

**Washington State Criminal Sentencing Task Force
Sentencing Alternatives Subgroup
Meeting Notes: November 30, 2021
Meeting via Zoom**

ATTENDEES

Task Force Members/Alternates:

- Nick Allen, *Interests of Incarcerated Persons*
- Tiffany Attrill, *Interests of Crime Victims*
- Rep. Goodman, *Washington State House of Representatives*
- Keri-Anne Jetzer, (Alt. for Judge St. Clair), *Sentencing Guidelines Commission*
- Julie Martin, *Dept. of Corrections*
- Mac Pevey, (Alt. for Julie Martin) *Dept. of Corrections (DOC)*
- 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*

Research/Technical Support: Lauren Knoth, *Washington State Institute for Public Policy*

Guests: Joanne Smieja, Bruce Glant, inside out toastmasters

Presenter: Dr. Karl Jones, *Dept. of Corrections*

Ruckelshaus Center: Chris Page, Molly Stenovec, Amanda Murphy, Maggie Counihan

Meeting Purpose: Review & Discuss Information on Prison Drug Offender Sentencing Alternative

WELCOME & AGENDA REVIEW

Amanda welcomed attendees and reviewed the meeting agenda, centered on a presentation from Dr. Jones about the prison drug offense sentencing alternative (pDOSA). She then invited Mac to provide opening comments and introduction prior to the presentation. Mac reminded the group that during the meeting on prison and residential DOSA in September, they had asked questions about revocations of DOSA, specifically the kinds of circumstances that lead to a revocation and demographics of those individuals. This fall, DOC has been reviewing data on revocations, race and ethnicity, and geography for pDOSA is able to share those findings and results with this subgroup. He noted that the group has talked about the need to base Task Force recommendations on data and evidence and has talked at length about issues around race and disproportionate outcomes.

Race and Geography in Prison DOSA Revocations (Jan. 2016-June 2019)

Dr. Jones presented preliminary findings on the intersection between race/ethnicity and pDOSA revocation in the context of geography and gender. Some takeaways include (See Appendix A for full presentation):

- Data is based on population of individuals released on community supervision between January 2016 and June 2019
- Revocations are limited to those occurring within two years of release
- The county of the person's known address could differ from where they are released (called County of Origin)
- 33% of pDOSA sentence alternatives for Hispanics were revoked in the first year. Revocations within first year for group overall was 24.8%
- Data show greater chances of revocations in second year for black (44%), Hispanic (46%), and American Indian or Alaska Native (51.7%) than group overall (40.6%).
- Data shows differences in revocations for white and black individuals in King and Benton Counties
- Data shows differences in revocations for white and Hispanic individuals in up in Yakima, King, Snohomish, Benton, and Franklin Counties.

Dr. Jones also reviewed population characteristics including gender, age, and affiliation with a prison gang, or security threat group (STG). Findings in these areas include:

Gender:

- Overall, women are less likely to have revocation except among American Indian/Alaska native
- Data show a lower risk of revocation associated with increased age, less pronounced in Black and Hispanic populations
- STG affiliation increased the probability of first year revocation

DOC is working to adapt its pDOSA program into a more person-centered approach.

Questions, Responses, and Dialog:

- Does DOC supervise these individuals upon release?
 - A DOSA sentence includes mandatory supervision and uses assessments to determine individualized programs and requirements
- pDOSA has discretionary and mandatory revocations. Mandatory revocations apply to those who don't engage in treatment. The rest of revocations are discretionary. DOC has made changes to the consequences for violations, such as the Task Force recommendations regarding "swift and certain" law, and this provided the ability to address individuals needs better.
- Do treatment providers make the decision to end treatment?
 - Yes, providers in the community make determinations. The funding for treatment got shifted to go through the state Health Care Authority and managed care organizations
- Is there dynamic risk being assessed once released into the community?
 - DOC administers "WA One." The study only looks at people released who then had DOSA revoked.
- Do you have information on individuals who have DOSA revoked that are still in prison? Seems like those are situations with less discretion involved.

- We can follow up and look at revocations while an individual is in prison. In the community there is greater discretion but also other options to participate. It goes back to “willful” – is there a definition of what willful means, or is that at the discretion of the hearing officer?
- Can you explain why there is less discretion in prison?
 - Participation in treatment is explicitly stated in statute and included as part of their sentence.
- Does the way in which you supervise have an impact—do you see the i-COACH model having an impact?
 - We were supervising individuals for years because of lack of clarity in statute in which supervision ran consecutively, rather than concurrently. Building on a 2019 recommendation from the Task Force, the Legislature clarified that terms are presumed concurrent—which will affect successful completion of pDOSAs. DOC believes i-COACH will also have a positive effect: the emphasis on support and resources during the first 90 days after release, that includes taking people to treatment appointments and help with paperwork, will help set up individuals for success. Significant improvement is possible, but some communities need resources to provide people treatment in a timely manner. It would help if the Health Care Authority can make it easier for people to get treatment and for our officers to help them navigate the system.
- Lauren Knott informed the workgroup that WSIPP is in the final stage of a report on Washington One and the findings are generally consistent with the last report. Also looks at what is driving changes, big factor is age. She asked Dr. Jones if DOC could conduct the same type of analysis with focus on violations, in order to see patterns and trends regarding individuals with violations and those with violations that lead to revocations.
- Who has the discretion to make decisions on revocation/for considering a violation?
 - As a community corrections officer (CCO) become aware of violations, they address low-level violations with verbal or other sanctions. If a higher-level violation occurs:
 - CCO will submit a report and make a recommendation.
 - Supervisor CCO will review
 - If they concur, then DOC administration will review – this is a separate step in which evidence is presented to hearing officer and the individual has an opportunity to speak to their circumstance and readjustments.
 - Then the hearing officer makes a final decision.
- If someone has their DOSA revoked while still in prison, what access does the individual have to treatment afterward?
 - If someone fails to complete or participate, doesn’t mean they don’t need treatment. They may decide later they’re ready to engage in it. DOC prioritizes access to treatment based on a person’s release date and sentence type.
 - If someone gets DOSA revoked, they serve standard sentence. That could push them to the back of the line for treatment since standard sentence is longer than a DOSA sentence and release date is used to determine access to programs.

- DOC is currently working on documents that will provide information that could help address some of these questions. Julie will check on status and share with the group when finalized.
- Violations in DOC – may be about behavior and ability to follow rules. Can DOC consider punishing people violating rules, without revoking DOSA, to provide individuals second chances?
 - DOC would love to give people second chances, to provide access to treatment when a person is ready to begin treatment—but the need for treatment outpaces its availability.
- DOC data on revocations and relationship to race/ethnicity and geography is informative.

Action Items:

- Facilitation team to send Dr. Jones' slides. [COMPLETE]
- Members/alternates contact Julie or Mac with questions.
- Julie Martin will share additional documents on pDOSAs and revocations once finalized.

Eligibility for Alternatives

Amanda recapped Workgroup and CSTF discussions from October-November. The Workgroup expressed interest in looking at eligibility criteria to gauge potential changes to allow more people to benefit from programs along with grid changes that could affect an alternative. She challenged the group to think about the three CSTF policy goals and asked, in light of what they have learned about DOSA, where they wanted to go.

A member stated that eligibility needs to change; since white defendants have had more access to alternatives the group should examine the prohibitions preventing otherwise eligible individuals to access alternatives and programs that could increase public safety. Another member expressed support for broadening eligibility without decreasing public safety, adding that these programs can ease and support reentry.

Another member asked why FTOW should be limited to just a person's first offense. They encouraged the group to suggest the Task Force recommend increasing eligibility for the Parenting Alternative and DOSA if a risk assessment shows that the individual should be considered low risk.

With limits on DOC treatment opportunities, why does DOSA need to be a one-chance opportunity?

Amanda pointed out that in some cases groups are already making recommendations related to the alternatives: specifically, the Sex Offender Policy Board (SOPB) produced a set of recommendations on the Special Sex Offender Sentencing Alternative. She asked if other groups are doing work on evaluating and making changes to improve the effectiveness of alternatives. A member added that the SOPB is doing lots of work on SSOSA.

The group touched on the potential to create a community intermediate sanction to provide a form of accountability in non-incarcerated setting AND include the treatments and programming.

Amanda asked the group whether sufficient quality programs exist to meet the needs of individuals if eligibility and access to programs get increased. Mac responded that court-ordered programs and treatment take priority when DOC determines access to treatment. Sometimes on-demand treatment is not available in a community because it does not have the resources to support program needs.

A member representing victims expressed concern about eliminating ALL restrictions on eligibility and voiced interest in hearing from people who operate/implement alternative programming. A fellow member (representing the incarcerated) clarified that they are not interested in eliminating all restrictions on eligibility but simply in eliminating prohibitions created by past prior violent convictions since people of color are more likely to have a serious violent/violent crime.

Another member noted that some criteria may be more logical for this workgroup to review than others. Specifically, the member urged the group to consider changes to type of individuals needing services since high-risk individuals have different support needs than low-risk ones. The state could benefit from thoughtful eligibility criteria allowing accessing to different programs and/or providers based on individualized risk assessments. They also urged the group to think about reducing disproportionality.

A member voiced support for discussing changes to eligibility and, given today's discussion, looking further into the backend of how alternatives get implemented. People of color are less likely to be granted an alternative AND more likely to have a revocation. If the group or Task Force only looks at eligibility, then missing important considerations.

A member suggested that if the Workgroup looks at SSOSA again, to invite the chair of the SOPB to the meeting. The SOPB recommendations can offer a starting point. The group should make sure it does not duplicate or counter the SOPB recommendations.

Next Steps & Action Items: Review list of eligibility criteria and determine what changes to suggest the Task Force recommend; review SOPB recommendations and assess whether to suggest the Task Force recommend they get implemented.

APPENDIX A: 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:

Joanne Smieja: Why are people convicted of a non-contact, non-violent sex offense such as voyeurism ineligible for the First Time Offender program?

There are 36 offenses that are classified as sex offenses. Yet only a few of these 36 are currently eligible for SOSSA. All the others are ineligible for any sentencing alternative. Please expand the eligibility of SSOSA or one of the other alternative programs so that these offenses are eligible.

Bruce Glant: What happens to someone who asks not to attend the program at the time the spot is open and they are told to attend due to education or other programs they are involved with and

attending and would be interrupted due to the timing? Are there allowances made for a delay in attending the treatment program, or are they automatically revoked?

Why is it necessary to make the individual to ADMIT to the crime? Why can't they just admit to the desire to attend treatment for their personal treatment and education? Since they qualify, WHY must they admit?

Many if not most FTO's in Net Nanny are receiving LIFETIME Community Custody and LIFETIME Registry. Everyday minute of the day provides trauma for the individuals AND family members.

What about Net Nanny for FTOW?

Race and Geography in Prison DOSA Revocations

JANUARY 2016 – JUNE 2019



Purpose

What is the relationship between Prison DOSA revocation, race and ethnicity, and geography?

Notes

- Population consists of individuals releasing to community supervision in Washington after completing confinement under a prison DOSA between January 1, 2016 and June 30, 2019.
- Revocations were limited to those occurring within two years of release.
- In 5% of records, county is based on known address at time of release versus county on record (e.g., person with record indicating release to Chelan but address in East Wenatchee is regarded as Douglas County).

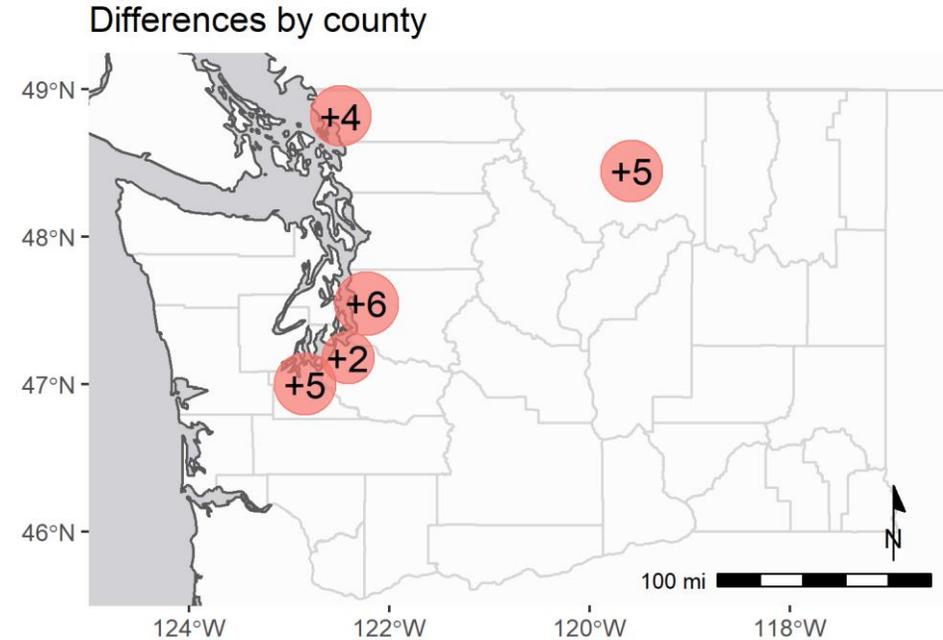
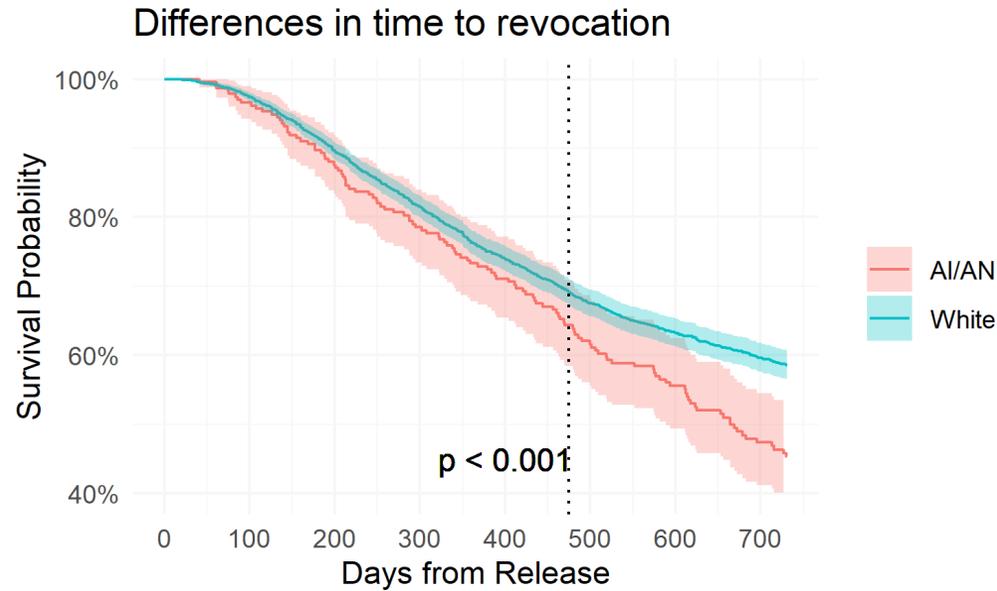
Racial and Ethnic Composition

Greater chances of revocation in the American Indian or Alaska Native, Black, and Hispanic populations affected an estimated 81 individuals releasing over a three-and-a-half-year period.

| | Prison DOSA Releases (% of total) | One-Year Revocations (% of group) | Two-Year Revocations (% of group) | Estimated Impact of Disparity |
|---|--------------------------------------|--------------------------------------|--------------------------------------|----------------------------------|
| Total | 3,541 (100%) | 878 (24.8%) | 1,438 (40.6%) | - |
| White | 2,378 (67.2%) | 560 (23.5%) | 916 (38.5%) | - |
| Black | 484 (13.7%) | 128 (26.4%) | 213* (44.0%) | 27 |
| Hispanic | 311 (8.8%) | 104* (33.4%) | 143* (46.0%) | 23 |
| American Indian or Alaska Native | 234 (6.6%) | 62 (26.5%) | 121* (51.7%) | 31 |
| Asian | 83 (2.3%) | 13 (15.7%) | 26 (31.3%) | - |
| Pacific Islander | 37 (1.0%) | 10 (27.0%) | 16 (43.2%) | - |

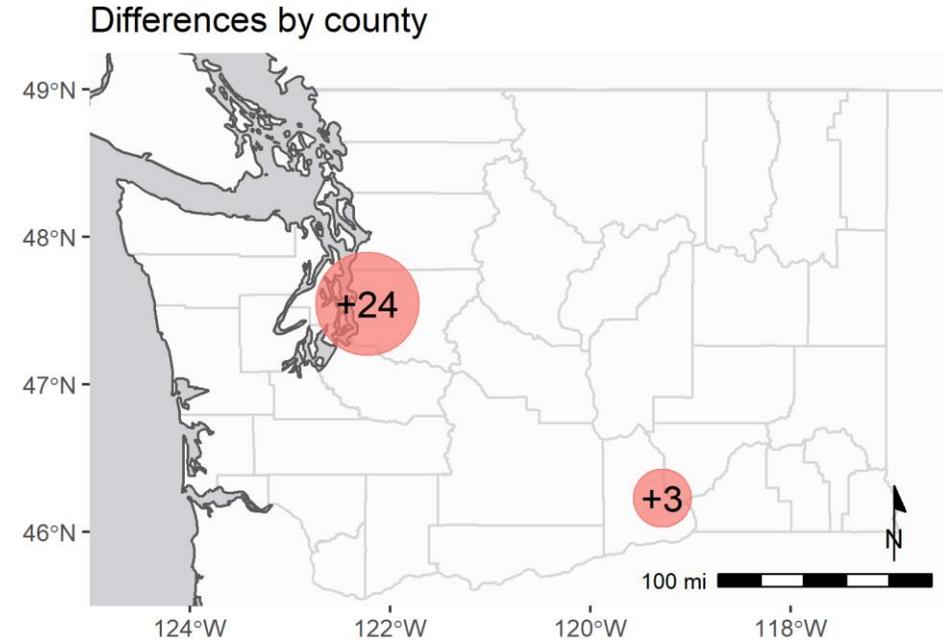
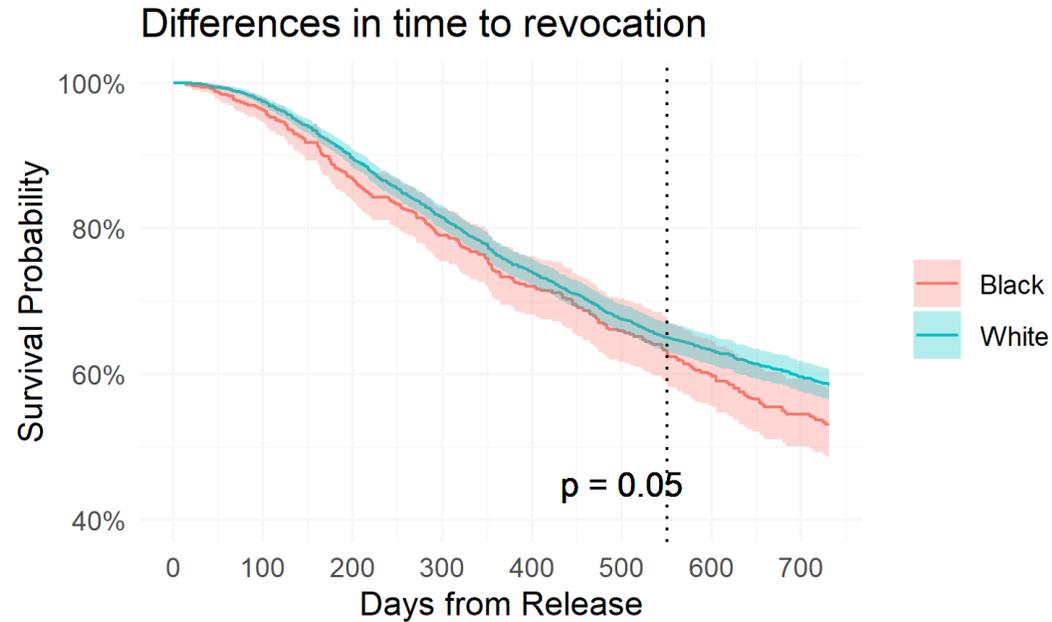
*Bayes factor > 3 favors hypothesis that group probability of revocation is significantly greater than White population. *NOTE:* <1% of individuals identified as "Other non-Hispanic" (n = 14) are not shown. Estimated impact of disparity is the number of individuals in a group multiplied by group percent difference in revocations compared to White population.

American Indian/Alaska Native and White Revocation Differences



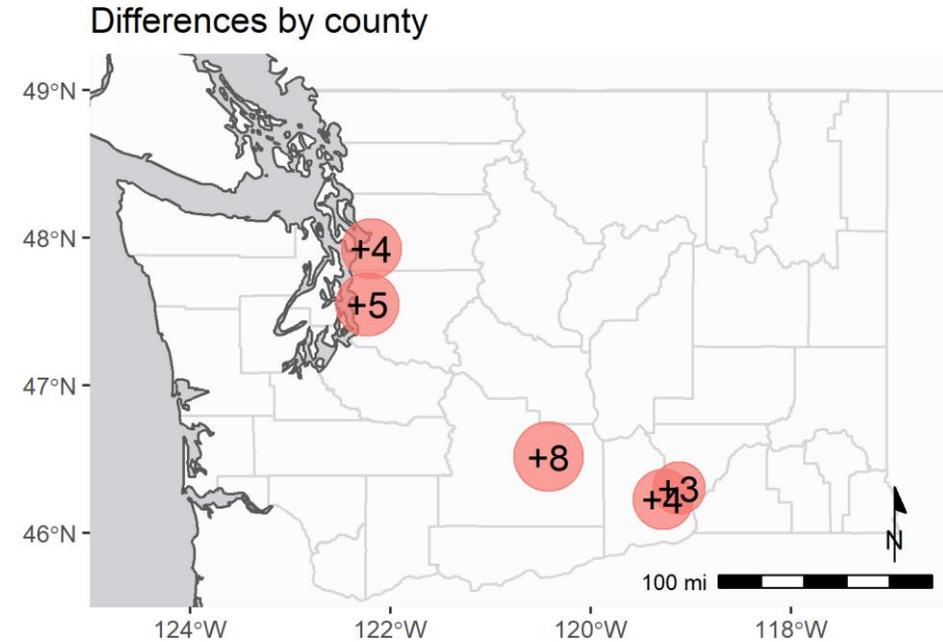
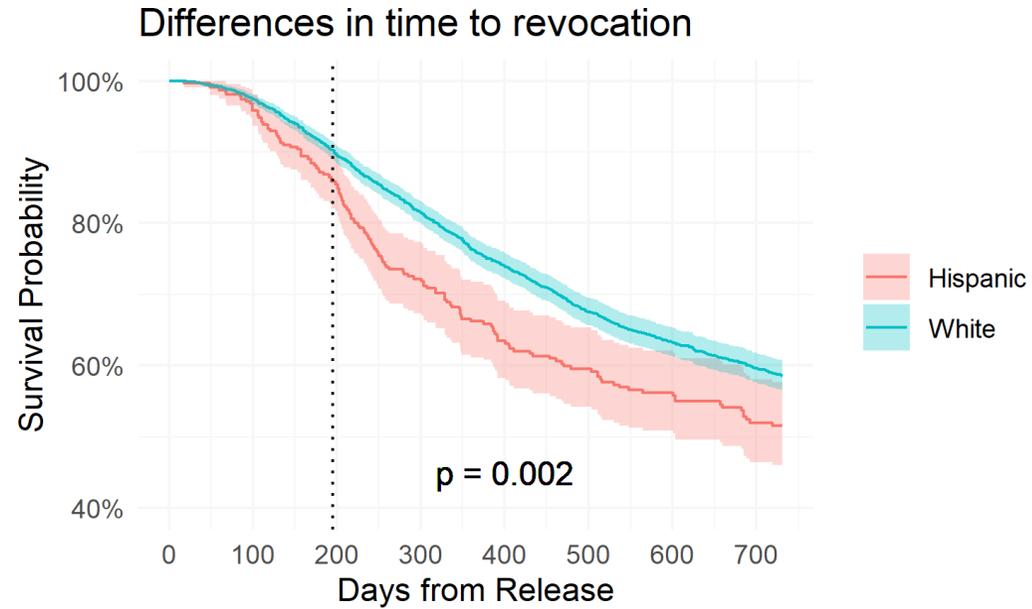
| | Black | | Hispanic | | AI/AN | | White | |
|----------|--------------|-------------|--------------|-------------|--------------|-------------|--------------|-------------|
| | Releases (n) | Revoked (%) |
| King | 243 | 49.3% | 55 | 40.0% | 37 | 56.8% | 393 | 39.4% |
| Thurston | 12 | 33.0% | 8 | 50.0% | 12 | 66.7% | 128 | 41.4% |
| Okanogan | - | - | 1 | 0.0% | 11 | 72.7% | 10 | 30.0% |
| Whatcom | 9 | 44.4% | 7 | 28.6% | 13 | 61.5% | 84 | 29.8% |
| Pierce | 133 | 37.6% | 27 | 29.6% | 34 | 41.2% | 352 | 34.1% |

Black and White Revocation Differences



| | Black | | Hispanic | | AI/AN | | White | |
|--------|--------------|-------------|--------------|-------------|--------------|-------------|--------------|-------------|
| | Releases (n) | Revoked (%) |
| King | 243 | 49.3% | 55 | 40.0% | 37 | 56.8% | 393 | 39.4% |
| Benton | 5 | 100% | 25 | 44% | 5 | 80.0% | 86 | 37.2% |

Hispanic and White Revocation Differences



| | Black | | Hispanic | | AI/AN | | White | |
|-----------|--------------|-------------|--------------|-------------|--------------|-------------|--------------|-------------|
| | Releases (n) | Revoked (%) |
| Yakima | 6 | 50.0% | 61 | 31.1% | 10 | 40.0% | 107 | 18.7% |
| King | 243 | 30.5% | 55 | 29.1% | 37 | 18.9% | 393 | 20.6% |
| Snohomish | 19 | 26.3% | 12 | 66.7% | 11 | 54.5% | 219 | 30.1% |
| Benton | 5 | 40.0% | 25 | 40.0% | 5 | 40.0% | 86 | 22.1% |
| Franklin | 2 | 0.0% | 13 | 30.8% | - | - | 9 | 11.1% |

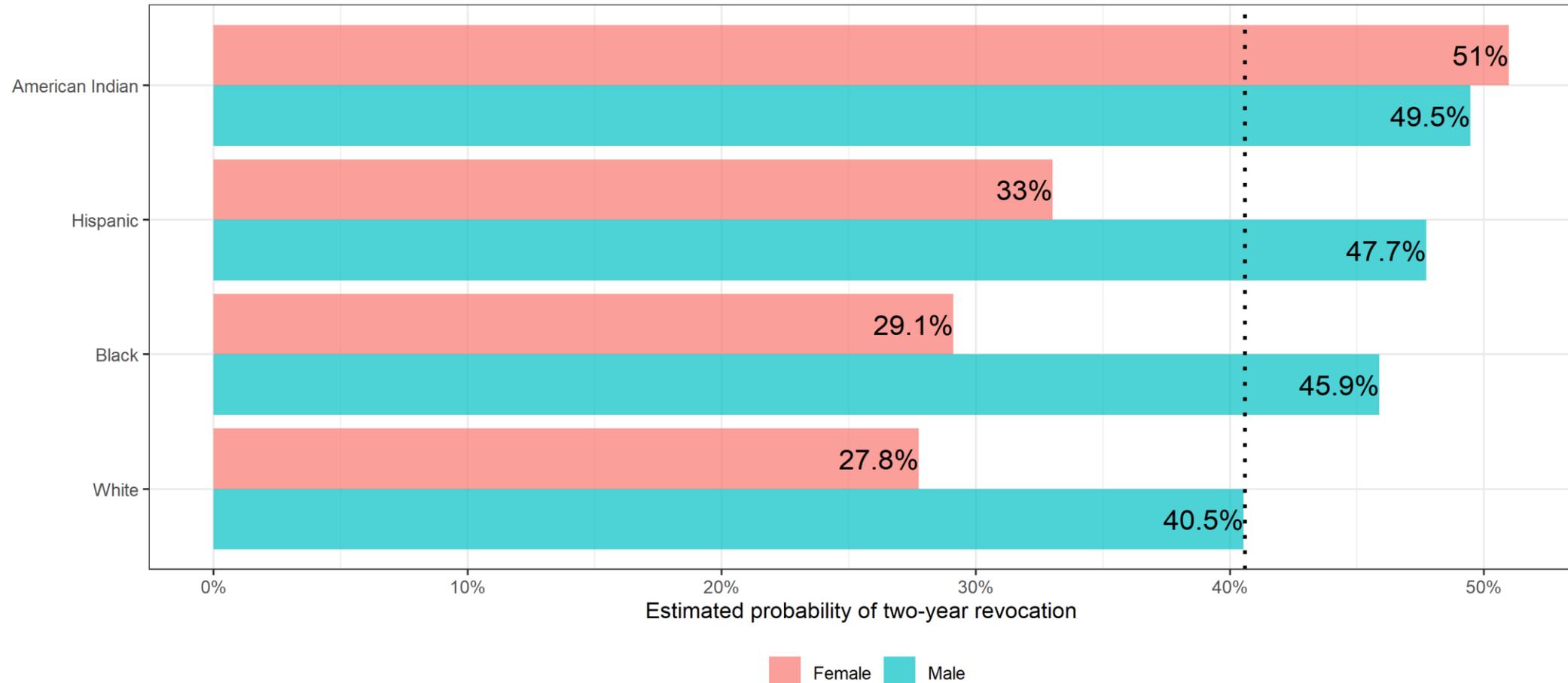
Population Characteristics

Characteristics associated with probability of reoffending vary across groups.

| | White | Black | Hispanic | AI/AN |
|-------------------------|--------------|--------------|-----------------|--------------|
| Total | 3,541 | 484 | 311 | 234 |
| % Female | 15.9% | 7.5% | 20.8% | 17.2% |
| Average Age | 36.6 | 38.9 | 33.6 | 35.4 |
| % STG Affiliated | 11.9% | 29.6% | 47.4% | 19.3% |

Gender and Race/Ethnicity

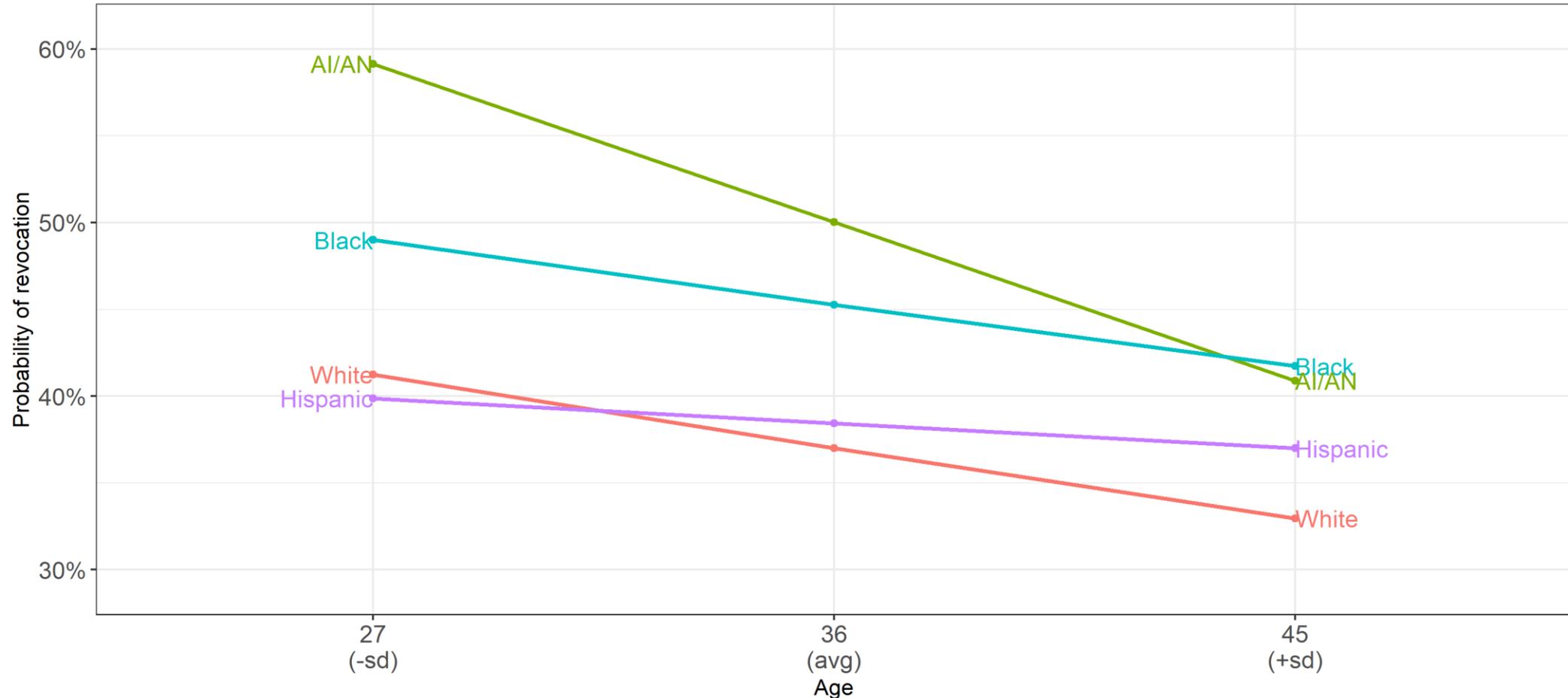
Probability of revocation among American Indian or Alaska Native women was exceptional relative to other groups of women *and* American Indian or Alaska Native men .



NOTE: Figure shows posterior medians of estimated probability of two-year revocation given average age, term of confinement, and time in substance abuse treatment in non-STG affiliated population.

Age and Race/Ethnicity

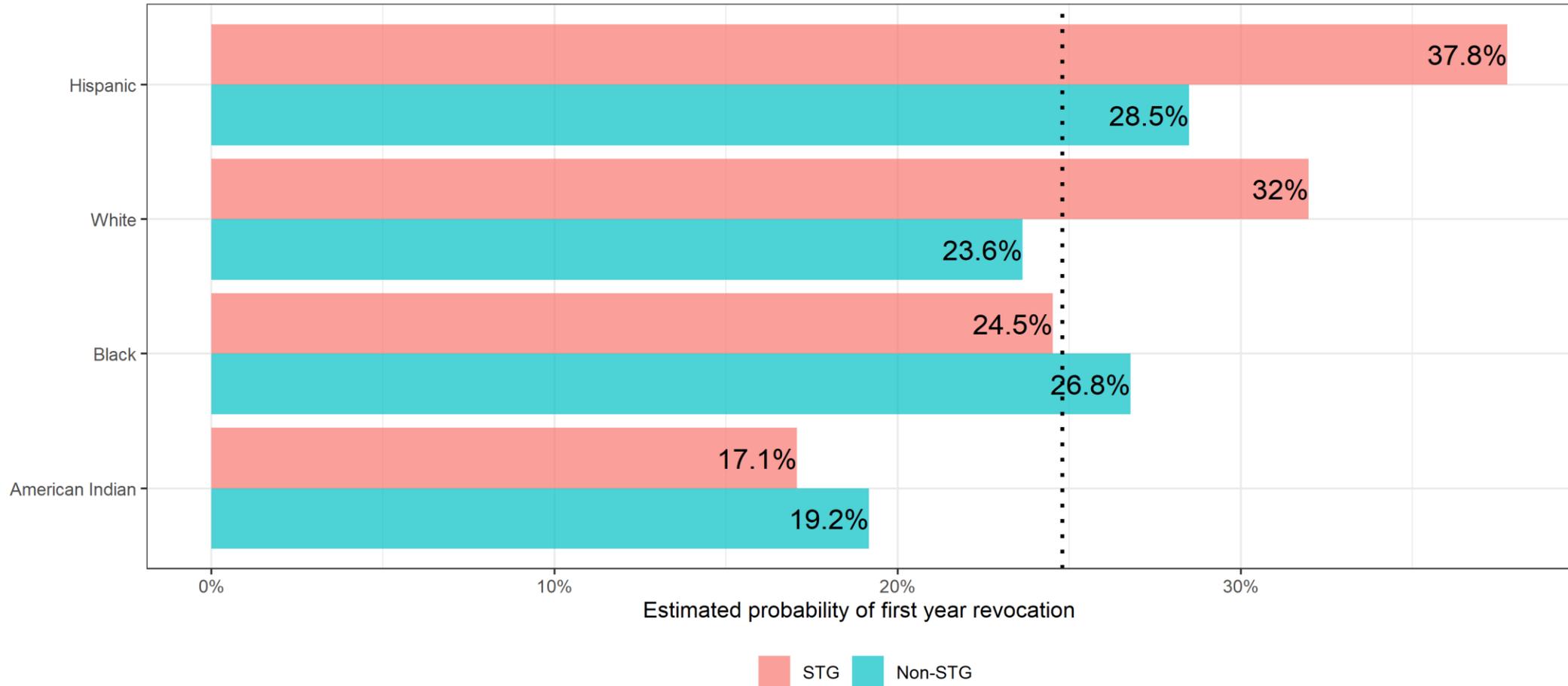
Lower risk of revocation associated with increased age (i.e., “age-crime curve”) was less pronounced in Black and Hispanic populations.



NOTE: Figure shows posterior medians of estimated probability of two-year revocation given average term of confinement, and time in substance abuse treatment in non-STG affiliated men.

STG Affiliation and Race/Ethnicity

STG affiliation affected a 9-point difference in the probability of first year revocation among Hispanic men.



NOTE: Figure shows posterior medians of estimated probability of one-year revocation given average age, term of confinement, and time in substance abuse treatment in male population.

Closing

Person-centered approaches to continuity of care are based in understanding the diversity of needs in our population, and the community contexts of reentry and treatment.

Questions?
