

**Sentencing Alternatives Subgroup
Meeting Notes
08.10.21 | 1:30pm-3:00pm**

Attendees:

- Tiffany Attrill, *(Alt. for Riddhi Mukhopadhyay), Interests of Crime Victims*
- Nick Allen, *Interests of Incarcerated Persons*
- Rep. Roger Goodman, *WA House Democrats*
- Keri-Anne Jetzer, *(Alt. for Judge St. Clair) Sentencing Guidelines Commission*
- Lauren Knoth, *Washington State Institute for Public Policy*
- Mac Pevey, *(Alt. for Julie Martin) Dept. of Corrections (DOC)*
- Waldo Waldron-Ramsey, *Representing Interests of Incarcerated Persons*
- Judge Wesley St. Clair, *Sentencing Guidelines Commission*
- Clela Steelhammer, *Caseload Forecast Council*

Guests: Carsen Nies, Joanne Smieja, Bruce Glant

Facilitation Team: Molly Stenovec, Chris Page, Amanda Murphy

WELCOME & MEETING PURPOSE

After welcoming attendees, Chris reviewed the meeting agenda and purpose along with the workplan for the Sentencing Alternatives Subgroup. The Grid Subgroup and Criminal Sentencing Task Force have asked members to spend time between CSTF meetings to review how existing sentencing alternatives are used and explore potential recommendations about how they should relate to the grid. Many of the changes being considered by the Grid Subgroup are based on a shift in the overall approach to community supervision and other alternatives to incarceration, to risk needs responsivity (RNR) based assessments and treatment-centered approaches.

Work ahead: This subgroup will review the remaining existing alternatives—how they are implemented, what works well, and how they relate to the sentencing grid. The tentative sequencing is:

- 8/24: Special Sex Offender Sentencing Alternative
- 9/7: Drug Offender Sentencing Alternative
- 9/21: Use of Alternatives by County, Work Ethic Camp, County-Level Diversion Programs
- 10/5: Wrap-Up on Takeaways & Recs

The facilitation team will start capturing potential recommendations that emerge during conversations. The Facilitation team is also tracking conversations and emerging recommendations in both subgroups since the topics are so interconnected.

Q: Since so much of our thinking is based on DOC implementing a new approach to supervision, could we get a status update on iCOACH?

R: Mac Pevey shared that DOC is still in the early planning stages. Representatives from all areas of DOC have met once to begin planning and identify who to reach out to for additional

feedback and input. The proviso directs DOC to launch the program in January 2023, but the agency is developing an accelerated timeline and hopes to launch in July 2022.

Members of the subgroup shared additional suggestions, including:

- Reach out to individuals and groups outside of DOC early enough in the process that their suggestions and feedback can be meaningfully integrated into the program;
- Outreach to additional groups should include those who work with victims and survivors of crime; and
- Consider offering a stipend to participants who otherwise are not paid to participate.

TAKEAWAYS FROM FIRST TWO MEETINGS

Chris reviewed the subgroup's progress to date:

- At the first meeting, Senator Dhingra provided an overview of the thinking behind the development of the new state Mental Health Sentencing Alternative.
- Susie Leavell, DOC, presented information on the Parenting Sentencing Alternatives— Family & Offender Sentencing Alternative (FOSA), which is court based, and Community Parenting Alternative, (CPA) which is DOC-based in partnership with the Department of Social and Health Services (DSHS).

Q: Susie's presentation talked about the "child focus" for the Community Parenting Alternative program; does the FOSA program use the same approach?

R: A prison-based program has the benefit and ability to work with individuals to do more planning and programs before return to the family. The court also has a big sensitivity for child safety and tends to revoke the FOSA if any concern about the child's safety arises. Specifically, the relevant section of the Revised Code of Washington directs the courts to "give great weight to the interest of the child."

FIRST TIME WAIVER

Clela Steelhammer, Caseload Forecast Council, provided an overview of the First Time Waiver (First Time Offender Waiver in statute, or FTOW). Takeaways from the presentation:

- Utilized FY20 data so most current information could be shared
- In FY20, there was an overall reduction in felony charges by 20% (possibly because of DOSA program, other reductions in charges).
- This alternative may include some time in confinement—court waives the standard range but may impose up to 90 days in confinement.
- Individuals serve violation length of time in confinement, if applicable; and full term of confinement cannot be imposed.

Discussion:

Mac Pevey noted that any individual sentenced under this alternative has a mandatory community supervision—there is no RNR screening.

Q: What counties utilize this waiver?

R: Clela can provide this information. At the request of the group, she will also provide this information for all alternatives. [COMPLETE]

After some discussion about different approaches to charging and sentencing across counties, some noted the need for the following:

- **Emerging Potential Recommendation:** Outreach and education to judges, prosecution, and defense about the new grid and sentencing alternatives.

Q: What are the success rates for FTOW?

R: Neither DOC, Caseload Forecast Council, nor WSIPP have that data, but could work collectively to provide that information; however, that would not be a small task. DOC may be able to provide information on violations to the terms of supervision.

- **Emerging Potential Recommendation:** Conduct a program evaluation of current sentencing alternatives, including rates of successfully reducing recidivism.

Q: Could you provide more information about the eligibility? What are the types of offenses that are eligible? How could this alternative connect to the grid?

R: Eligibility info:

- Individual cannot have a drug, sex, or under the influence charge and no previous felony conviction (including as a juvenile)
- Alternative can apply to individuals facing jail or prison sentence
- Some actions may lead to a gross misdemeanor whereas other counties similar behavior may lead to a felony charge—does the “first time” restriction make sense?
- Convictions that have washed out don’t apply towards the criminal history score but would prevent eligibility for the first-time waiver.

During the discussion, members identified the following:

Emerging Recommendation: Increase eligibility for the First Time Waiver to include those with juvenile felony convictions and/or washed-out convictions.

Emerging Recommendation: Consider renaming this alternative to broaden eligibility to those with previous felony convictions.

Emerging Recommendation: Sentencing Alternatives are the default or presumptive sentence, rather than the exception. Considerations:

- If the Grid Subgroup is considering increases to the number of cells with minimums of 0 months confinement in the SW corner of the grid, and this group is considering expanding the eligibility of the waiver—is this still needed as an alternative? Or could it be a sentencing option within certain cells on the grid?
- Consider adding language to a recommendation that would require a risk assessment to determine the type and level of supervision.

Q: What does it look like if someone gets a FTOW?

R: Similar to someone coming to supervision: there is an intake evaluation, then develop programing/requirements based on an individual’s situation and needs.

Lauren Knoth (WSIPP) shared some information about Pennsylvania's county intermediate punishment program. The court frameworks between PA and WA are too different for direct comparison, but the subgroup could adopt concepts.

Overview of county intermediate punishment program:

- State funded via block grants
- County run with state oversight to ensure that programs meet consistent set of standards

2:45 Next Meeting (8/24 on SSOSA) Action Items

The facilitation team asked what information the group needs for its discussion on this sentencing alternative and who can provide it.

Action items:

- Facilitation Team will reach out to Riddhi and let her know that the focus of the next meeting will be SSOSA [COMPLETE]
- Clela Steelhammer will provide information regarding use of Sentencing Alternatives by county [COMPLETE]
- Keri-Anne will help the Facilitation Team connect with the chair of the SOPB (Sex Offender Policy Board) about a presentation on SSOSA [COMPLETE]
- Mac will see if DOC can provide information on individuals who receive sanctions/violations for term of supervision associated with FTOW.

Resources shared by members in the chat:

David Heppard of the freedom project (someone DOC could contact during iCOACH planning phase). David@freedomprojectwa.org. (Judge Sinclair)

--

<https://app.leg.wa.gov/rcw/default.aspx?cite=9.94A.650> (FTOW statute – Mac Pevey)

--

Sentence departures by alternative – Table 10, page 32:

http://www.cfc.wa.gov/PublicationSentencing/StatisticalSummary/Adult_Stat_Sum_FY2020.pdf (Clela Steelhammer)

--

Info on intermittent serving confinement. RCW 9.94A.030(3) If the court imposes a sentence requiring confinement of thirty days or less, the court may, in its discretion, specify that the sentence be served on consecutive or intermittent days. A sentence requiring more than thirty days of confinement shall be served on consecutive days. Local jail administrators may schedule court-ordered intermittent sentences as space permits.

APPENDIX I - Comments/Questions submitted by Guests

Could you ask Mac if someone convicted of a sex offense be asked to give input? (Joanne Smieja)

--

Will there ever be ANY alternative considerations offered for sex or violent crimes when there is no harm to anyone or it is a victimless crime with fictitious victims?

Also, as I understand it, points are added because of age under 25 and also if they have NOT lived with someone else for 12 or 24 months. These are usually young individuals that come into the criminal justice system and most likely are the ones who should get the first-time waiver (Bruce Glant)

--

there are tremendous restrictions in supervision. (Bruce Glant)

--

living location restrictions, inability to get jobs, bank loans, housing etc. Continual meeting with CCO, polygraph tests, and their computers constantly being looked at by CCO's. CCO's continually put their own rules upon the individual which are not in the judges ruling. We're experiencing that right now. (Bruce Glant)

--

I don't understand why all sex offenses are excluded. I recommend expanding the eligibility to include first time offenders who have been charged with a non-violent, non-crime against a person sex offense. These offenses include viewing depictions, possessing depictions, voyeurism, and second and subsequent failure to register as a sex offender offense. (Joanne Smieja)