



# Felony Drug Grid Sentencing Comparison

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## 2015 Preliminary Report to the Legislature

*As required by Second Engrossed Substitute Senate Bill 5892*

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This report is the first report required by 2ESSB 5892 and has been produced by the Department of Corrections based on data from the Washington State Caseload Forecast Council.



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# Felony Drug Grid Sentencing Comparison Pursuant to Second Engrossed Senate Bill 5892, 2013 2015 Report to the Legislature

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## Executive Summary

The 2013 Legislature directed the Department of Corrections (DOC), in consultation with the Caseload Forecast Council (CFC), to compare sentencing data of certain drug offenders two years prior to the effective date of Second Engrossed Senate Bill 5892 (2ESSB 5892) to those sentenced two years after the effective date of the bill. This is the first of two reports due to the legislature. For this preliminary report, DOC obtained data from the CFC and compared the number of sentences in the affected sentencing grid cell for the two years prior to the law change (Fiscal Years 2012 and 2013) to the first year after the law change (Fiscal Year 2014).

The bill made a change to the standard sentence courts may impose for certain lower-level drug offenses. Prior to the bill, drug offenders within a certain sentencing grid cell could receive a prison or jail sentence. After the introduction of 2ESSB 5892, those offenders which fall inside this sentencing cell are limited to jail sentences.

Based on the review of the data, 2ESSB 5892 results in a reduction of DOC's population and an increase to local jail populations. It appears that the criminal history offender score and the offense charged have remained fairly stable over the entire three years. However, for the year after the law change, there was a higher incidence of exceptional sentences imposed resulting in prison sentences. In addition, there were a small number of sentences imposed that resulted in a prison or alternative sentence, when the presumptive sentence should have been a jail sentence. These types of sentences can occur early in the implementation of new laws, and generally corrects over time.

The second report due to the legislature in January of 2018 will represent the full impacts of the legislative law change.

The changes to the sentencing grid in the enacted bill will expire on June 30, 2018. After that date, the sentencing grid will revert to the version that was in place prior to July 1, 2003.

## Report Overview

The 2013 Legislature directed the DOC, in consultation with the CFC, to compile information on offenders sentenced under the drug grid (RCW 9.94A.517) for a Seriousness Level I offense with an offender score of 3 – 5 for the two years prior to and for the one year after the effective date of 2ESSB 5892. The information compiled must include:

- (a) The total number of sentences and the average length of sentence imposed, sorted by sentences served in state versus local correctional facilities;
- (b) The number of current and prior felony convictions for each offender;

- (c) The estimated cost or cost savings, total and per offender to the state and local governments from the change to the maximum sentence pursuant to RCW 9.94A.517(1); and
- (d) The number of offenders who were sentenced to community custody, the number of violations committed on community custody and any sanctions imposed for such violations.

The DOC was directed to submit two reports to the Office of Financial Management and the appropriate fiscal and policy committees of the legislature, with the preliminary report due on January 1, 2015, and the final report due on January 1, 2018.

## Legislative History

The sentence length for an adult offender convicted of a felony offense is based on a standard range that is determined by the seriousness level of the offense and the offender's criminal history score, among other possible factors. The standard ranges are codified in a table, referred to as a sentencing grid. When the Sentencing Reform Act was effective in 1984, there was one sentencing grid prescribing sentencing ranges for all felony sentences, codified in RCW 9.94A.518.

In 2002, the Legislature created an additional sentencing grid, the Drug Offense Sentencing Grid (Drug Grid), which is codified in RCW 9.94A.518, and is used to determine the standard sentence range specifically for felony offenders convicted of drug offenses committed on, or after, July 1, 2003.

The determination of the location of where the sentence is served (state or local facility), is dependent upon the length of sentence imposed. A sentence of 12 months or less is served in a local (county) facility and a sentence of at least 12 months and a day is served at a state prison facility (RCW 9.94A.190). Contained in the Drug Grid (intersection of Seriousness Level 1 with offender score 3 - 5), was a sentencing cell that had a standard sentence range of 6 months and a day (6+) as a low range and 18 months as a high range. This "straddle cell" was the first and only cell contained in either the Drug Grid or the Adult Felony Sentencing Grid that allowed for either a jail *or* prison sentence.

In 2013, 2ESSB 5892 was passed and the legislation included a change to the "straddle cell" of the Drug Grid. The standard range was changed from "6+ to 18 months" to "6+ to 12 months", eliminating the standard sentence that included either a jail or a prison commitment and created a sentence range that only allows for a presumptive jail sentence. This change resulted in a reduction of offenders sentenced to confinement at a DOC facility; causing a decrease to DOC population and an increase to county jail commitments. This legislative change in the enacted bill to the sentencing grid will expire on June 30, 2018. The change to the standard range for the "straddle cell" is only effective for offenders sentenced for a drug offense committed on, or before, July 1, 2018.

## Fiscal Impacts Estimated for Enactment of 2ESSB 5892

Based on Fiscal Year 2012 data, the CFC’s 2013 fiscal note for the bill estimated the following impacts to the Average Monthly Population (AMP) of the prison and jail populations as a result of the Drug Grid changes contained in 2ESSB 5892:

	Fiscal Year										
	FY14	FY15	FY16	FY17	FY18	FY19	FY20	FY21	FY22	FY23	FY24
<b>Jail AMP*</b>	52	81	81	81	81	63	18	5	2	1	0
<b>Prison AMP*</b>	-126	-126	-126	-125	-70	-18	-6	-3	-2	0	0

\*Average Monthly Population Change

Source: CFC

## Findings of Comparisons – Population Impacts

As required by 2ESSB 5892, the CFC reviewed all felony drug sentences imposed in the two years prior to the Drug Grid change, FY 2012 and FY 2013, and one year after the effective date, FY 2014. The Drug Grid contains nine sentencing cells: three Seriousness Levels (SL) and groups offenders’ scores in three groups: 0-2, 3-5, and 6 and over.

Following is a table that shows the distribution of **all sentences** at all seriousness levels imposed under the Drug Grid for the two years prior to the law change and the one year after the law change.

### All Sentences Imposed per the Drug Grid:

Law Chg	Fiscal Year	SL 1		SL 2		SL 3		Total	
		# of sentences	%	# of sentences	%	# of sentences	%	# of sentences	%
Pre	2012	4,734	76.8%	1,388	22.5%	44	0.7%	6,166	100.0%
Pre	2013	4,937	78.3%	1,337	21.2%	33	0.5%	6,307	100.0%
Post	2014	5,238	79.2%	1,351	20.4%	28	0.4%	6,617	100.0%

*The law change effective for FY 2014 offenses does not appear to have significantly impacted the distribution of offenses within Seriousness Levels. The percent of offenses categorized as SL 1 offenses have increased slightly in FY 2014 (+2.4% from FY 2012 to FY 2014), while offenses at SL 2 have decreased slightly (-2.1%). SL 3 offenses continue to be a very small percent of the overall drug offenses. See Appendix A for the list of drug offenses by Seriousness Level.*

Following is a table displaying the number of sentences per FY for offenses that are SL 1, by the offender score (the highlighted columns reflect the cell that was changed in FY 2014 to require presumptive jail sentences).

### SL 1 Drug Grid Sentences:

		Seriousness Level 1 Drug Offenses							
Law Chg	Fiscal Year	Score 0 - 2		Score 3 - 5		Score 6 - 9+		Total	
		# of sentences	%	# of sentences	%	# of sentences	%	# of sentences	%
Pre	2012	3,022	63.8%	841	17.8%	871	18.4%	4,734	100.0%
Pre	2013	3,073	62.2%	915	18.5%	949	19.2%	4,937	100.0%
Post	2014	3,354	64.0%	831	15.9%	1,053	20.1%	5,238	100.0%

Consistent with the finding that the number of sentences for drug offenses categorized as Seriousness Level 1 offenses did not significantly change from FY 2012 to FY 2014, the distribution by offender score was also a minor change. The number of sentences in the impacted cell (those with scores of 3 - 5) as a percent of the total sentences decreased by less than 2% from FY 2012 to FY 2014, and the percent of sentences within the neighboring cells increased slightly (those with scores of 0 - 2 increased less than 1% and those with an offender score of 6 - 9+ increased by 1.8%).

### Total Number of Sentences and the Average Length, by State vs Local Correctional Facilities

Following is a table displaying the total number of sentences and the average length of sentence imposed for sentences within the impacted cell, sorted by where the sentence was served - state versus local correctional facilities:

### Impacted Cell (SL 1, Offender Score of 3-5) Number of Sentences Imposed and the Average Length of Sentences Imposed:

Law Chg	Fiscal Year	Local (Jail) Facilities			State (Prison) Facilities			Alternative Sentences			Total Sentences
		#	%	Avg Sent. (mos)	#	%	Avg Sent. (mos)	#	%	Avg Sent. (mos)	
Pre	2012	446	53.0%	6.8	289	34.4%	13.8	106	12.6%	n/a	841
Pre	2013	479	52.3%	6.5	309	33.8%	14.2	127	13.9%	n/a	915
Post	2014	694	83.5%	7.2	110	13.2%	12.9	27	3.3%	n/a	831

While the change in the drug grid was intended to shift offenders with an offense classified at SL 1 and a score of 3 - 5 to a presumptive jail sentence, the year after the effective date a little more than 13% of the sentences still resulted in a prison term and 3.3% received an alternative that they should not have been eligible to receive.

Of the 13% of the sentences that resulted in a prison sentence:

- 53% were an exceptional sentence, and
- 47% were sentences imposed outside the standard range. These sentences can occur early in the phase of implementing new laws, and generally corrects over time.

### Number of Current and Prior Felony Convictions for Each Sentence Imposed:

Following is a table displaying the average number of current and prior felony convictions for offenders receiving a sentence based on the drug grid for Seriousness Level I.

		Seriousness Level 1 Drug Offenses					
Law Chg	Fiscal Year	Score 0 - 2		Score 3 - 5		Score 6 – 9+	
		Avg # Currents	Avg # Priors	Avg # Currents	Avg # Priors	Avg # Currents	Avg # Priors
Pre	2012	1.2	1.2	1.7	3.5	1.8	7.9
Pre	2013	1.2	1.5	1.6	3.5	1.8	7.9
Post	2014	1.2	1.6	1.6	3.5	1.8	7.8

The average number of current offenses and the average number of prior convictions for each sentence remains stable between before and after the effective date of the law change.

### Fiscal Impacts: The Estimated Cost or Cost Savings to the State and Local Governments

The CFC’s data is based on all felony sentences in the state. In order to estimate the number of offenders, as one offender may have multiple sentences, an average ratio of 73 offenders to 100 sentences was used to extrapolate sentences to offenders for prison sentences and an average of 63 to 100 for non-prison sentences. These calculations are standard assumptions used in CFC’s fiscal note estimates.

#### Estimated Prison Savings

##### Non-DOSA

On average, the number of non-DOSA prison sentences for the impacted grid cell in the two years preceding the law change was 284. In the year after, it was 101, resulting in a reduction of 183 sentences, or an estimated 134 offenders (183 x .73). This resulted in an estimated reduction of -87 Average Daily Population (ADP) for FY14. See table below for detailed calculations.

#### Calculation Details for Estimated Prison Savings, Non-DOSA Sentences

Prison Sentences (Non-DOSA)					
Fiscal Year	# of Sentences	Est. # of Offenders (73%)	Average Sentence	Estimated LOS*	ADP
2012	277	203	13.87	7.41	125
2013	290	213	14.29	7.63	135
2012-13 2-year Avg.	284	208	14.08	7.52	130
2014	101	74	12.98	6.93	43
Difference:	-183	-134		<b>ADP:</b>	<b>-87</b>

\*Length of Stay

### Prison-DOSA

On average, the number of prison-based DOSA sentences for the impacted grid cell in the two years preceding the law change was 16. In the year after, it was 9, resulting in a reduction of 7 sentences, or an estimated 5 offenders (7 x .73). This resulted in an estimated reduction of -3 ADP for FY14. See table below for detailed calculations.

#### Calculation Details for Estimated Prison DOSA Savings

Prison DOSA Sentences					
Fiscal Year	# of Sentences	Est. # of Offenders (73%)	Average Sentence	Estimated LOS*	ADP
2012	12	9	12.52	7.29	5
2013	19	14	12.01	6.99	8
2012-13 2-year Avg.	16	12	12.27	7.14	7
2014	9	7	12.01	6.41	4
Difference:	-7	-5		<b>ADP:</b>	<b>-3</b>

\*Length of Stay

### Total Prison Impacts

It cannot be determined if the entire reduction, estimated at -90 ADP that occurred between the average of FY 2012/FY 2013 and FY 2014, was attributed to the law change, but assuming it was, the ADP savings is calculated by using a ratio established for fiscal notes. The ratio is based on actual lengths of stay for releasing offenders, by crime type, as compared to the sentence imposed, resulting in a percent that can be applied to sentence lengths to estimate the length of stay. An offender's stay at DOC is less than the sentence imposed by the court because of the earned time and presentence credits.

The estimated fiscal impact for the DOC prison population reduction of -90 ADP in the cell amended by 2ESSB 5892, was approximately a \$1.1 million savings for DOC in FY 2014. The fiscal calculation to estimate is based on the FY 2014 average unit cost (AUC) of \$12,387 per offender per year that is used for DOC fiscal note assumptions. This cost estimate includes prison custody staffing on living/housing units, prison direct variable costs, health services direct variable costs, and prison non-custody essential staffing on living/housing units. It does not include staffing or dollars necessary for staffing needed at the facility outside of the living/housing units. AUC is calculated by DOC and reviewed by staff from the Office of Financial Management, Senate, House and Washington State Institute of Public Policy each legislative session.

## Estimated Local Jail Costs

On average, the number of local sentences in the two years preceding the law change was 463. In the year after, it rose to 694, resulting in an increase of 231 local jail sentences, or an estimated 145 offenders (231 x .63). This resulted in an estimated increase of +75 ADP for local jails statewide in FY14. See table below for detailed calculations.

### Appendix C – Calculation Details for Estimated Jail Costs

Jail Sentences					
Fiscal Year	# of Sentences	Est. # of Offenders (63%)	Average Sentence	Estimated LOS*	ADP
2012	446	281	6.80	4.90	115
2013	479	302	6.51	4.69	118
2012-13 2-year Avg.	463	292	6.65	4.80	116.8
2014	694	437	7.30	5.26	191.6
Difference:	231	145		<b>ADP:</b>	<b>+75</b>

\*Length of Stay

DOC does not have the fiscal information necessary to estimate the cost associated with the increased ADP to local governments; however, for illustrative purposes an estimate has been provided using the Local Government fiscal note rate that was used for the fiscal note of \$80 per day.

Assuming this is the “cost” of additional jail beds, it is estimated that the cost of housing additional drug offenders pursuant to the law change is \$2.2 million per year, statewide for local governments.

## Community Custody Impacts

The courts have authority to order a one-year term of community custody for offenders who have been convicted of a drug offense. The DOC has statutory requirements to conduct a risk assessment for every felony offender sentenced to a term of community custody who may be subject to supervision. For drug offenders, if the offender’s risk is assessed at Low or Moderate risk to reoffend, DOC does not have authority to supervise and must terminate supervision for such offenders.

The language in 2ESSB 5892 directs DOC to report on the number of offenders who were sentenced to community custody, the number of violations committed on community custody and any sanctions imposed for such violations, for the two years prior to the law change and for the two years after. Based on the effective date of the law change, and the time offenders are supervised, the only data available is

the data for FY 2012 - FY2013. The comparison to offenders supervised after the law change will be included in the final report due to the legislature in 2018.

## Report Summary

The change contained in 2ESSB 5892 has resulted in savings to DOC as it shifts certain prison sentences to presumptive jail sentences. As common with new sentencing laws, there is an initial period early in implementation that may result in more sentences outside the standard range, as the criminal justice system adjusts to the change. This report serves as interim report, with a final report due to the Legislature in 2018. At that time, it is expected that the change would be fully implemented and in practice. This legislative change in the enacted bill to the sentencing grid will expire on June 30, 2018. The change to the standard range for the “straddle cell” is only effective for offenders sentenced for a drug offense committed before July 1, 2018. It would be expected that DOC’s prison population would increase, as courts would have an option of sentencing offenders to either jail or prison for a longer time period, in the sentencing cell that was amended.

## Appendix A - Drug Offenses Seriousness Levels (Table 4, RCW 9.94A.518)

- SL III Any felony offense under chapter [69.50](#) RCW with a deadly weapon special verdict under RCW [9.94A.602](#)
- Controlled Substance Homicide (RCW [69.50.415](#))
- Delivery of imitation controlled substance by person eighteen or over to person under eighteen (RCW [69.52.030\(2\)](#))
- Involving a minor in drug dealing (RCW [69.50.4015](#))
- Manufacture of methamphetamine (RCW [69.50.401\(2\)\(b\)](#))
- Over 18 and deliver heroin, methamphetamine, a narcotic from Schedule I or II, or flunitrazepam from Schedule IV to someone under 18 (RCW [69.50.406](#))
- Over 18 and deliver narcotic from Schedule III, IV, or V or a nonnarcotic, except flunitrazepam or methamphetamine, from Schedule I-V to someone under 18 and 3 years junior (RCW [69.50.406](#))
- Possession of Ephedrine, Pseudoephedrine, or Anhydrous Ammonia with intent to manufacture methamphetamine (\*\*RCW [69.50.440](#))
- Selling for profit (controlled or counterfeit) any controlled substance (RCW [69.50.410](#))
- SL II Create, deliver, or possess a counterfeit controlled substance (RCW [69.50.4011](#))
- Deliver or possess with intent to deliver methamphetamine (RCW [69.50.401\(2\)\(b\)](#))
- Delivery of a material in lieu of a controlled substance (RCW [69.50.4012](#))
- Maintaining a Dwelling or Place for Controlled Substances (RCW [69.50.402\(1\)\(f\)](#))
- Manufacture, deliver, or possess with intent to deliver amphetamine (RCW [69.50.401\(2\)\(b\)](#))
- Manufacture, deliver, or possess with intent to deliver narcotics from Schedule I or II or flunitrazepam from Schedule IV (RCW [69.50.401\(2\)\(a\)](#))
- Manufacture, deliver, or possess with intent to deliver narcotics from Schedule III, IV, or V or nonnarcotics from Schedule I-V (except marijuana, amphetamine, methamphetamines, or flunitrazepam) (RCW [69.50.401\(2\)](#) (c) through (e))
- Manufacture, distribute, or possess with intent to distribute an imitation controlled substance (RCW [69.52.030\(1\)](#))
- SL I Forged Prescription (RCW [69.41.020](#))
- Forged Prescription for a Controlled Substance (RCW [69.50.403](#))
- Manufacture, deliver, or possess with intent to deliver marijuana (RCW [69.50.401\(2\)\(c\)](#))
- Possess Controlled Substance that is a Narcotic from Schedule III, IV, or V or Nonnarcotic from Schedule I-V (RCW [69.50.4013](#))
- Possession of Controlled Substance that is either heroin or narcotics from Schedule I or II (RCW [69.50.4013](#))
- Unlawful Use of Building for Drug Purposes (RCW [69.53.010](#))