

Washington State Criminal Sentencing Task Force
Sentencing Alternatives Subgroup
Meeting Notes: September 7, 2021
Meeting via Zoom

ATTENDEES

Task Force Members/Alternates:

- Nick Allen, *Interests of Incarcerated Persons*
- Keri-Anne Jetzer, (Alt. for Judge St. Clair), *Sentencing Guidelines Commission*
- Rep. Roger Goodman, *Washington State Legislature*
- Mac Pevey, (Alt. for Julie Martin) *Dept. of Corrections*
- Judge St. Clair, *Sentencing Guidelines Commission*
- Clela Steelhammer (research & data support), *Caseload Forecast Council*
- Jon Tunheim, *Washington Association of Prosecuting Attorneys*
- Waldo Waldron-Ramsey, *Interests of Incarcerated Persons*

Guests: Bruce Glant, Joanne Smieja, Alec Mayo

Ruckelshaus Center: Chris Page, Molly Stenovec, Amanda Murphy

WELCOME & AGENDA REVIEW

The meeting focus, originally on the Drug Offense Sentencing Alternative (DOSA), changed since the intended presenters could not attend (the Facilitation Team will work to reschedule). After some discussion, the group decided to review some of the emerging recommendations from the Grid Subgroup that connect to Sentencing Alternatives.

DISCUSSIONS

Cost-Benefit Analysis

Washington State Institute of Public Policy (WSIPP) has conducted Cost-Benefit Analysis to help policymakers in Washington identify evidence-based policies and efficiently use tax-payer dollars. This analysis includes a review of many policies and programs [that relate to adult criminal justice](#), including programs discussed during various workgroup or subgroup conversations. The Subgroup reviewed the information and expressed interest in learning more about how to interpret the data presented and, in some cases, about the programs being analyzed.

Straddle Cells – Prison/Jail

The current sentencing grid has a clear delineation between prison and jail: the ranges within any given sentencing cell are either below 12 months or over 12 months+1 day. The emerging revamped grid (based on a formula with consistent increases) has cells with sentence ranges that “straddle” both prison (longer than 12 months) and jail (shorter than 12 months) sentences. The Grid Subgroup has been exploring the idea of recommending the state fund current county diversion programming and/or funding development and implementation of other non-incarceration county programs and services, aka “county intermediate sanctions.”

The Sentencing Alternatives workgroup considered looking at other county programs but focused on criteria for eligible county programs. Criteria discussed:

- Program meets cost-benefit benchmarks
- Program has clear mechanisms of accountability
- Sufficient resources provided for effective implementation
- Program cannot simply be “surveillance,” but must really support “reentry”

Relationship of Sentencing Alternatives to the Sentencing Grid

The group spent some time discussing the following emerging potential recommendations:

Non-incarceration Sentencing Alternatives, in the form of county intermediate sanctions, should be the presumptive sentence if the term is under 12 months of confinement.

Members discussed which existing alternatives require some amount of incarceration time and why a court might include confinement behind bars (as opposed to electronic home monitoring or work release, which some parties regard as alternate forms of confinement) with a sentence. The prison-based alternatives include some time in prison, then transition to supervision. The court-based alternatives (such as residential DOSA, FOSA, and SSOSA) include a suspended sentence followed by intensive supervision. Examples of when a court may impose some time in incarceration prior to supervision include:

- The court could believe the individual needs time in confinement prior to supervision, perhaps due to community safety concerns
- Limited beds for in-patient treatment so courts would impose some incarceration time until a bed became available
- County/prosecution preference and availability of local programs
- If person has a substance use disorder, but doesn't qualify for the residential option

In FY2020, there were 987 Res DOSA and 1,229 sentences for Prison DOSA.

A member suggested that the group could consider a recommendation for terms under six months to be only probation/supervision—no jail time. For low-risk individuals, six months or shorter is less disruptive and those individuals might benefit more from intensive supervision and accountability in the community such as community service. Other members noted that, due in part to budget cuts, low-risk individuals are no longer eligible for supervision.

Another member suggested that prosecutors seek—and courts impose—incarceration time because otherwise individuals would not have any accountability. A member expressed support for increasing eligibility for supervision, because that will allow for a risk/needs/responsivity (RNR) approach, rather than conviction, to determine supervision eligibility.

Members discussed Sentencing Alternatives as presumptive sentences. A member noted that current statute requires judges to consider using a Sentencing Alternative and write an explanation why, if not used. Apparently, this statue does not often get followed, so the member asked the group for insight as to why not. A possible explanation could be on the

interpretation and distinctions between “alternative confinement,” which could include work release or electronic home monitoring, and “alternative to confinement.”

A member noted that even if a court imposes an alternative sentence, an individual may still serve that time in confinement. For example, sometimes the court imposes a sentence of electronic home monitoring (EHM), but the individual doesn’t qualify for the county administrative process, or county may not have a work release program.

Amanda Murphy shared an image of the lower rows of the current sentencing grid, offense seriousness level (OSL) rows 1-5, with the clear distinction between cells presumed prison and those with presumed jail sentences. This led to a discussion on eligibility for sentencing alternatives and how alternatives could connect to the grid, using the example of Pennsylvania. Takeaways include:

- Eligibility in Pennsylvania is based on exclusions of certain convictions within the last 10 years, whereas in Washington exclusions may be based on a 10-year period or lifetime of prior convictions, depending on the circumstances of the situation.
- Some members expressed support for a recommendation where a prior conviction should not be the limiting factor if an individual meets all other criteria. Such a recommendation could help address some racial disparity. Another member noted that if an individual has already completed sentencing requirements for a previous conviction, they should not continue to be punished for that action. Jon Tunheim expressed support for discussing a recommendation where a prior conviction will not affect someone’s eligibility for an alternative on a current offense.
- A member inquired about research examining the likelihood of someone with a conviction of a serious violent crime to recidivate with another serious violent crime.
- PA and WA are not parallel systems: PA has a unified court system but could provide information about process of revocation and implementation of probation, and how it may differ from supervision.
- A member reminded the group to think about victim perspectives and needs.
- DOC currently conducts RNR when an individual begins their term of confinement—several members have expressed support for conducting RNR earlier in the process so judges can consider it in sentencing decisions. Such an approach would require significant resources but would benefit the state in the long term.
- Changes to eligibility have been driven in part by research noting the need for supervising high-risk individuals. A member shared that pre-2009, DOC had a caseload of 65,000+ individuals, so most individuals were just checking in at a kiosk, and not participating in any programming.

Several members expressed frustration with the clear racial disparity in sentences and the variance in use of sentencing alternatives across counties. A member suggested that the court could consider an individual’s needs and impose a jail or prison sentence if that county did not have adequate programs and services.

Several expressed support for funding as an incentive and pointed to possible lessons learned in the juvenile system, which operates block grants. The juvenile system may also offer lessons learned for adult supervision, in which each person gets paired with a supervision officer shortly after arrest and that officer begins building the relationship and looking into family/social setting right away and plays a big role in the sentencing outcome.

A member noted the juvenile and adult systems have significant philosophical differences, and that considering 18 as the beginning of adulthood does not align with current brain science—perhaps the group could consider a recommendation where individuals between 18 and 25 could have sentencing occur within a blended juvenile/adult system.

A member asked if DOC community corrections officers (CCOs) could be more engaged at the time of arrest, or if there could there be a “warm handoff” from pretrial services to post-sentencing. Mac Pevey shared that the iCOACH model will provide opportunities for CCOs to begin building relationships with individuals prior to release. Others expressed concerns with DOC being involved pre-conviction and need to see some successes as iCOACH is implemented.

Another member expressed support for the proposed potential recommendation that addresses the past convictions as restrictions to alternatives, noting this could help in addressing racial disparity. They pointed to data where whites are “down-charged” (given lesser charges as part of a plea negotiation) more often than black, indigenous, and people of color (BIPOC) individuals.

Several members expressed interest in learning more about sentencing alternatives in other states, specifically:

- Racial disparity / disproportionality in use of county intermediate punishment (CIP) programming in PA
- Success and recidivism rates for those completing the CIP
- Examples of other states where an individual could qualify for an alternative based on the grid, but then be disqualified based on local restrictions/administration/availability.

Action item: what other examples or lessons could be gleaned from other states?

Several members noted that legislative leaders and trial lawyers may need to discuss tort liability around incidents involving individuals on supervision and/or alternatives to prison/jail.

Amanda shared a visual of the current grid that includes color codes indicating which cells have at least one offense eligible for each state alternative. Discussion items included:

- The Sentencing Guidelines Commission favors making alternatives visible on the grid but noted the challenge of developing such a grid since eligibility and disqualifications are based on specific offenses and in some cases sentence length, rather than an OSL or criminal history score. Another member expressed support for showing alternatives on the grid to visually remind judges what else they can consider and suggested a tool that could help

practitioners develop common understanding of possible sentencing outcomes. This would also provide more transparency and clarity for the public and families.

- Given the challenge of connecting Alternatives to the grid, some members expressed support for the county-based programming or supervision on the straddle cells.
- Several members noted that although the grid could depict county-based alternatives and programs that meet state priorities, the existence and availability of programs will still vary by county. Also, individuals may not meet the administrative criteria to qualify for alternatives. For example, counties may take different approaches to implementing similar programs, so some work releases may not accept individuals with a sex offense.

NEXT STEPS/ACTION ITEMS

- Facilitation Team will follow up with DOC to determine appropriate individuals to provide a presentation on DOSA.
- ALL: continue to think about how the Sentencing Alternatives could relate to the grid.
- Facilitation Team will gather examples or lessons could be gleaned from other states

APPENDIX: COMMENTS AND QUESTIONS SUBMITTED BY PUBLIC VIA ZOOM CHAT

Due to limited time, the public may submit questions via the zoom chat and the Facilitation Team includes with the meeting notes. The following questions and comments were sent during this meeting:

Bruce Glant: Net nanny individuals do not get SSOSA because there is no victim, and you have to know the victim to get SSOSA. There are currently approx. 150 net nanny individuals incarcerated. Several have served their term of incarceration and released to the community. There is a problem with their ability to find employment and pay for counseling. total individuals arrested in these stings approx. 300.

Bruce Glant: Why do we always have to discriminate against all sex offenses. those convicted of these crimes have the lowest recidivism rate and have a right to better themselves and live a normal life I believe this issue and crime must be confronted by the sentencing review committee.