

# Drug Sentencing

**Overview** – In 2002 the Legislature enacted major changes in sentencing policies for non-violent drug offenders (those convicted of violating drug laws and who have no prior convictions for sex or violent offenses). The goal of the legislation was to lower sentences for non-violent drug offenders, eliminate double and triple scoring of prior offenses, and redirect any savings from reduced jail and prison sentences into treatment programs and county drug courts. A new drug sentencing grid took effect in July 2004. While there are differing philosophies on how to handle drug offenders, most agree that the new policies should be given time to see if they work as intended. Following is a brief description of drug sentencing laws.

**Drug Sentencing Grid** – For all crimes committed after July 1, 1984, the Sentencing Reform Act (SRA) of 1981 as amended governs sentencing for most felony convictions in Washington state. It is a “determinate” sentencing structure that establishes a minimum and maximum standard sentence range for each crime and does not use parole. Most felonies are assigned a seriousness level with a corresponding minimum and maximum sentence range. The ranges increase with each seriousness level and for the number of prior convictions. The new drug sentencing grid removes most felony drug offenses from the SRA grid into a separate drug grid and provides reduced penalties for non-violent drug offenders. A list of specific crimes with each seriousness level is shown in the Appendix.

Seriousness Level	Offender Score 0 to 2	Offender Score 3 to 5	Offender Score 6 to 9 or more
III	51 to 68 months	68+ to 100 months	100+ to 120 months
II	12+ to 20 months	20+ to 60 months	60+ to 120 months
I	0 to 6 months	6+ to 18 months	12+ to 24 months

Double and triple scoring of prior drug offenses (where one prior offense counts as two or three) was eliminated with the establishment of the new drug grid. However, offenders convicted of manufacturing methamphetamine and those that have a criminal history for a sex or violent offense would still be subject to the double and triple scoring penalties.

**Alternatives to Jail and Prison** – Two major alternatives to incarceration are available to drug offenders: the Drug Offender Sentencing Alternative (DOSA) or Drug Court. The DOSA program authorizes a judge to sentence an offender to a partial prison sentence and community placement while participating in a mandatory alcohol and substance abuse treatment program. Drug Court, an alternative court system operated by counties, diverts non-violent drug criminals into court-ordered treatment programs rather than jail or prison. The program allows defendants arrested for drug possession to choose an intensive, heavily supervised rehabilitation program in lieu of incarceration and a criminal record. Drug court is only available for offenders convicted of Seriousness Level I or II offenses.

**Early Release** – In 2003, the Legislature passed SB 5990, which authorized non-violent drug offenders to gain up to 50 percent earned release time, meaning they would serve only half of their sentence and then would be released. This provision did not apply to drug offenders with sex or violent offense convictions.

## Legislative History

In 2006, the legislature passed E2SSB 6239, a major bill dealing with reducing substance abuse. It amended the definition of "neglect" of vulnerable adults and children to include exposure to methamphetamines or ingredients of meth when there was intent to manufacture meth. It also granted authority to local health officers, in consultation with law enforcement officers, to seek a warrant to conduct inspections of property if they have probable cause that property is contaminated by drugs or drug-making materials. It also provided that, in addition to condemning or demolishing contaminated property, city or county officials could take additional actions such as prohibiting the use, occupancy, or removal of property, or ordering its decontamination. Property owners were made responsible for the costs of any property testing which may be required to demonstrate the presence or absence of hazardous chemicals, and the costs of the property's decontamination, demolition, and disposal expenses, as well as costs incurred by the local health officer.

E2SSB 6239 also required sentence enhancements for ranked drug offenses to be served consecutively and that DOSA offenders serve 12 months or up to the half point of a sentence, whichever is greater, and that when a court determined that chemical dependency contributed to a felony offense, the offender, not just drug offenders, had to receive a chemical dependency screening report prior to sentencing.

**Issues and Outlook** – One of the results of the new drug grid has been more prison sentences, partially due to certain drug crimes that now require a prison sentence (where the offender would have gone to a local jail before), and the increased early release time offenders can get in prison. While this has not led to significant savings to the state, local governments are saving money from housing fewer drug offenders in their local jails. There have been ongoing attempts to expand DOSA and provide for even earlier release for certain drug offenders.

**Additional Information** - Crimes included within each seriousness level on the drug sentencing grid:

### Level III (51-68 months in prison or DOSA)

- Any drug offense that involves a deadly weapon special verdict
- Manufacture of methamphetamine
- Over 18 and deliver heroin, methamphetamine, a narcotic from Schedule I or II, or flunitrazepam from Schedule IV to someone under 18
- Controlled Substance Homicide
- 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 three years junior
- Possession of Ephedrine, Pseudoephedrine, or Anhydrous Ammonia with intent to manufacture methamphetamine
- Selling for profit (controlled or counterfeit) any controlled substance
- Involving a minor in drug dealing
- Delivery of imitation controlled substance by person 18 or over to minor

**Level II (12 - 20 months in prison, Drug Court, or DOSA)**

- Deliver or possess with intent to deliver methamphetamine
- Manufacture, deliver, or possess with intent to deliver amphetamine
- Manufacture, deliver, or possess with intent to deliver heroin or cocaine
- Manufacture, deliver, or possess with intent to deliver narcotics from Schedule I or II (except heroin or cocaine) or flunitrazepam from Schedule IV
- 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)
- Delivery of a material in lieu of a controlled substance
- Maintaining a dwelling or place for controlled substances
- Manufacture, distribute, or possess with intent to distribute an imitation controlled substance
- Create, deliver, or possess a counterfeit controlled substance.

**Level I (Zero - 6 months in jail or Drug Court)**

- Manufacture, deliver, or possess with intent to deliver marijuana
- Possession of controlled substance that is either heroin or narcotics from Schedule I or II or flunitrazepam from Schedule IV
- Forged prescription
- Forged prescription for a controlled substance
- Possess controlled substance that is a Narcotic from Schedule III, IV, or V or Non-narcotic from Schedule I-V (except phencyclidine or flunitrazepam)
- Possession of phencyclidine (PCP).
- Unlawful use of a building for drug purposes.