger counties (25% in King County), and FTOW being used more often in smaller counties. While most DOSA sentences were ordered in King County, the use of DOSA is trivial in every county. As with types of convictions, counties differ substantially in the type and severity of sentences ordered. Given the relatively small numbers of cases in many counties, apparent differences between particular counties should be interpreted cautiously.

Finally, Tables 6 and 7 present the number and percentages of different types of sentences by offender race and ethnicity. The differences in sentencing outcomes by race and ethnicity - which may be due to the differences in convictions (shown above) - are striking. Statewide, White offenders are the least likely to be sentenced to prison (22%), most likely to receive a sentence of supervision only (32%), and receive the shortest sentences on average (8.5 months). White offenders are also the least likely to be sentenced to WEC (7%), and most likely to receive the FTOW (18%). Conversely, African American and Hispanic offenders are the most likely to be sentenced to prison (48%; 46%), least likely to be sentenced to supervision only (11%; 15%), and receive the longest sentences on average (19 months; 18 months). African American and Hispanic offenders are also the most likely to be sentenced to WEC (17%; 13%), and least likely to receive the FTOW (5%; 8%). By each of these measures, Asian American and Native American offenders also receive sentences that are more severe than those of White offenders, but less severe than those of African American and Hispanic offenders.

In sum, there are substantial differences statewide by county, and between racial and ethnic groups, both in the kinds of convictions for felony drug offenses, and in the types and severity of sentences ordered in those cases. On average, minority offenders receive sentences that are substantially more severe than do white offenders; but minority offenders also tend to be convicted of more serious drug offenses. To the extent that differences also exist, by race or ethnicity, in prior offending, those differences may also contribute to these

different sentencing outcomes. The analyses that follow in Parts B and C of this report assess the extent to which differences by race/ethnicity in sentencing outcomes statewide, are, or are not, due to differences in characteristics of the offenses (current and prior) for which people are convicted, or to differences in sentencing practices across counties.

Part B: Sentence length and type

Sentence length

The existence of differences in sentencing outcomes for differential racial and ethnic groups of offenders is not, in itself, evidence of disparate treatment of those offenders by the courts. As the data in Part A reveal, significant differences also exist between racial/ethnic groups in the types and the severity of drug crimes for which those individuals, on average, are convicted. Neither, however, is it necessarily the case that differences in sentencing outcomes are due simply to those differences in offending. It is critical, therefore, to assess whether sentencing outcomes are related to offenders' race or ethnicity *independently*, of the legally-relevant factors (i.e., offense characteristics and prior history) that should be the primary determinants of sentencing outcomes.

To do that, this part of the analysis uses *ordinary least squares (OLS) regression* to assess the net influence of extra-legal and legally-relevant factors on sentence length. Specifically, the analysis includes the following independent variables, and is limited to cases having complete data (n=23,443). Descriptive statistics for these variables are presented in Table 8.

- *Extra-legal factors*: age, sex, race/ethnicity, mode of conviction (guilty plea vs. trial), county size (class B, C, D and E vs. class A);
- *Legal factors*: total conviction counts, total prior felonies, drug type (hard drugs vs. other), offense type (delivery vs. anticipatory and non-deliveries), presumptive sentence (midpoint of the standard range);
- *Sentencing alternatives used*: FTOW, DOSA, exceptional mitigated, and exceptional aggravated.

Table 9 presents the results of three OLS regression models predicting sentence length among all drug offenders. Model 1 includes only extra-legal factors; legally-relevant factors are introduced in Model 2; and sentencing alternatives used are introduced in Model 3. Models 1 and 2 allow us to see the relationship between offender race/ethnicity and sentence length both with and without controls for offending. Model 3 reveals the overall impact that various sentencing alternatives have on sentence length, and also whether differences in sentence length persist once the use of those alternatives is taken into account.

Model 1 shows the relationship between offender race/ethnicity net of age, sex, mode of conviction, and county size. This model reveals essentially the same relationships that were observed in Part A, showing that sentence length is positively related to age, sex, and minority status. The regression coefficients for model 1 indicate that, net of the other factors in that model, African American offenders receive sentences averaging about 9 months ($b = 8.7$) longer than white offenders. Native American and Hispanic offenders

receive sentences that are, on average, about 3 ($b=3.06$) and 10 ($b = 9.9$) months longer than white offenders, respectively. Sentence length is also related to mode of conviction, with offenders who plead guilty receiving sentences that average 15 months less than offenders convicted at trial ($b = -15.15$). Offenders sentenced in medium-sized and smaller counties also, on average, receive shorter sentences than those sentenced in the largest (Class A) counties. Because model 1 does not control for differences in offending, these relationships are useful mainly as a point of reference for the more complete analyses that follow.

Model 2 introduces a number of legally relevant factors that should be the primary determinants of sentence length. This includes the presumptive sentence based on seriousness level and offender score. The model shows that the differences in sentence length associated with sex, race/ethnicity, mode of conviction, and county size are almost entirely explained by those legally-relevant factors. Some small differences persist, however. Males ($b = .47$) and Hispanic offenders ($b = 1.1$) receive slightly longer sentences than other offenders, on average, even after controlling for offending and prior history. Offenders sentenced in the smallest counties also receive slightly longer sentences ($b = .7$) compared to the largest counties, while those who plead guilty receive sentences about 2 months shorter than those convicted at trial.

While it is not immediately apparent, the presumptive sentence is *by far* the major determinant of sentence length. The coefficient for presumptive sentence ($b = .85$) indicates that for every one month increase in the midpoint of

the standard range, sentences increase by an average of .85 months, a very strong relationship. The effects of the other legal factors in the model are mostly subsumed by the presumptive sentence, but those variables continue to have significant effects on sentence length. This indicates that the total counts at conviction, prior felonies, conviction of delivering drugs, and conviction for crimes involving hard drugs each increase the average sentence, slightly, above and beyond what is expected based on the midpoint of the standard range. This does not mean that those factors result in sentences above the standard range, but simply that, cases with these characteristics tend to result in higher sentences within the standard range. The explanatory power of the legal factors on sentence length is also evident in the fact that model 2 explains 91 percent of the total variance in sentence length. Once the legal factors are taken into account, extra-legal factors explain very little additional variance.

Model 3 introduces controls for the use of sentencing alternatives on sentence length. The effects of those alternatives are as expected, with DOSA, FTOW and exceptional mitigated sentences producing shorter sentences, and exceptional aggravated sentences producing longer sentences.⁵ More importantly, for our purposes, controlling for sentence alternatives has little effect on the relationship between race/ethnicity and sentence length, and only slightly

⁵ The overall effect of FTOW on sentence length is small because 75 percent of drug offenders eligible for FTOW, and 87 percent of those sentenced to FTOW, have standard range sentences of 3 months or less to begin with. For those offenders, FTOW results in an increased period of community supervision, but does not necessarily result in a shorter sentence than they would otherwise have received.

increases the explanatory power of the model (93%). The coefficients for sex and Hispanic ethnicity reduce slightly, but they are still positive and statistically significant, however very small. Because those alternatives are used infrequently and, in the case of DOSA and FTOW, are only available for certain offenders, it is not surprising that the overall impact of those sentencing options is slight.

While the overall impact of race and ethnicity on sentence length appears to be small, net of legal factors, research reviewed above indicates that the factors that determine sentencing outcomes, including legal factors, may differentially affect white and minority offenders. To examine the possibility that such interactions exist, we repeat the analyses in models 2 and 3 above (minus the controls for race and ethnicity) separately for White and minority offenders. The results of those analyses are presented in Table 10. The results indicate that, for the most part, the same factors—primarily legal factors—explain sentence length for both groups. Also, for both groups, and net of legal factors, males tend to receive slightly longer sentences than females, offenders who plead guilty receive slightly shorter sentences than those convicted at trial, and smaller counties tend to order slightly longer sentences than do the largest counties.

Some differences do appear, however. Most notably, the effects of conviction of drug delivery, and offenses involving hard drugs, each have a slightly greater impact on sentence length for minority offenders than for white offenders. This is true even controlling for the presumptive sentence (models 4

and 6) and controlling for the use of sentencing alternatives (models 5 and 7). Finally, the effects of sentencing alternatives on sentence length also differ between groups. In particular, exceptional sentences, both mitigated and aggravated, appear to have a greater impact on sentences for minority offenders than for white offenders. Among white offenders, mitigated exceptional sentences reduce sentence length, on average, by about 18 months, compared to about a 27-month reduction among minority offenders. Conversely, aggravated exceptional sentences increase sentence length by about 16 months, on average, for minority offenders, compared to about an 11 month increase for white offenders.

In sum, the analyses of sentence length find that the effects of race/ethnicity are small once we control for legally relevant factors (delivery, type of drug, counts, priors), while the latter, because they determine the presumptive sentence, have the strongest effects. These legally relevant factors, furthermore, are shown to have some small influence on sentences beyond that which is prescribed by law. The use of sentencing options DOSA, FTOW and exceptional sentences do significantly affect sentence lengths, as one would expect, but they contribute little to explaining sentence length overall. The use of those options partly mediates the already small differences that remain between White and Hispanic offenders. Finally, the legal and extra-legal factors that determine sentence length appear to have similar effects for both white and minority offenders, although conviction of delivering drugs and of offenses

involving hard drugs increase sentences for minority offenders to a greater extent than for comparable white offenders.

Sentence type

Closely related to sentence length is the type of sentence ordered. Although the type of sentence (probation only, jail, or prison) is correlated with sentence length, the three levels are really unique sanctions and are experienced very differently by offenders. To assess differential use of these sanctions for different race and ethnic groups we use multinomial regression models so that the influence of other legal and extra-legal variables can be statistically controlled.

The results of the multinomial logistic regression models that follow cannot be interpreted as the OLS regression results discussed when assessing racial and ethnic disparities in sentence length. In these models, the dependent variables are dichotomous, where the person was either given (coded 1) or not given (coded 0) the particular sentence (e.g., prison sentence=1 or =0). The estimates presented in the tables represent the *relative change in odds* of receiving that sentence that is associated with a unit change in the independent variable. Values greater than one indicate positive relationships, while values

less than one indicate negative relationships.⁶ A parameter equal to 1.00 indicates no association. Because independent variables have different metrics (sex has only two values, while age has a wide range of values), one must be careful in interpreting the parameter estimates. Since the focus of this study is race and ethnicity, we will focus on these relationships and only briefly discuss the other variables in the models. As with the analysis of sentence length we use t-tests to compare the parameters across groups. Only parameter estimates that differ statistically and substantively are discussed.

Table 11 provides estimates of the multivariate relationships between the independent variables and the odds of receiving either a jail sentence or a prison sentence, versus community supervision (i.e., probation) only. The results indicate that the factors associated with receiving a jail sentence (versus probation) are very similar to those associated with a prison sentence (versus probation). Controlling for legal and extra-legal factors at conviction, including

⁶ Multinomial logistic regression, like the binomial logistic regressions that follow in Part C, estimates the relationship between each independent variable, net of all other independent variables, and the *odds* of the dependent variable (e.g. "prison") having a value of 1, rather than a value of 0 (i.e., odds = the probability that (prison = 1)/ the probability that (prison = 0)). Subtracting 1 from a parameter value, and multiplying by 100, yields the *percentage* difference in the odds associated with a unit change in the independent variable. For example, the *relative change* in the odds of a jail sentence for an offender who is African American, versus one who is white, equals 2.0. That means the odds ratio for the African American offender is two times greater than for a comparable white offender; the *percentage change* in the odds of a jail sentence for an African American offender is 100% greater than the odds of a jail sentence for a white offender, net of other factors.

the presumptive sentence, males, African Americans and Hispanics are all more likely to receive jail or prison sentences than are females and Whites.

Specifically, relative to a comparable white offender, the odds of receiving a jail sentence are 100% (i.e., two times) greater for an African American offender, and nearly 300% (i.e., four times) greater for a Hispanic offender. Offenders that plead guilty are much less likely to receive jail sentences (62% less) or prison sentences (43% less) than those who take their cases to trial. There is also some evidence that the use of jail and prison sentences varies across counties. With the exception of Class C counties, the smaller counties are more likely to use jail or prison, over probation, than are the largest (Class A) counties. The legal variables, however, have the strongest effect on these decisions, and number of counts, number of prior convictions, cases involving delivery and hard drugs, and the midpoint of the standard range are all positively related to receiving jail and prison sentence as opposed to probation. The model as a whole fits the data very well and explains 79% of the variation in these decisions.

Table 12 provides separate analyses for White and minority offenders. The results for White offenders are very similar to the results for the sample as a whole. There are some striking differences, however, within the minority sample. First, the model explains somewhat more of the variation in decisions regarding prison and jail for minorities (80%) than for Whites (75%), suggesting that factors other than those that we include in these analyses play a greater role in the sentencing of Whites than minorities. Second, while there is considerable variation across county class in the use of jail and prison for Whites, those

differences are smaller and not statistically significant among minorities. This suggests that for African Americans and Hispanics the likelihood of a jail or prison sentence, as opposed to probation, is fairly consistent, while for White offenders there are substantial differences by county size. Third, in contrast to Whites, for whom all of the legally-relevant variables are statistically and strongly associated with these decisions, only the number of prior convictions and the midpoint of the range are significant predictors among minorities.

In conclusion, these analyses are consistent with the analyses regarding sentence length. This is to be expected since the measures are to some extent correlated. However, while the analyses of sentence length suggested relatively small differences between racial groups in the length of time incarcerated, these analyses suggest that, controlling for differences in offending, the likelihood of incarceration is considerably greater for racial/ethnic minorities than it is for white offenders. Also, while the likelihood of incarceration (or conversely, the likelihood of supervision only) varies by county size and by type of offense, for white offenders, those same differences in incarceration versus supervision do not appear for minority offenders.

Part C: Use of alternative sanctions

As mentioned, there are four basic alternative sentencing options available for drug offenders: 1) the Drug Offender Sentencing Alternative (DOSA), 2) the First-time Offender Waiver (FTOW), 3) Work Ethic Camp (WEC), and 4) exceptional sentences either above (i.e., aggravated) or below (i.e.,

mitigated) the standard range. In this section of the report, we develop logistic regression models to assess disparate use of these sentencing options for different race and ethnic groups. In addition, we examine the influence of legal and extra-legal factors in predicting the use of the sanctions among Whites and minorities. Because the eligibility requirements restrict the size of the samples analyzed and the variation in some of the independent variables (e.g., prior offenses), the specific independent variables utilized varies somewhat across models.

Drug Offender Sentencing Alternative

The Drug Offender Sentencing Alternative is available only under certain circumstances. Eligibility requirements include: conviction of delivery of schedule I or II narcotics (heroin or cocaine), no prior felony convictions, no deadly weapon enhancement, a standard range midpoint of greater than one year, involvement of a small quantity of drugs, and the potential that the offender and community will benefit from the alternative sanction. The last two requirements are based on judges' interpretation and so, for purposes of operationally defining who is "technically eligible" for the sanction, we rely on the first four requirements. Of the 23,443 offenders included in this data set, 1,865 (8.0%) were eligible for the sanction. Of eligible offenders, 176 (9.4%) were given a DOSA sentence.

In this analysis we include age, race/ethnicity, whether the offender pled guilty, county size (largest counties compared to all others), the midpoint of the standard range, and the number of counts as independent variables. Column 1

of Table 13 describes the multivariate influence of these variables on DOSA. The only extra-legal offender characteristics that affect DOSA sanctions are the offenders' age and Hispanic ethnicity. Older offenders are more likely to receive DOSA, while the odds of Hispanic offenders receiving a DOSA sentence are 83% less than that of Whites. There were no other sex or racial/ethnic differences, and offenders who pled guilty were no more or less likely to receive DOSAs than were those who went to trial. The largest counties were less likely to use DOSA, and offenders charged with more counts were less likely to receive the sanction.

The positive effect of the midpoint of the standard range is somewhat surprising, and indicates that DOSA is more often utilized for offenders with longer standard range sentences. Given that we control for the number of counts, along with the restrictive eligibility requirements, we would not expect much variation in presumptive sentence lengths for these offenders. Exploratory analyses (not shown) reveal, however, that *30 percent* of offenders who received DOSA also received 24 month protected zone enhancements, a remarkably high percentage compared to the one percent of offenders overall who received that enhancement. While this may explain the positive association between the presumptive sentence length and use of DOSA, it is not clear why offenders sentenced to DOSA, with its reduced sentence, are also so much more likely to be found guilty of this aggravating factor. Finally, the variables in our analysis explain only a small proportion (13%) of the variation in the use of

DOSA, suggesting that other factors may also be important in explaining the use of this alternative sanction.

Separate analyses for Whites and minorities are presented in columns 2 and 3 of Table 13. The results for the two groups are quite similar. The most notable difference is that, among Whites, offenders are less likely to receive DOSA in the larger as opposed to the smaller counties, while for minority offenders, county class was statistically unrelated to the use of DOSA. Conversely, the effect of age was significant, and positive, for minorities but not significant for Whites. In both models, only a small proportion of the variance is explained, slightly more for minorities (10%), than Whites (6%). Given the poor explanatory power of the variables in our analysis, which may stem in part from the fact that DOSA sentences are rarely used, the meaning of these findings is difficult to interpret.

First-time Offender Waiver

Under the First-time Offender Waiver (FTOW), the standard range sentence is waived in lieu of a determinate sentence of up to 90 days of confinement and/or community service, with or without community supervision. Mandatory treatment is generally ordered. The FTOW is available for offenders with no prior felony convictions and no deferred prosecutions of a felony. The drug offense cannot be for manufacture, delivery, or possession with intent to deliver a Schedule I or II narcotic (e.g., heroin, cocaine) or methamphetamine.

Of the 23,443 offenders in the sample, 10,552 (45%) were eligible for the FTOW. Of those eligible, 3314 (31.4%) were given this alternative sentence.

The results of the logistic regressions shown in column 1 of Table 14 suggest that, controlling for other factors, males, African Americans, and Hispanics are less likely to receive this sanction than are females and Whites. The odds of African Americans receiving FTOW was 35 percent lower than for Whites, and the odds of Hispanics receiving FTOW was 59 percent less than for Whites. Offenders' age is negatively related to receiving a FTOW. There is also considerable variation in the use of this sanction across county class, with smaller counties more likely to utilize the sanction than the largest ones. Number of charges (counts) is positively related to the use of FTOW, while the midpoint of the standard range is negatively associated with an FTOW sanction. While the type of drug was unrelated to the use of FTOW, being charged with delivery was positively related to the use of FTOW. It should be noted that because of eligibility requirements, the delivery convictions in these models are mostly delivery of marijuana. Furthermore, it is important to remember that, as noted above (in Part B), FTOW does not necessarily result in a shorter term of incarceration. For most offenders, rather, it means an additional year of community supervision. This may explain why offenders with delivery convictions and multiple counts are more likely to receive this sentence option. The model explains a modest amount of the variation in the use of FTOW (18%).

The separate analyses for Whites and minorities presented in columns 2 and 3 of Table 14 suggest that the independent variables analyzed are similarly

related to the FTOW sanctions for each group. Although the parameter estimate for number of counts is statistically significant for Whites but not for minorities, both coefficients are in same direction and do not differ statistically or substantively. One interesting difference is that Whites are more likely to receive FTOW in Class B counties than in Class A counties, while the reverse is true for minorities. The model explains slightly more of the variance in FTOW for minorities (19%) than among Whites (14%).

Work Ethic Camp

Work Ethic Camp (WEC) is an alternative sanction for offenders with no current or prior convictions for violent or sex offenses and whose standard sentence ranges from 16 to 36 months. Of the 23,443 offenders in the sample, 4,048 (17.3%) were eligible for WEC. Of those eligible, 2,237 (55.3%) were sentenced to work ethic camp as part of their sentence. The first column in Table 15 shows that older offenders and Hispanics were less likely than younger offenders and Whites to be sentenced to WEC. Specifically, the odds of Hispanic offenders receiving this sanction was 47% less than for White offenders. Alternatively, African American offenders, offenders who pled guilty, and offenders sentenced in larger counties were more likely than Whites and those convicted in smaller counties to be sentenced to WEC. The odds of African American offenders receiving this sanction were 54 percent higher than Whites. Offenders with more prior convictions and more charges (counts) against them were less likely to be sentenced to work ethic camp than were less

serious offenders. Offenders charged with delivery and for offenses involving hard drugs were more likely to be sentenced to WEC than others. The model explains a modest amount of the variation (28%) in WEC sentences.

Separate analyses for Whites and minorities presented in columns 2 and 3 of Table 15 show similar results. In both cases the models explain a modest amount of the variance in WEC sentences (27%). There are two notable exceptions. First, for White offenders, age is negatively related to the likelihood of receiving WEC, while there is no such differences among minorities. Second, although larger counties are more likely to sentence both Whites and minorities to WEC, this is particularly true for minorities (the odds are more than twice as high for minorities than for Whites). Although the relationship between hard drug offenses and WEC is positive and statistically significant for Whites but not for minorities, the differences between the coefficients are not statistically significant.

Mitigated and Aggravated Exceptional Sentences

Technically, while judges in Washington State must follow the sentencing guidelines, they need not always sentence within the standard range, or to specific alternatives. Under “substantial and compelling circumstances” judges can order an exceptional “aggravated” sentence above or “mitigated” sentence below the standard range. All drug offenders are eligible for exceptional sentences. Of the 23,443 offenders in the sample, only 224 (1%) received an exceptional sentence below the presumptive range, and only 292 (1.2%)

received an exceptional sentence above the standard range. An additional 349 offenders (1.5%) were given exceptional sentences *within* the standard range. Clearly, exceptional sentences are used rarely in Washington State.

Mitigated Exceptional Sentences

Column 1 of Table 16 shows the direct effects of legal and extra-legal factors on the use of mitigated exceptional sentences. Younger offenders and males are less likely to receive an exceptional mitigated sentence than older offenders and females. There are no racial or ethnic differences in the likelihood of receiving a mitigated sentence, nor are there important jurisdictional differences. Legal variables are more strongly associated with mitigated exceptional sentences than are extra-legal ones. Offenders with more prior convictions, those charged with more counts, those charged with delivery, and those convicted of crimes involving hard drugs are all more likely than their counter-parts to receive a mitigated exceptional sentence. The model explains a small proportion of the variance in the use of mitigated exceptional sentences (14%), presumably because they are such unique cases.

The models for Whites and minorities in columns 2 and 3 of Table 16 suggest that, although the models explains similar amounts of the variation in the dependent variable (14% and 16%), some of the variables operate quite differently for the two groups. First, the relationship between age and a mitigated exceptional sentence is a positive and relatively robust predictor among minorities, but has no effect among Whites. Second, the midpoint of the

standard range is important for minorities but not for Whites. Alternatively, the number of prior convictions is a relatively strong predictor among Whites but not minorities. Finally, while both White and minority offenders convicted of delivery are more likely to receive mitigated exceptional sentences, this is particularly true for Whites (the odds ratio for Whites is more than twice that of minorities).

Aggravated Exceptional Sentences

While race/ethnicity has little impact on the likelihood of a mitigated exceptional sentence, column 1 of Table 17 shows that Hispanics are substantially more likely than Whites (and other offender) to be sentenced above the presumptive range. The odds of an aggravated exceptional sentence are approximately three times greater for Hispanics than they are for Whites. There is substantial variation across county class in the use of aggravated sentences, with judges in the smaller jurisdictions being more likely to make use of this alternative than judges in the largest counties. Controlling for the midpoint of the standard range, which is negatively related to the use of aggravated exceptional sentences, both the number of priors and the number of current charges are positively related to the use of exceptional sentences. There is not significant variation in the use of aggravated exceptional sentences across drug type, but delivery is positively associated with aggravated exceptional sentences. The model explains only a small amount of the variation (9%) in the use of this alternative sanction.

The models analyzed separately for Whites and minorities are presented in columns 2 and 3 of Table 17. In contrast to the models predicting mitigated exceptional sentences, which varied in a number of respects across groups, these results suggest that the variables operate quite similarly across the two groups. The models explain similar amounts of variation in both groups (<10 %) and virtually all of the parameter estimates seem to operate similarly across groups. Only one of the variable's parameter estimates varied significantly and substantively across groups. Minorities were significantly much more likely (four times more likely) to be given aggravated exceptional sentences in Class C counties than in Class A counties; this was not true for Whites.

Summary of Findings Related to Alternative Sentences

Perhaps the most important finding of in this part of the analysis is that there is significant variation in the use of some alternative sanctions across racial and ethnic groups. In particular, controlling for a number of important legal considerations at the sentencing stage, eligible Hispanics are less likely than Whites to receive DOSA, FTOW, or WEC sentences and are more likely to receive exceptional sentences above the standard range. African Americans are also less likely than Whites to receive FTOW sentences. Alternatively, African Americans are more likely than Whites to receive WEC sentences, but did not differ from Whites for other alternative sanctions.

Other extra-legal factors were also influential in affecting the use of some alternative sanctions. Controlling for a number of legal factors, offender age was

positively associated with the likelihood of receiving DOSA and mitigated exceptional sentences. Alternatively, younger offenders were more likely than older offenders to receive FTOW and WEC sentences. Males were less likely than females to receive FTOW and mitigated exceptional sentences, but they did not differ from females on other alternative sanctions. There was also important jurisdictional variation in the use of some of these alternative sanctions. Judges in smaller, less urban counties were more likely to make use of DOSA, FTOW, and aggravated exceptional sentences. Alternatively, judges in the largest counties were more likely to sentence offenders to WEC.

Separate analyses for Whites and minorities also produced some interesting findings. In particular, there is evidence that race interacts with county class to affect some alternative sanctions. For instance, Whites are more likely to receive DOSA sanctions in the smaller counties as opposed to the largest ones. There is no difference across counties for minorities. Similarly, Whites are more likely to receive FTOW in Class B counties than in Class A counties, while the reverse is true for minorities. Although both Whites and minorities are more likely to receive WEC in the largest Class A counties, this relationship is particularly strong for minorities. Finally, minority offenders are more likely to receive aggravated exceptional sentences in midrange Class C than in more urban Class A counties, while this is not the case for Whites.

Reconciling these specific, possibly idiosyncratic, differences with these data is impossible. However, the results suggest that the impact of offender race and ethnicity may vary across social contexts in Washington State. Although

there was some evidence that race/ethnicity interacted with other offender and offense characteristics, the differences across models were relatively small and not consistent across types of alternative sanctions.

VI. Discussion and conclusions

We began this study with four basic questions: 1) Does offenders' race or ethnicity affect severity of punishment; 2) Does offenders' race or ethnicity affect whether or not they receive alternative sanctions; 3) Do counties vary in their use of sentencing options, and does this help to explain differences by race; and 4) Does the influence of offenders' race or ethnicity vary across counties. To address these questions we used a number of statistical techniques to analyze data on sentencing of convicted felons in Washington State.

The first question concerns the severity of punishment. We used two measures to address this question—sentence length and sentence type. While, on average, minority offenders do receive longer sentences than white offenders, those differences are mostly eliminated once legally-relevant case characteristics are statistically controlled. Sentence length is almost completely determined by the presumptive sentence and other legal factors related to offending. Controlling for differences in conviction offenses, only Hispanic offenders receive statistically significantly longer sentences than Whites, and those differences are small (approximately one month).

Analyses of the *type* of sentence, however, showed larger differences by race and ethnicity. In particular, Hispanic and African American offenders are

much more likely than White offenders to receive jail or prison sentences as opposed to only community supervision. Unlike the differences in average sentence length, differences by race/ethnicity in the likelihood of incarceration are robust and statistically significant even after other extra-legal and legal variables are included. These results suggest that African American and Hispanic offenders convicted of similar offenses as Whites, and with similar criminal histories, are more likely to be sentenced to confinement, although they may not spend much more time incarcerated.

The second question concerns the use of alternative sanctions. Analyses showed significant differences by race and ethnicity in the use of alternative sanctions even controlling for legal and extra-legal characteristics at the sentencing stage. Eligible Hispanic offenders were less likely than Whites to receive DOSA, FTOW, and WEC, and were more likely to receive aggravated exceptional sentences above the standard range than were Whites. Eligible African American offenders were more likely to receive FTOW sentences than eligible Whites but were less likely than Whites to receive WEC sentences. All of these differences are statistically and substantively important and were robust after the inclusion of numerous control variables.

The answer to the third question dealing with county differences in the use of sentencing options is more complex. On the one hand, county class is related to sentence length, sentence type, and the use of DOSA, FTOW, WEC, and aggravated exceptional sentences. In general, courts in smaller counties give somewhat longer sentences, are more likely to use prison as opposed to

probation (county class B being an exception), are more likely to use DOSA, FTOW, and aggravated exceptional sentences, and are less likely to use WEC than courts in larger counties. On the other hand, inclusion of county class in models predicting these sentencing decisions did *not* reduce the effects of race and ethnicity on sentencing. This suggests that, while different sized counties vary in their tendency to use those sentencing alternatives, those differences do not account for the race and ethnic disparities in their overall use.

The fourth question is related to the third and asks whether the influence of race or ethnicity varies by county. We addressed this question by looking at the relationship between county class and various sentencing decisions separately for White and minority offenders. The answer to this question is complex and differs across the dependent variables examined. For sentence length, the influence of county size is relatively small, and is similar for Whites and minorities. For sentence type, however, there are substantial differences by county size in how white offenders are sentenced, but no significant differences for racial or ethnic minorities. This variation in the sentencing of white offenders contributes to differences across counties in the magnitude of the difference in sentencing between Whites and minorities. Differences by race/ethnicity in the use of sentencing alternatives also vary by county size, with larger counties more likely to use certain alternatives for certain groups, and smaller counties more likely to use others.

Two general findings of this study emerge as most central. First, while legally-relevant factors are the primary determinants of sentencing decisions,

those factors do not entirely explain differences between white and minority offenders in sentencing outcomes. Second, the relationship between race/ethnicity and sentencing varies across county courts. Knowing that these differences exist is important, but it does not necessarily help us to understand *why* those differences exist. These differences may be the result of a variety of different factors, including: 1) unmeasured differences in criminal behavior or other characteristics of offenders that may affect sentencing decisions, and that may be related to race or ethnicity; or 2) specific characteristics and behaviors of criminal justice officials. Differences across county courts may be due to 3) organizational and bureaucratic differences between courts; or 4) the social, political and economic characteristics of counties, including differences in the nature of drug offending.

Regarding the first possibility, while we were able to control for the offenses of which offenders are convicted, and the prescribed sentences for those offenses, there may still be differences among offenders, possibly related to race/ethnicity, in the nature of their crimes. For instance, the sentencing laws in Washington, and the data we analyzed, do not differentiate by the quantity of drugs involved. If some offenders are more likely to be involved in the trafficking of large quantities of drugs, that may very well warrant differential punishment. Because we did not have information on quantity of drugs, our analysis cannot take such concerns into account.

Other characteristics of offenders, such as ties to the community, stable employment, chemical dependency, may also be important, especially in

decisions to use alternative sanctions or non-incarcerative sentences. To the extent that differences in those characteristics are related to race/ethnicity, those might help to explain the disparities observed. It has been suggested by criminal justice officials, for instance, that some Hispanic offenders in Washington State are not U.S. citizens. These offenders are subject to deportation and this may affect decisions to use incarcerative versus other kinds of sanctions.

Regarding the second point, we cannot rule out the possibility that deliberate behavior of criminal justice officials accounts for these disparities. While this study does not examine that explanation, research reviewed here suggests that it is possible that subtle and possibly unconscious perceptions of offenders, or groups of offenders, contribute to the disparate sentencing outcomes uncovered in this study. Furthermore it must also be recognized that sentencing decisions, particularly the use of alternative sanctions, do not rest on the discretion of judges alone. While judges are ultimately responsible for sentencing, their decisions regarding the length and type of sentence are likely to be influenced by other court officials (prosecutors and defense attorneys), and by the defendants themselves. For example, sentencing to programs such as DOSA or WEC may be conditional on the stated “wishes” and/or “commitment” of offenders to participate in drug treatment or other forms of rehabilitation.

Investigation of the third possibility is also beyond the scope of this study. However, some researchers have suggested that studies of sentencing disparities move beyond the “multivariate analyses of case, defendant, and decision maker attributes...and focus on the differences in norms across court

communities” (Nardulli et al. 1988: 383-384). Further research might collect detailed quantitative information regarding organizational characteristics of a number of court communities, and/or qualitative information from sources including interviews with court personnel, to explore these issues. In particular, understanding the cultural and/or organizational constraints on the use of various sentencing alternatives would be useful for policy makers and criminal justice professionals, and may shed light on the causes of sentencing disparities.

In this study we relied on a single variable, county class (size), to explore the issue of county variation in sentencing decisions. Other research in Washington and other states with sentencing guidelines has focused more extensively on other county level variables associated with sentencing decisions and incarceration (Bridges, Crutchfield, and Simpson 1987; Kramer and Steffensmeier 1993). However, measurement in such research has generally been limited to census data and the to data from the FBI’s Uniform Crime Report. More theoretical work and more detailed and/or better measurement sources are needed to understand how characteristics of the community affect the workings of the criminal justice system(s). At a minimum, research should take into account possible differences across counties both in the nature of drug offending and in offender characteristics that may be associated with race or ethnicity.

Finally, sociologists argue that sentencing decisions are best understood not as discrete events, but as the culmination of a series of interconnected decisions, including the decision to arrest, charging decisions by prosecuting

attorneys, and the plea-bargaining process. Given the limitations of our data, however, we could not examine the influence of race and ethnicity at earlier stages in this process. Research examining those decisions is important for at least two reasons. First, convicted offenders may not be representative of all offenders arrested and charged. Even among those convicted, charges may have been dropped or reduced. Without examining those earlier decisions, it is impossible to fully account for individual differences that may affect sentencing decisions. Second, given the limited discretion available to judges in Washington State (and other jurisdictions with sentencing guidelines), those decisions may prove far more consequential for determining sentencing than is judicial behavior. Importantly, if charging or plea bargaining practices differ by offenders' race/ethnicity, or across counties, those differences could result in disparities in sentencing outcomes, for similar offenders, that may be much larger or smaller than those observed at the sentencing stage. In order to fully understand the sentencing process, the role of race/ethnicity in sentencing, and in criminal justice generally, research must examine decision-making at those earlier stages as well as at the sentencing stage.

There is evidence that race and ethnicity continue to affect the sentencing of drug offenders in Washington State. This is true both for the severity of the sanction and the use of alternative sanctions. The use of these different types of sanctions varies by county class across the state and to some extent the relationship between race and ethnicity and sentencing varies across counties. The process through which race and ethnicity affect sentencing is clearly

extremely complex, and further research must be conducted that takes a wider range of issues, such as those mentioned above, into account.

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Tables Part A: Descriptives

Table 1. Convictions by County Superior Court and Type of Drug Offense: FY96 to FY99

County	Delivery		Anticipatory delivery		Non-delivery		Total	Hard Drug	
Class A	4297	30%	2040	14%	7825	55%	14162	12644	89%
King	2512	42%	1140	19%	2267	38%	5919	5271	89%
Pierce	913	17%	711	13%	3837	70%	5461	5039	92%
Snohomish	413	28%	14	1%	1038	71%	1465	1220	83%
Spokane	459	35%	175	13%	683	52%	1317	1114	85%
Class B	1617	23%	474	7%	4851	70%	6942	6205	89%
Benton/Franklin	291	27%	12	1%	783	72%	1086	1034	95%
Clark	349	23%	84	6%	1083	71%	1516	1336	88%
Cowlitz	217	36%	2	0%	387	64%	606	551	91%
Kitsap	263	25%	58	6%	732	70%	1053	917	87%
Thurston	172	14%	76	6%	969	80%	1217	1109	91%
Whatcom	170	41%	57	14%	187	45%	414	287	69%
Yakima	155	15%	185	18%	710	68%	1050	971	93%
Class C	951	33%	175	6%	1783	61%	2909	2474	85%
Chelan/Douglas	194	39%	49	10%	255	51%	498	424	85%
Clallam	78	29%	4	1%	190	70%	272	233	86%
Grant	145	35%	44	11%	222	54%	411	335	82%
Grays Harbor	145	22%	35	5%	467	72%	647	575	89%
Island/San Juan	56	47%	3	3%	59	50%	118	77	65%
Lewis	103	22%	12	3%	345	75%	460	427	93%
Skagit	133	52%	23	9%	100	39%	256	198	77%
Walla Walla	86	39%	4	2%	128	59%	218	184	84%
Whitman	11	38%	1	3%	17	59%	29	21	72%
Class D	218	32%	20	3%	447	65%	685	562	82%
Asotin/Columb./Garf.	33	47%	0	0%	37	53%	70	58	83%
Ferry/Stev./Pend O.	41	39%	1	1%	64	60%	106	68	64%
Kittitas	35	31%	8	7%	70	62%	113	101	89%
Mason	36	22%	4	2%	123	75%	163	144	88%
Okanogan	41	30%	4	3%	93	67%	138	105	76%
Pacific/Wahkiakum	32	34%	3	3%	60	63%	95	86	91%
Class E	126	38%	7	2%	199	60%	332	260	78%
Adams	21	23%	2	2%	69	75%	92	86	94%
Jefferson	36	47%	2	3%	39	51%	77	51	66%
Klickit/Skamania	56	49%	2	2%	57	50%	115	89	77%
Lincoln	13	27%	1	2%	34	71%	48	34	71%
State Total	7209	29%	2716	11%	15105	60%	25030	22145	88%

Table 2. Convictions by County Superior Court and Race/Ethnicity: FY96 to FY99

County	Total	White	African American	Asian American	Native American	Hispanic	Unknown						
Class A	14162	7886	56%	4530	32%	169	1%	211	1%	864	6%	502	4%
King	5919	2322	39%	2736	46%	83	1%	71	1%	314	5%	393	7%
Pierce	5461	3505	64%	1276	23%	70	1%	87	2%	472	9%	51	9%
Snohomish	1465	1154	79%	197	13%	11	1%	25	2%	31	2%	47	3%
Spokane	1317	905	69%	321	24%	5	0%	28	2%	47	4%	11	1%
Class B	6942	5033	73%	297	4%	55	1%	73	1%	1090	16%	394	6%
Ben/Franklin	1086	635	59%	73	7%	1	0%	2	0%	279	26%	96	9%
Clark	1516	1359	90%	64	4%	7	1%	2	0%	68	5%	16	1%
Cowlitz	606	474	78%	16	3%	4	1%	1	0%	105	17%	6	1%
Kitsap	1053	752	71%	74	7%	19	2%	5	1%	19	2%	184	18%
Thurston	1217	1053	87%	26	2%	5	0%	14	1%	32	3%	87	7%
Whatcom	414	316	76%	20	5%	18	4%	8	2%	51	12%	1	0%
Yakima	1050	444	42%	24	2%	1	0%	41	4%	536	51%	4	0%
Class C	2909	2037	70%	37	1%	8	0%	43	1%	488	17%	296	10%
Chelan/Doug	498	261	52%	5	1%	0	0%	5	1%	131	26%	96	19%
Clallam	272	229	84%	7	3%	0	0%	9	3%	22	8%	5	2%
Grant	411	247	60%	9	2%	0	0%	3	1%	122	30%	30	7%
Grays Harbor	647	468	72%	4	1%	1	0%	19	3%	66	10%	89	14%
Island/Sjuan	118	104	88%	1	1%	3	3%	2	2%	2	2%	6	5%
Lewis	460	355	77%	5	1%	2	0%	2	0%	37	8%	59	13%
Skagit	256	157	61%	3	1%	1	0%	2	1%	90	35%	3	1%
Walla Walla	218	195	89%	3	1%	0	0%	1	1%	13	6%	6	3%
Whitman	29	21	72%	0	0%	1	3%	0	0%	5	17%	2	7%
Class D	685	420	61%	7	1%	2	0%	27	4%	85	12%	144	21%
Asot/Col/Gar	70	54	77%	1	1%	0	0%	4	6%	6	9%	5	7%
Fer/Stev/P.O.	106	97	92%	0	0%	0	0%	5	5%	0	0%	4	4%
Kittitas	113	54	48%	2	2%	0	0%	0	0%	6	5%	51	45%
Mason	163	67	41%	2	1%	0	0%	5	3%	9	6%	80	49%
Okanogan	138	65	47%	2	1%	1	1%	12	9%	55	40%	3	2%
Pac/Wahk	95	83	87%	0	0%	1	1%	1	1%	9	10%	1	1%
Class E	332	241	73%	4	1%	0	0%	3	1%	36	11%	48	14%
Adams	92	34	37%	1	1%	0	0%	2	2%	23	25%	32	35%
Jefferson	77	72	94%	1	1%	0	0%	0	0%	3	4%	1	1%
Klickit/Skam	115	90	78%	0	0%	0	0%	1	1%	9	8%	15	13%
Lincoln	48	45	94%	2	4%	0	0%	0	0%	1	2%	0	0%
State Total	25030	15617	62%	4875	20%	234	1%	357	1%	2563	10%	1378	6%

Table 3. Convictions by Type of Offense and Race/Ethnicity: FY96 to FY99

Race/Ethnicity	Delivery		Anticipatory Delivery		Non-delivery		Total	Hard Drug	
White	4012	26%	1124	7%	10481	67%	15617	13467	86%
African American	1680	34%	1013	21%	2182	45%	4875	4456	92%
Asian American	75	32%	25	11%	134	57%	234	201	86%
Native American	91	25%	46	13%	220	62%	357	329	92%
Hispanic	1046	41%	429	17%	1088	42%	2563	2435	95%
Unknown	305	22%	79	6%	1000	72%	1384	1256	91%

Table 4. Convictions by County Superior Court and Sentence Type: All Drug offenses: FY96 to FY99

County	Total	Average Sentence Length (months)	Prison	Jail>=30 days	Supervision only			
Class A	14162	13.94	5082	36%	5909	42%	3134	22%
King	5919	19.09	2975	50%	2382	40%	549	9%
Pierce	5461	10.10	1368	25%	2220	40%	1856	34%
Snohomish	1465	9.59	369	25%	748	51%	345	24%
Spokane	1317	11.52	370	28%	559	42%	384	29%
Class B	6941	8.10	1462	21%	3449	50%	1951	28%
Ben/Franklin	1086	10.42	320	29%	503	46%	257	24%
Clark	1516	7.77	315	21%	913	60%	285	19%
Cowlitz	606	14.15	186	31%	281	46%	138	23%
Kitsap	1053	7.02	185	18%	360	34%	507	48%
Thurston	1216	5.30	148	12%	718	59%	348	29%
Whatcom	414	8.45	105	25%	189	46%	58	14%
Yakima	1050	6.85	203	19%	485	46%	358	34%
Class C	2909	10.37	759	26%	1124	39%	1002	34%
Chelan/Doug	498	16.27	198	40%	195	39%	105	21%
Clallam	272	9.62	57	21%	85	31%	129	47%
Grant	411	7.64	96	23%	153	37%	162	39%
Grays Harbor	647	7.17	120	19%	316	49%	211	33%
Island/SJuan	118	8.13	26	22%	33	28%	57	48%
Lewis	460	9.99	96	21%	138	30%	223	48%
Skagit	256	15.09	101	39%	86	34%	52	20%
Walla Walla	218	9.56	61	28%	98	45%	59	27%
Whitman	29	5.59	4	14%	20	69%	4	14%
Class D	685	9.21	147	21%	340	50%	196	29%
Asot/Col/Gar	70	9.49	25	36%	16	23%	28	40%
Fer/Stev/P.O.	106	5.56	13	12%	53	50%	40	38%
Kittitas	113	10.18	26	23%	60	53%	27	24%
Mason	163	10.54	34	21%	105	64%	23	14%
Okanogan	138	6.11	15	11%	59	43%	64	46%
Pac/Wahk	95	14.15	34	36%	47	49%	14	15%
Class E	332	7.76	76	23%	145	44%	110	33%
Adams	92	6.95	24	26%	52	57%	15	16%
Jefferson	77	5.63	14	18%	21	27%	42	55%
Klickit/Skam	115	12.14	35	30%	52	45%	28	24%
Lincoln	48	2.21	3	6%	20	42%	25	52%
State Total	25029	11.69	7526	30%	10967	44%	6393	26%

Table 5. Convictions by County Superior Court and Sentencing Alternatives: All Drug offenses: FY96 to FY99

County	Total	Work Ethic Camp	Drug Offender Sentencing Alternative	First-Time Offender Waiver	Exceptional Mitigated	Exceptional Aggravated					
Class A	14162	1939	14%	135	1%	1283	9%	139	1%	118	1%
King	5919	1483	25%	102	2%	258	4%	45	1%	24	0%
Pierce	5461	221	4%	9	0%	876	16%	75	1%	94	2%
Snohomish	1465	79	5%	16	1%	59	4%	8	1%	0	0%
Spokane	1317	156	12%	8	1%	90	7%	11	1%	0	0%
Class B	6941	302	4%	32	0%	1146	17%	70	1%	113	2%
Ben/Franklin	1086	136	13%	7	1%	78	7%	23	2%	7	1%
Clark	1516	9	1%	0	0%	485	32%	18	1%	48	3%
Cowlitz	606	16	3%	15	2%	141	23%	7	1%	8	1%
Kitsap	1053	76	7%	6	1%	79	8%	7	1%	6	1%
Thurston	1217	41	3%	0	0%	341	28%	3	0%	7	1%
Whatcom	414	12	3%	4	1%	17	4%	3	1%	16	4%
Yakima	1050	12	1%	0	0%	5	0%	9	1%	21	2%
Class C	2909	201	7%	21	1%	893	31%	23	1%	61	2%
Chelan/Doug	498	17	3%	9	2%	143	29%	7	1%	38	7%
Clallam	272	20	7%	0	0%	100	37%	4	1%	4	1%
Grant	411	10	2%	8	2%	126	31%	0	0%	6	2%
Grays Harbor	647	33	5%	2	0%	237	37%	0	0%	6	1%
Island/SJuan	118	14	12%	0	0%	28	24%	0	0%	2	2%
Lewis	460	29	6%	1	0%	182	40%	6	1%	1	0%
Skagit	256	41	16%	0	0%	9	4%	3	1%	4	2%
Walla Walla	218	35	16%	1	0%	55	25%	3	1%	0	0%
Whitman	29	2	7%	0	0%	13	45%	0	0%	0	0%
Class D	685	38	6%	9	1%	147	22%	8	1%	13	2%
Asot/Col/Gar	70	10	14%	1	1%	24	34%	0	0%	1	1%
Fer/Stev/P.O.	106	2	2%	0	0%	25	24%	3	3%	1	1%
Kittitas	113	10	9%	2	2%	24	21%	2	2%	2	2%
Mason	163	8	5%	0	0%	48	29%	2	1%	3	2%
Okanogan	138	0	0%	4	3%	19	14%	1	1%	0	0%
Pac/Wahk	95	8	8%	2	2%	7	7%	0	0%	6	6%
Class E	332	12	4%	1	0%	108	33%	1	0%	8	2%
Adams	92	2	2%	1	1%	5	5%	0	0%	5	5%
Jefferson	77	7	9%	0	0%	32	42%	0	0%	1	1%
Klickit/Skam	115	3	3%	0	0%	55	48%	0	0%	1	1%
Lincoln	48	0	0%	0	0%	16	33%	1	2%	1	2%
State Total	25030	2492	10%	198	1%	3577	14%	241	1%	313	1%

Table 6. Convictions Statewide by Race/Ethnicity and Sentence Type: All Drug offenses: FY96 to FY99

Race/Ethnicity	Total	Average Sentence Length	Prison		Jail>=30		Supervision only	
White	15617	8.49	3506	22%	7029	45%	4979	32%
African American	4875	19.29	2332	48%	2004	41%	527	11%
Asian American	234	10.87	62	27%	117	50%	52	22%
Native American	356	10.88	103	29%	148	41%	103	29%
Hispanic	2563	18.26	1173	46%	1002	39%	375	15%
Unknown	1384	9.31	350	25%	667	48%	356	26%

Table 7. Convictions Statewide by Race/Ethnicity by Sentencing Alternatives: All Drug offenses: FY96 to FY99

Race/Ethnicity	Total	Work Ethic Camp		Drug Offender Sentencing Alternative		First-Time Offender Waiver		Exceptional Mitigated		Exceptional Aggravated	
White	15617	1158	7%	98	1%	2859	18%	120	1%	192	1%
African American	4875	849	17%	66	1%	239	5%	66	1%	35	1%
Asian American	234	29	12%	1	0%	33	14%	2	1%	3	1%
Native American	357	41	11%	8	2%	49	14%	6	2%	3	1%
Hispanic	2563	338	13%	16	1%	198	8%	35	1%	61	2%
Unknown	1384	77	6%	9	1%	199	14%	11	1%	19	1%

Tables Part B: Sentence Length and Type

Table 8. Descriptive Statistics for Multivariate Analyses (n = 23,443)

Variables	Coding	Mean	Std. Dev.
Race/Ethnicity			
<i>White</i>	1 = White; 0 = other	.66	.47
<i>African American</i>	1 = African American; 0 = other	.21	.40
<i>Asian American</i>	1 = Asian American; 0 = other	.01	.01
<i>Native American</i>	1 = Native American; 0 = other	.02	.12
<i>Hispanic</i>	1 = Hispanic; 0 = other	.11	.31
Sex	1 = Male; 0 = Female	.77	.42
Age	Years	32.09	8.60
County Class			
<i>Class A</i>	1= Class A; 0 = other	.58	.49
<i>Class B</i>	1= Class B; 0 = other	.28	.45
<i>Class C</i>	1= Class C; 0 = other	.11	.31
<i>Class DE</i>	1= Class D or E; 0 = other	.03	.18
Pled Guilty	1 = Pled guilty; 0 = Bench or jury trial	.93	.26
Offense Type			
<i>Delivery</i>	1 = Completed delivery; 0 = other	.29	.45
<i>Anticipatory Delivery</i>	1 = Anticipatory delivery; 0 = other	.11	.31
<i>Non-delivery</i>	1 = Non-delivery; 0 = other	.60	.49
Drug type	1 = Hard drugs; 0 = other drug offense	.88	.32
Total counts	1 to 10	1.11	.44
Total priors		1.46	2.12
Presumptive sentence	Midpoint, in months	13.80	21.34
Sentence length	Confinement ordered, in months	11.83	19.95
Sentence type ordered			
<i>Prison</i>	1 = Prison; 0 = Jail or supervision only	.30	.46
<i>Jail</i>	1 = 1+ months jail; 0 = Prison or supervision only	.44	.50
<i>Supervision</i>	1 = Supervision only; 0 = Jail or prison	.26	.44
Alternative sentences ordered			
<i>WEC</i>	1 = WEC; 0 = Not WEC	.10	.30
<i>DOSA</i>	1 = DOSA; 0 = Not DOSA	.01	.09
<i>FTOW</i>	1 = FTOW; 0 = Not FTOW	.14	.35
<i>Exceptional Mitigated</i>	1 = Mitigated; 0 = Not mitigated	.01	.10
<i>Exceptional Aggravated</i>	1 = Aggravated; 0 = Not aggravated	.01	.11

Table 9. OLS Regressions Predicting Sentence Length (Months of Incarceration): All Offenders (n=23,443)

	Model 1	Model 2	Model 3
(Constant)	19.13**	-.29	-.75*
Age	.08**	-.01	-.00
Male	3.43**	.47**	.35**
African American	8.77**	-.21	-.14
Asian American	1.68	.06	-.01
Native American	3.06*	-.21	.14
Hispanic	9.89**	1.06**	.71**
Case Pled	-15.15**	-2.35**	-2.21**
County Class B	-3.76**	.05	.09
County Class C	-1.94**	.35	.37*
County Class D, E	-3.81**	.70*	.66*
Number of Counts		.34*	.41**
Number of Priors		.43**	.31**
Delivery		.81**	1.21**
Hard Drug		1.15**	1.45**
Midpoint		.85**	.87**
DOSA			-11.95**
FTOW			-.80**
Exc. Mitigated			-22.61**
Exc. Aggravated			12.67**

R-square (adj) .11 .91 .93

Coefficients are Unstandardized

*p<.00, **p<.000

Table 10. OLS Regressions Predicting Sentence Length (Months of Incarceration): White versus Minority Offenders

	White(n=15,491)		Minority(n=7,952)	
	Model 4	Model 5	Model 6	Model 7
(Constant)	-.14	-.26	.02	-1.00
Age	-.00	-.00	-.02*	-.01
Male	.52**	.39**	.70*	.47
Case Pled	-2.22**	-2.08**	-2.57**	-2.43**
County Class B	.25	.23*	.34	.28
County Class C	.42*	.45**	1.12**	.80*
County Class D,E	1.05**	.96**	.31	.11
Number Counts	.24	.18	.37	.77**
Number of priors	.33**	.23**	.49**	.35**
Delivery	.07	.46*	1.39**	1.76**
Hard Drug	.66*	.94**	1.57**	1.81**
Midpoint	.88**	.90**	.83**	.85**
DOSA		-11.71**		-12.37**
FTOW		-.68**		-1.28**
Exc. Mitigated		-18.06**		-27.64**
Exc. Aggravated		11.16**		15.70**
R-square (adj)	.90	.91	.91	.94

Coefficients are Unstandardized

*p<.00, **p<.000

Table 11. Multinomial Logistic Regression of Jail or Prison Sentences vs. Probation

	Jail vs. Probation	Prison vs. Probation
	Exp b	Exp b
Age	1.03	1.00
Male	1.60**	1.63**
African American	2.01**	1.85**
Asian American	1.12	1.54
Native American	1.11	1.04
Hispanic	3.97**	2.00**
Case Pled	.38**	.57**
County Class B	1.32*	1.38**
County Class C	.96	.79**
County Class D, E	2.22**	1.43**
Number of Counts	1.50**	1.59**
Number of Priors	3.93**	2.95**
Delivery	1.84**	1.56**
Hard Drugs	1.89**	1.41**
Midpoint	1.67**	1.22**
Nagelkerke r-square	.79	
Sample Size	23443	

* p< .01
 ** p<.001

Table 12. Multinomial Logistic Regression Models of Jail or Prison Sentences vs. Probation by Race/Ethnicity

	Whites		Minorities	
	Jail vs. Probation	Prison vs. Probation	Jail vs. Probation	Prison vs. Probation
	Exp b	Exp b	Exp b	Exp b
Age	1.00**	1.00**	1.01**	1.01
Male	1.72	1.63	1.72	1.88*
Case Pled	.36**	.50**	.55*	.97**
County Class B	1.40**	1.47**	1.39	1.12
County Class C	.86*	.78**	1.82	.82
County Class D,E	2.63	1.66**	1.57	.78
Counts	1.66**	1.66**	.88	1.00
Number of Priors	4.04**	2.96**	3.28*	2.63**
Delivery	1.97*	1.80**	1.17	.82
Hard Drugs	2.32**	1.65**	1.12	.81
Midpoint	1.76**	1.29**	1.53**	1.11**
Nagelkerke r-square	.75		.80	
Sample Size				

* p< .01
 ** p<.001

Tables Part C: Sentencing Alternatives

Table 13. Logistic Regression Models of DOSA Sentences on Extra-Legal and Legal Case Characteristics and Alternative Sanctions by Race/Ethnicity

	Total Exp. B	Whites Exp. B.	Minorities Exp. B
Age	1.04**	1.02	1.06**
Male	.71	.62	.57
African American	1.05	.	.
Asian American	.56	.	.
Native American	2.50	.	.
Hispanic	.17**	.	.
Case Pled	1.00	1.11	.90
County Class A	.52*	.49*	1.51
Midpoint	1.04**	1.05**	1.04*
Number of Counts	.43**	.36*	.40*
Nagelkerke r-square	.13	.06	.10
Sample Size	1,865	734	1,131

* p < .01

** p < .001

Table 14. Logistic Regression Models of FTOW Sentences on Extra-Legal and Legal Case Characteristics and Alternative Sanctions by Race/Ethnicity

	Total Exp. B	Whites Exp. B.	Minorities Exp. B
Age	.99**	.99	.99
Male	.49**	.50**	.44**
African American	.65**	.	.
Asian American	.93	.	.
Native American	.65	.	.
Hispanic	.41**	.	.
Case Pled	1.11	1.13	.88
County Class B	1.39**	1.53**	.59**
County Class C	4.74**	4.25**	5.22**
County Class D, E	1.92**	1.91	1.54
Midpoint	.87**	.88**	.85**
Number of Counts	1.64**	1.67**	1.21
Delivery	1.41*	1.40	1.45
Hard Drugs	1.26	1.27	1.17
Nagelkerke r-square	.18	.14	.19
Sample Size	10,552	7,771	2,781

* p< .01
 ** p<.001

Table 15. Logistic Regression Models of Work Ethic Camp Sentences on Extra-Legal and Legal Case Characteristics and Alternative Sanctions by Race/Ethnicity

	Total Exp. B	Whites Exp. B.	Minorities Exp. B
Age	.98**	.97**	.99
Male	.94	.90	.86
African American	1.54**	.	.
Asian American	1.41	.	.
Native American	1.06	.	.
Hispanic	.53**	.	.
Case Pled	1.57**	1.17	2.06**
County Class A	3.38**	2.82**	7.09**
Midpoint	1.02**	1.02	1.02*
Number of Counts	.60**	.68**	.46**
Number of Priors	.86**	.85**	.90**
Delivery	2.78**	2.47**	3.06**
Hard Drugs	2.32**	3.11**	1.68
Nagelkerke r-square	.28	.27	.27
Sample Size	4,048	2,078	1,970

* p< .01
 ** p<.001

Table 16. Logistic Regression Models of Mitigated Exceptional Sentences on Extra-Legal and Legal Case Characteristics and Alternative Sanctions by Race/Ethnicity

	Total Exp. B	Whites Exp. B.	Minorities Exp. B
Age	1.03**	1.02	1.05**
Male	.60*	.54*	.60
African American	1.24	.	.
Asian American	1.13	.	.
Native American	2.08	.	.
Hispanic	1.32	.	.
Case Pled	1.38	1.71	1.20
County Class B	1.46	1.14	1.97*
County Class C	.83	.76	.91
County Class D, E	.92	1.19	.01
Midpoint	1.01	1.00	1.01*
Number of Counts	1.55**	1.54**	1.54**
Number of Priors	1.16**	1.28**	1.03
Delivery	5.76**	8.82**	3.61**
Hard Drugs	2.12*	2.29	1.86
Nagelkerke r-square	.14	.14	.16
Sample Size	23,443	15,491	7,952

* p< .01
 ** p<.001

Table 17. Logistic Regression Models of Aggravated Exceptional Sentences on Extra-Legal and Legal Case Characteristics and Alternative Sanctions by Race/Ethnicity

	Total Exp. B	Whites Exp. B.	Minorities Exp. B
Age	1.02	1.01	1.01
Male	.71	.76	.71
African American	.83	.	.
Asian American	1.61	.	.
Native American	.87	.	.
Hispanic	3.13**	.	.
Case Pled	.64	.72	.57
County Class B	1.69**	1.78**	2.75**
County Class C	1.84*	1.71	4.12**
County Class D, E	2.05*	2.23	3.00
Midpoint	.96**	.96**	.95**
Number of Counts	2.10**	1.89**	3.06**
Number of Priors	1.40**	1.42**	1.30**
Delivery	2.08*	1.89	2.37
Hard Drugs	1.40	1.15	2.06
Nagelkerke r-square	.09	.08	.09
Sample Size	23,443	15,491	7,952

* p< .01
 ** p<.001

**Appendix A:
Classification of Drug Offenses**

Drug Offense	Delivery	Non-Delivery	Hard Drug	Seriousness Level
Over 18 and Deliver Heroin or Narcotic from Schedule I or II to Someone Under 18 (RCW 69.50.406)	X		X	X (10)
Over 18 and Deliver Narcotic from Schedule III, IV, or V or a Nonnarcotic from Schedule I-V to Someone Under 18 and 3 Years Junior (RCW 69.50.406)	X		X	IX (9)
Possession of Ephedrine or Pseudoephedrine with Intent to Manufacture Methamphetamine (RCW 69.50.440)		X	X	VIII (8)
Selling for Profit (Controlled or Counterfeit) Any Controlled Substance (RCW 69.50.410)	X			VIII (8)
Manufacture, Deliver, or Possess with Intent to Deliver Heroin or Cocaine (RCW 69.50.401(a)(1)(i))	X		X	VIII (8)
Manufacture, Deliver, or Possess with Intent to Deliver Methamphetamine (RCW 69.50.401(a)(1)(ii))	X		X	VIII (8)
Manufacture, Deliver, or Possess with Intent to Deliver Narcotics from Schedule I or II (Except Heroin or Cocaine) (RCW 69.50.401(a)(1)(i))	X		X	VI (6)
Delivery of Imitation Controlled Substance by Person Eighteen or Over to Person Under Eighteen (RCW 69.52.030(2))	X		X	V (5)
Manufacture, Deliver, or Possess with Intent to Deliver Narcotics from Schedule III, IV, or V or Nonnarcotics from Schedule I-V (Except Marijuana or Methamphetamines) (RCW 69.50.401(a)(1)(iii) through (v))	X		X	IV (4)
Manufacture, Deliver, or Possess with Intent to	X			III (3)

Deliver Marijuana (RCW 69.50.401(a)(1)(iii))				
Delivery of a Material in Lieu of a Controlled Substance (RCW 69.50.401(c))	X			III (3)
Manufacture, Distribute, or Possess with Intent to Distribute an Imitation Controlled Substance (RCW 69.52.030(1))	X			III (3)
Possession of Controlled Substance that is Either Heroin or Narcotics from Schedule I or II (RCW 69.50.401(d))		X	X	II (2)
Possession of Phencyclidine (PCP) (RCW 69.50.401(d))		X	X	II (2)
Create, Deliver, or Possess a Counterfeit Controlled Substance (RCW 69.50.401(b))	X			II (2)
Forged Prescription for a Controlled Substance (RCW 69.50.403)		X		I (1)
Possess Controlled Substance that is a Narcotic from Schedule III, IV, or V or Nonnarcotic from Schedule I-V (Except Phencyclidine) (RCW 69.50.401(d))		X	X	I (1)

**Appendix B:
Drug Related Enhancements⁷**

Enhancements to the presumptive range are required for certain drug offenses that occur in correctional facilities (RCW 9.94A.310(5)) or in a protected zone (RCW 9.94A.310(6)). These enhancements are as follows:

Correctional Facility: If the offender or an accomplice committed certain drug offenses while in a county jail or state correctional facility, the following additional time is added to the presumptive sentence range:

Figure 3. Drug-related Enhancements

Crime	Enhancement
Manufacture, Deliver, Possess with Intent to Deliver Heroin or Cocaine	18 Months
Manufacture, Deliver, Possess with Intent to Deliver Schedule I or II Narcotics (Except Heroin or Cocaine)	18 Months
Selling for Profit (Controlled or Counterfeit) Any Controlled Substance	18 Months
Manufacture, Deliver, Possess with Intent to Deliver Methamphetamine	18 Months
Manufacture, Deliver, Possess with Intent to Deliver Schedule III-V Narcotics or Schedule I-V Non Narcotics (Except Marijuana or Methamphetamine)	15 Months
Manufacture, Deliver, Possess with Intent to Deliver Marijuana	15 Months
Possession of Controlled Substance that is Either Heroin or Narcotics from Schedule I or II	12 Months
Possession of Phencyclidine (PCP)	12 Months
Possession of a Controlled Substance that is a Narcotic from Schedule III-V or Nonnarcotic from Schedule I-V (Except Phencyclidine)	12 Months

Protected Zone: If the offender is sentenced for committing certain drug offenses⁸ in a protected zone, 24 months are added to the presumptive sentence, and the maximum imprisonment and fine are doubled (RCW 69.50.435). These protected zones are as follows:

- In a school or on a school bus;
- Within 1,000 feet of a school bus route stop or a school ground perimeter;
- In a public park;
- On a public transit vehicle or in a public transit stop;
- At a civic center designated as a drug-free zone by the local governing authority;
- Within 1,000 feet of the perimeter of a facility designated as a civic center, if the local governing authority specifically designates the 1,000 foot perimeter.

⁷ Adult Sentencing Guidelines Manual, 1996, Sentencing Guidelines Commission.

⁸ RCW 69.50.435(a) "[A violation of:]...RCW 69.50.401(a) by manufacturing, selling, delivering, or possessing with intent to manufacture, sell or deliver a controlled substance listed under that subsection or who violates RCW 69.50.410 by selling for profit any controlled substance or counterfeit substance classified in schedule I, RCW 69.50.204, except leaves and flowering tops of marijuana..."

Appendix C⁹
Sentence Ranges for Anticipatory Drug Offenses

The appropriate sentence ranges for anticipatory offenses (attempts, solicitations, and conspiracies) involving violations of the Uniform Controlled Substances Act (VUCSA) have been clarified through a series of court decisions and legislative actions. Table 6 presents the current status of statute and case law on appropriate sentence ranges for anticipatory violations of the Uniform Controlled Substances Act.

Table 6. Sentence Ranges for Anticipatory Drug Offenses

	SENTENCE RANGE	STATUTE
Attempt Delivery	Unranked (0 to 12 mos.)	RCW 69.50.407
Possession	Unranked (0 to 12 mos.)	RCW 69.50.407
Solicitation* Delivery	75% of Standard Range	RCW 9A.28.030
Possession	75% of Standard Range	RCW 9A.28.030
Conspiracy Delivery	Unranked (0 to 12 mos.)	RCW 69.50.407
Possession	Unranked (0 to 12 mos.)	RCW 69.50.407

*Solicitations drop one class from the underlying offense (e.g., a solicitation to commit a Class B felony is a Class C felony). Solicitations to commit Class C felonies are gross misdemeanors.

An attempt or conspiracy to commit a drug offense is specifically addressed in RCW 69.50.407, which states that such offenses are punishable by "...imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense..." The appellate courts have consistently held that for VUCSA offenses, RCW 69.50.407 takes precedence over RCW 9A.28. The following reflects current sentencing practices; current statute and case law should be reviewed for definitive guidance in this area.

An attempt or conspiracy to commit a drug offense is typically sentenced as an unranked offense (0-12 months) following state case law. In *State v. Mendoza* (63 Wn. App. 373), Division One, the Court of Appeals, held that "inasmuch as a conspiracy conviction under RCW 69.50.407 has no sentencing directions from the Legislature, it is punished under the unspecified crimes provisions of RCW 9.94A.120(7)."

Solicitation to commit a drug offense is not specifically addressed in RCW 69.50. It is typically charged under RCW 9A.28 and sentenced under RCW 9.94A310(2) at 75 percent of the standard range. Solicitation to commit a Class C felony is a gross misdemeanor under RCW 9A.28.

⁹ Adult Sentencing Guidelines Manual, 1996, Sentencing Guidelines Commission.

RELEVANT STATUTES

RCW 9A.28.020 Criminal attempt. (1) A person is guilty of an attempt to commit crime if, with intent to commit a specific crime, he does any act which is a substantial step toward the commission of that crime.

(2) If the conduct in which a person engages otherwise constitutes an attempt to commit a crime, it is no defense to a prosecution of such attempt that the crime charged to have been attempted was, under the attendant circumstances, factually or legally impossible of commission.

(3) An attempt to commit a crime is a:

(a) Class A felony when the crime attempted is murder in the first degree or arson in the first degree;

(b) Class B felony when the crime attempted is a Class A felony other than murder in the first degree or arson in the first degree;

(c) Class C felony when the crime attempted is a Class B felony;

(d) Gross misdemeanor when the crime attempted is a Class C felony;

(e) Misdemeanor when the crime attempted is a gross misdemeanor or misdemeanor.

RCW 9A.28.030 Criminal solicitation. (1) A person is guilty of criminal solicitation when, with intent to promote or facilitate the commission of a crime, he offers to give or gives money or other thing of value to another to engage in specific conduct which would constitute such crime or which would establish complicity of such other person in its commission or attempted commission had such crime been attempted or committed.

(2) Criminal solicitation shall be punished in the same manner as criminal attempt under RCW 9A.28.020.

RCW 9A.28.040 Criminal conspiracy. (1) A person is guilty of criminal conspiracy when, with intent that conduct constituting a crime be performed, he agrees with one or more persons to engage in or cause the performance of such conduct, and any one of them takes a substantial step in pursuance of such agreement.

(2) It shall not be a defense to criminal conspiracy that the person or persons with whom the accused is alleged to have conspired:

(a) Has not been prosecuted or convicted; or

(b) Has been convicted of a different offense; or

(c) Is not amenable to justice; or

(d) Has been acquitted; or

(e) Lacked the capacity to commit an offense.

(3) Criminal conspiracy is a:

(a) Class A felony when an object of the conspiratorial agreement is murder in the first degree;

(b) Class B felony when an object of the conspiratorial agreement is a Class A felony other than murder in the first degree;

(c) Class C felony when an object of the conspiratorial agreement is a Class B felony;

(d) Gross misdemeanor when an object of the conspiratorial agreement is a Class C felony;

(e) Misdemeanor when an object of the conspiratorial agreement is a gross misdemeanor or misdemeanor.

RCW 9.94A.410 Anticipatory offenses. For persons convicted of the anticipatory offenses of criminal attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the presumptive sentence is determined by locating the sentencing grid sentence range defined by the appropriate offender score and the seriousness level of the crime, and multiplying the range by 75 percent.

In calculating an offender score, count each prior conviction as if the present conviction were for the completed offense. When these convictions are used as criminal history, score them the same as a completed crime.

RCW 69.50.101(f) "Deliver" or "delivery" means the actual or constructive transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

RCW 69.50.407 Conspiracy. Any person who attempts or conspires to commit any offense defined in this chapter is punishable by imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

**Appendix D:
The Drug Offender Sentencing Alternative**

RCW 9.94A.120

(6)(a) An offender is eligible for the special drug offender sentencing alternative if:

(i) The offender is convicted of the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance classified in Schedule I or II that is a narcotic drug or a felony that is, under chapter 9A.28 RCW or RCW 69.50.407, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes, and the violation does not involve a sentence enhancement under RCW 9.94A.310 (3) or (4);

(ii) The offender has no prior convictions for a felony in this state, another state, or the United States; and

(iii) The offense involved only a small quantity of the particular controlled substance as determined by the judge upon consideration of such factors as the weight, purity, packaging, sale price, and street value of the controlled substance.

(b) If the midpoint of the standard range is greater than one year and the sentencing judge determines that the offender is eligible for this option and that the offender and the community will benefit from the use of the special drug offender sentencing alternative, the judge may waive imposition of a sentence within the standard range and impose a sentence that must include a period of total confinement in a state facility for one-half of the midpoint of the standard range. During incarceration in the state facility, offenders sentenced under this subsection shall undergo a comprehensive substance abuse assessment and receive, within available resources, treatment services appropriate for the offender. The treatment services shall be designed by the division of alcohol and substance abuse of the department of social and health services, in cooperation with the department of corrections. If the midpoint of the standard range is twenty-four months or less, no more than three months of the sentence may be served in a work release status. The court shall also impose one year of concurrent community custody and community supervision that must include appropriate outpatient substance abuse treatment, crime-related prohibitions including a condition not to use illegal controlled substances, and a requirement to submit to urinalysis or other testing to monitor that status. The court may require that the monitoring for controlled substances be conducted by the department or by a treatment alternatives to street crime program or a comparable court or agency-referred program. The offender may be required to pay thirty dollars per month while on community custody to offset the cost of monitoring. In addition, the court shall impose three or more of the following conditions:

(i) Devote time to a specific employment or training;

(ii) Remain within prescribed geographical boundaries and notify the court or the community corrections officer before any change in the offender's address or employment;

(iii) Report as directed to a community corrections officer;

(iv) Pay all court-ordered legal financial obligations;

(v) Perform community service work;

(vi) Stay out of areas designated by the sentencing judge.

(c) If the offender violates any of the sentence conditions in (b) of this subsection, the department shall impose sanctions administratively, with notice to the prosecuting attorney and the sentencing court. Upon motion of the court or the prosecuting attorney, a violation hearing shall be held by the court. If the court finds that conditions have been willfully violated, the court may impose confinement consisting of up to the remaining one-half of the midpoint of the standard range. All total confinement served during the period of community custody shall be credited to the offender, regardless of whether the total confinement is served as a result of the original sentence, as a result of a sanction imposed by the department, or as a result of a violation found by the court. The term of community supervision shall be tolled by any period of time served in total confinement as a result of a violation found by the court.

(d) The department shall determine the rules for calculating the value of a day fine based on the offender's income and reasonable obligations which the offender has for the support of the offender and any dependents. These rules shall be developed in consultation with the administrator for the courts, the office of financial management, and the commission.

**Appendix E:
First-Time Offender Waiver**

RCW 9.94A.120

(5) In sentencing a first-time offender the court may waive the imposition of a sentence within the sentence range and impose a sentence which may include up to ninety days of confinement in a facility operated or utilized under contract by the county and a requirement that the offender refrain from committing new offenses. The sentence may also include up to two years of community supervision, which, in addition to crime-related prohibitions, may include requirements that the offender perform any one or more of the following:

- (a) Devote time to a specific employment or occupation;
- (b) Undergo available outpatient treatment for up to two years, or inpatient treatment not to exceed the standard range of confinement for that offense;
- (c) Pursue a prescribed, secular course of study or vocational training;
- (d) Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;
- (e) Report as directed to the court and a community corrections officer; or
- (f) Pay all court-ordered legal financial obligations as provided in RCW 9.94A.030 and/or perform community service work.

RCW 9.94A.030 Definitions.

(22)(a) "First-time offender" means any person who is convicted of a felony (i) not classified as a violent offense or a sex offense under this chapter, or (ii) that is not the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance classified in schedule I or II that is a narcotic drug, nor the manufacture, delivery, or possession with intent to deliver methamphetamine, its salts, isomers, and salts of its isomers as defined in RCW 69.50.206(d)(2), nor the selling for profit of any controlled substance or counterfeit substance classified in schedule I, RCW 69.50.204, except leaves and flowering tops of marijuana, and except as provided in (b) of this subsection, who previously has never been convicted of a felony in this state, federal court, or another state, and who has never participated in a program of deferred prosecution for a felony offense.

Appendix F: Work Ethic Camp

RCW 9.94A.030-DEFINITION

(40) "Work ethic camp" means an alternative incarceration program designed to reduce recidivism and lower the cost of corrections by requiring offenders to complete a comprehensive array of real-world job and vocational experiences, character-building work ethics training, life management skills development, substance abuse rehabilitation, counseling, literacy training, and basic adult education.

RCW 9.94A.137-ELIGIBILITY

Work ethic camp program—Eligibility—Sentencing. (1)(a) An offender is eligible to be sentenced to a work ethic camp if the offender:

(i) Is sentenced to a term of total confinement of not less than sixteen months or more than thirty-six months; and

(ii) Has no current or prior convictions for any sex offenses or for violent offenses other than drug offenses for manufacturing, possession, delivery, or intent to deliver a controlled substance.

(b) The length of the work ethic camp shall be at least one hundred twenty days and not more than one hundred eighty days. Because of the conversion ratio, earned early release time shall not accrue to offenders who successfully complete the program.

(2) If the sentencing judge determines that the offender is eligible for the work ethic camp and is likely to qualify under subsection (3) of this section, the judge shall impose a sentence within the standard range and may recommend that the offender serve the sentence at a work ethic camp. The sentence shall provide that if the offender successfully completes the program, the department shall convert the period of work ethic camp confinement at the rate of one day of work ethic camp confinement to three days of total standard confinement. In sentencing an offender to the work ethic camp, the court shall specify: (a) That upon completion of the work ethic camp the offender shall be released on community custody for any remaining time of total confinement; (b) the applicable conditions of supervision on community custody status as required by RCW 9.94A.120(9)(b) and authorized by RCW 9.94A.120(9)(c); and (c) that violation of the conditions may result in a return to total confinement for the balance of the offender's remaining time of confinement.

(3) The department shall place the offender in the work ethic camp program, subject to capacity, unless: (a) The department determines that the offender has physical or mental impairments that would prevent participation and completion of the program; (b) the department determines that the offender's custody level prevents placement in the program; or (c) the offender refuses to agree to the terms and conditions of the program.

(4) An offender who fails to complete the work ethic camp program, who is administratively terminated from the program, or who otherwise violates any conditions of supervision, as defined by the department, shall be reclassified to serve the unexpired term of his or her sentence as ordered by the sentencing judge and shall be subject to all rules relating to earned early release time.

(5) During the last two weeks prior to release from the work ethic camp program the department shall provide the offender with comprehensive transition training. [1995 1st sp.s. c 19 § 20; 1993 c 338 § 4.]

Comment

In 1993, the Legislature established the Work Ethic Camp program sentencing alternative. The 1995 Legislature expanded eligibility for Work Ethic Camp by including those sentenced for manufacturing, possession, delivery, or intent to deliver a controlled substance, eliminating age-based qualifications, and reducing from 22 to 16 months the minimum term of confinement qualifying an offender for Work Ethic Camp. The legislation also requires the sentencing court to specify conditions of supervision on community custody status after completion of the Work Ethic Camp, and to specify that violating those conditions may return the offender to total confinement for the remainder of the sentence. The Department of Corrections may deny placement in the Work Ethic

Camp on the basis of an offender's custody level. This sentencing option was intended to be an alternative to the treatment-oriented drug offender sentencing option created in RCW 9.94A.120(6), not for use in conjunction with it.

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