

**Washington State Criminal Sentencing Task Force
Sentencing Alternatives Subgroup
Meeting Notes: December 14, 2021
Meeting via Zoom**

ATTENDEES

Task Force Members/Alternates:

- Nick Allen, *Interests of Incarcerated Persons*
- Tiffany Attrill, *Interests of Crime Victims*
- Keri-Anne Jetzer, (Alt. for Judge St. Clair), *Sentencing Guidelines Commission*
- 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*

Guests: Joanne Smieja, Bruce Glant, Alex Mayo, Kathleen Hambrick, Brian Drake, Megan Allen

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

Meeting Purpose: Review & Discuss Information on SSOSA eligibility and the Parenting alternative

WELCOME & AGENDA REVIEW

Amanda welcomed members and alternates and reviewed the agenda. The group will walk through a spreadsheet on alternatives showing important elements for each such as the intended purpose, statutory eligibility criteria, and whether any other efforts are under way to develop potential changes on specific alternatives.

Special Sex Offender Sentencing Alternative

Amanda reviewed the program overview, intended purpose, and statutory eligibility for SSOSA. That information, along with eligibility for all alternatives can be found in Appendix B.

Additional resources on SSOSA can be found at: [RCW 9.94A.670](#) and the Sex Offender Policy Board has [written a report](#) on this alternative in 2013.

Discussion and Comments

- What is the reason behind the criteria limiting eligibility to those facing a potential sentence no longer than 11 years?
 - There might have been a connection to the grid when choosing 11 years as a cut off number.
 - Clela shared that the minimum was raised from 6 years to 11 years when sex offenses were raised to a higher seriousness level
- Does the defendant also have to be able to pay for treatment? If so, economic status could determine access and contribute to racial disproportionality. Several members expressed interest in a racial impact and equity analysis on this alternative.
- A member recommended removing the criteria eliminating eligibility for those with prior violent offenses, emphasizing that treatment should be available to anyone who can benefit from it, as well as

- Treatments for other offenses also have some prohibitions on serious violent offenses that barred individuals.
- Access to treatment can be very expensive and some individuals are engaged in treatment prior to sentencing. Needs to be mechanisms to individuals who don't qualify to access treatment.

Sex Offender Policy Board (SOPB) & Its 2013 Recommendations

After Molly Stenovec reviewed some of the specific recommendations in the [SOPB report \(beginning page 29\)](#), the group discussed it and its recommendations. A member noted that the SOPB only meets when directed to do so by the Legislature, and that Board has not been asked to look at SSOSA since 2013.

Discussion:

- Are treatment/programs while in prison paid for by DOC and treatment/programs in the community paid by the individual?
 - For individuals in custody, there is treatment available prioritized by how close they are to their release date. The fiscal responsibility is on the individuals and the conversations is around how to sustain treatment once out of prison.
- Can treatment be paid for through any type of insurance?
 - A report from 1993 from WSIPP said individuals have to pay 60% to a treatment provider.
- There are not currently two tracks for SSOSA (as with DOSA)— prison SSOSA is a concept considered in the 2012 SOPB report.
- For eligibility in a no contact case, can we hear from experts what the level of risk would be for treatment in the community?
- This group or the co-chairs could put a recommendation forward to ask the Legislature to ask the SOPB to look at SSOSA.
- The SOPB has looked at how to address juvenile sexual deviancy over the past two years, but it is not a standing group like the SGC, it only meets at the direction of the Legislature.
- A member asked if a sexual treatment provider come to a meeting as a guest speaker, suggesting the group should hear from a prison treatment provider too.
- After a member made the point that to be eligible for treatment you have to admit guilt. If the defendant does not, the case goes to trial.

Amanda asked if the group wanted to request the SOPB present information to the Task Force, and if so, when it would make sense to have the Task Force receive that information. Members discussed that it would be useful to have information sooner rather than later.

The group also touched on whether the SOPB might be well-positioned to review sex offenses in terms of where they sit on the grid, potentially gauging whether any should get reclassified.

Parenting Sentencing Alternative

The Parenting Sentencing Alternative consists of two different options: The Family Offender Sentencing Alternative (FOSA) and the Community Parenting Alternative (CPA). FOSA is a court ordered sentence. The CPA is when someone is serving a sentence but just at an alternative site (electronic home monitoring) while still in custody under DOC.

A member pointed out that access to the alternative is limited based on the county, saying it can depend on the judge and local resources available. A member asked why a previous violent offense excludes someone from the alternative, noting that this contributes to the racial disproportionality that exists

with access to alternatives. The member expressed support for allowing access to those with violent offenses in their past, saying those people should still be able to see their child/ren. Another member responded by voicing concern about serious violent offenses being eligible.

Clela noted that the CPA did not have restrictions related to prior convictions.

NEXT STEPS & ACTION ITEMS:

Amanda asked workgroup members to read through the spreadsheet of information on the alternatives and bring back from their constituencies what changes they would like to see.

The facilitation team will talk with the co-chairs about requesting the SOPB to review SSOSA and potentially whether any sex offenses merit reclassification.

The meetings for next year will stay on the current schedule of bi-weekly Tuesdays at 1:30pm.

Next meeting - January 11th at 1:30pm.

APPENDIX A: COMMENTS AND QUESTIONS SUBMITTED BY PUBLIC VIA ZOOM CHAT

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

Bruce Glant (via email): I wanted to say, that the last SOPB mtg which reviewed SSOSA was in 2013 I believe. I want to mention that the Net Nanny Stings did not begin until August of 2015, so they were not included in the last SOPB recommendations, and therefore not included in SSOSA or other alternatives because no one had imagined the WSP would go onto 18 and older sites catfishing individuals with no probable cause using fictitious children.

Bruce: The SOPB review of 2013 was done before the victimless WSP Stings started in August of 2015.

Joanne: The SOPB suggested expanding eligibility to include people convicted of a non-contact sex offense (i.e. depictions).

Bruce: The problem with the SOPB is the makeup does not include a stakeholder who has been charged with a sex crime, violent sex crime, someone who is on the registry and lifetime supervision, as well as an affected loved one. Most current members of the committee are law enforcement, prosecutors, and people who's jobs are based on these crimes

We are helping someone from a net nanny sting who has reintegrated the community and is having to pay \$600 per month for his treatment. He is having a very hard time paying for it personally. Many can't pay because they can't get jobs

Kathleen Hambrick: persons incarcerated without a plea are not allowed to take treatment in prison before completion of appeal, fyi

Joanne: Yes, please recommend to the Legislature to ask the SOPB to look at sentencing alternatives for people convicted of a sex offense.

Bruce: Waldo brings up a perfect point of a no contact crime individual. Treatment can be one of education as well as treatment for a deviancy. Jon's comment is one of assumption that they're not admitting they have a problem. However, admitting guilt or not has nothing to do with education and treatment which they will receive.

I would be surprised if Representative Goodman wouldn't make the request to the SOPB.

I would ask that that a couple of impacted individuals be included in the subject matter to be asked of the SOPB. Also, that the individuals come from both hands on and hands off crimes.

Many and most net nanny are class A violent sex offenses

Alternatives & Eligibility - draft of 12.17.21	Program Overview	Intended Purpose	Statutory Eligibility Criteria: Current Offense	Statutory Eligibility Criteria: Prior Record	Statutory Eligibility Criteria: Prior Participation in Alternative	Any past or current efforts or entities looking at potential changes ?
SSOSA	Available for eligible individuals convicted of some sex offenses. Standard range sentence is suspended; court imposes a jail term of up to 12 months and conditions of the sentence may include inpatient and/or outpatient treatment. If individual does not comply, court may revoke the alternative and impose the suspended standard range sentence.	<p>Creation of SSOSA – SHB 1247 in 1984</p> <p>Sexual assault victim advocates were highly concerned about the deterring impacts a determinate model would have on victims seeking support and pursuing justice. The concerns were rooted in the knowledge that the majority of victims are children sexually assaulted by someone they know or to whom they are related. Children were placed in a position of reporting and potentially testifying against a caregiver or other known individual and this also placed the family stability (income and structure) in jeopardy; the rigid sentencing structure provided no consideration of these dynamics.</p> <p>Community treatment providers also expressed concern and their desire to preserve an emerging and promising treatment model. Together, advocates and treatment providers formed an alliance to influence the legislation. Responsive to these concerns and desiring an effective approach, the legislature crafted the SSOSA model. The Special Sex Offender Sentencing Alternative became part of the SRA legislation. The original purpose of SSOSA was to support and encourage family member victims to engage in the criminal justice system, knowing there was opportunity for the offender to receive treatment rather than exclusively a prison term. The creation of SSOSA met both the need to support reporting of familial sexual assault incidents and the preservation of community-based treatment for offenders. This was especially important with the elimination, through SRA, of the inpatient programs at Western State Hospital.</p>	Current conviction of a sex offense that does not include any serious violent sex offenses or Rape in the second degree.	Person may not have any prior felony sex convictions.		Sex Offender Policy Board - Special Special Sex Offender Sentencing Alternative Review, 2013 Report https://sgc.wa.gov/sites/default/files/public/sopb/
			If conviction results from a guilty plea, individual must voluntarily and affirmatively admit to committing all elements of the crime to which the individual is pleading guilty.	No prior adult convictions for a violent offense that was committed within 5 years of the current offense		<p>SOPB Findings and Recommendations for Improvements to the SSOSA Process (begin p. 29): <i>Clarify the statute language and/or emphasize adherence to the existing statutory language: "The offender had an established relationship with, or connection to, the victim such that the sole connection with the victim was not the commission of the crime."</i></p> <p><i>Reinstate the Dept. of Corrections supervision to the length of suspended sentence (pre-2001), thus eliminating lifetime supervision to non-revoked SSOSA recipients. This applies to Class A felony offenses.</i></p> <p><i>The state should strengthen oversight of the certification requirements of sex offender treatment providers. The Sex Offender Treatment Provider Advisory Committee should be reinstated and funded to carry out this responsibility.</i></p>
			Not have caused substantial bodily harm to victim.			Additional concepts for consideration (begin p. 32): <i>Further explore prison-based SSOSA.</i>
			Alternative not available to offense charged under North Carolina v. Alford and State v. Newton . Individual must have had an established relationship with, or connection to, the victim such that the sole connection with the victim was not the commission of the crime.			
			Individuals must also have a current offense and criminal history that permits the court to impose a standard range sentence of less than eleven years confinement and may not have any adult convictions for a violent offense that was committed within five years of the date of the current offense.			<i>Need for data collection and analysis.</i> <i>Community-based treatment for related crimes.</i>
pDOSA	Available for certain chemically dependent individuals. Sentence length may depart from the standard range and consists of a period of total confinement in a state facility for one-half the midpoint of the standard sentence range or 12 months, whichever is greater; and one-half the midpoint of the standard sentence range as a term of community custody, which must include appropriate substance abuse treatment.	The Drug Offender Sentencing Alternative (DOSA) is designed to provide substance use disorder treatment and community supervision for individuals diagnosed with a substance disorder who have committed a drug or other statutory eligible crimes. The goal of DOSA is to reduce or eliminate confinement time for individuals in exchange for full participation and completion of substance use disorder treatment and adherence to strict supervision requirements.	maximum of the standard sentence range for the current offense is greater than one year	No prior violent offenses within ten years of the current offense,	Have not received more than one DOSA in the last 10 years	Upcoming Legislative Session: Drug Offender Sentencing Alternative for persons convicted of felony impaired driving offenses.
			current offense is not a violent offense	Have any prior sex offense (effective before 7-1-2021). No prior sex offense convictions for which the individual is currently required to register (effective 7-1-2021)		
			current offense is not a sex offense (prior to 7-1-2021). Effective 7-1-2021, a sex offense that requires registration	Have any prior sex offense (effective before 7-1-2022). No prior sex offense convictions for which the individual is currently required to register (effective 7-1-2022)		
			current offense does not have a weapon enhancement,	For individuals with a Robbery 2 in their criminal history (a violent offense), if the offense did not involve a weapon or was not reduced from Robbery 1, the person becomes eligible after 7 years, rather than 10 years.		

			current offense is not a felony driving while under the influence of intoxicating liquor or any drug,			
			current offense is not a felony physical control of a vehicle while under the influence of intoxicating liquor or any drug, and			
			if the current offense constitutes a violation under the Uniform Controlled Substance Act, the court must determine that the offense involved a small quantity of the controlled substance.			
			Individual is not subject to a deportation detainer or order and does not become subject to a deportation order during the period of the sentence.			
rDOSA	Available for certain chemically dependent individuals. Sentence consists of a term of community custody equal to one-half the midpoint of the standard range sentence or two years, whichever is greater, conditioned on the individual entering and remaining in residential chemical dependency treatment for a period up to 6 months.	The Residential Drug Offender Sentencing Alternative is a court sentencing alternative that allows eligible individuals to receive residential substance use disorder treatment in the community in lieu of serving time in prison. The court-referred individual receives a substance use disorder assessment prior to sentencing and must agree to enter, participate and complete residential treatment in the community and abide by all other supervision requirements in order to successfully serve the entirety of their sentence in the community. Failure to participate, complete substance use disorder treatment or adhere to supervision requirements may lead to a revocation of the DOSA. The sentencing court is given statutory authority to revoke the DOSA.	midpoint of the standard range is twenty-four months (until 7-1-2021) and twenty-six months or less effective 7-1-2021, jail sentences eligible			
			current offense is not a violent offense	No prior violent offenses within ten years of the current offense,		
			Current offense is not a sex offense (prior to 7-1-2022). Effective 7-1-2022, a sex offense that requires registration	Have any prior sex offense (effective before 7-1-2022). No prior sex offense convictions for which the individual is currently required to register (effective 7-1-2022)		
			Current offense does not have a weapon enhancement			
			Current offense is not a felony driving while under the influence of intoxicating liquor or any drug,			
			Current offense is not a felony physical control of a vehicle while under the influence of intoxicating liquor or any drug, and			
			if the current offense constitutes a violation under the Uniform Controlled Substance Act, the court must determine that the offense involved a small quantity of the controlled substance.			
				For individuals with a Robbery 2 in their criminal history (a violent offense), if the offense did not involve a weapon or was not reduced from Robbery 1, the person becomes eligible after 7 years, rather than 10 years.		
			Individual is not subject to a deportation detainer or order and does not become subject to a deportation order during the period of the sentence.			
Parenting Sentencing Alternative: FOSA	There are two alternatives to the Parenting Sentencing Alternative - FOSA and CPA. The Family Offender Sentencing Alternative (FOSA) is an lternative for parents of minor-aged children. Allows judges to waive a prison sentence for eligible individuals and impose 12 months of community supervision along with conditions for treatment and programming. An attorney for either the prosecutionor defense	Passed in Washington State in 2010 to assist individualswho have minor children in their care withthe reentry process by strengthening family bonds to ease the transition from incarceration to their homes and communities. The mission of theParenting Sentencing Alternative is to build sustainable families, reduce intergenerational incarceration, reduce duplicative services, and maintain family and community safety. Goals include encouraging successful reentry, maintaining family units by providing structureand support, and intervening at thelowest levelif violations	for individuals who have physical custody of his or her minor child, is an expectant parent, or is a legal guardian of a minor child; or is a biological parent, adoptive parent, custodian, or stepparent with a proven, established, ongoing, and substantial relationship with the minor child that existed at the time of the offense			
			if the top end of the standard sentence range for the current offense is greater than one year			
			No current conviction for a violent offense			

	refers the individual to the program. The supervision requirements for FOSA participants result from coordination between the Court and the assigned community corrections officer. Requirements are more individualized to each person for FOSA participants compared to CPA participants.	occur.	Current offense is not a felony offense where the person was armed with a firearm or other deadly weapon in the commission of the offense,	No prior conviction where the person was armed with a firearm or other deadly weapon in the commission of the offense,		
			Current offense is not categorized as a serious violent offense,	No prior conviction for serious violent offense		
			Current offense is not categorized a felony sex offense	No prior conviction for an adult felony sex offense		
				No prior convictions for an juvenile adjudication offenses classified as sex, serious violent, or the offense was committed while the individual was armed with a firearm or other deadly weapon.		
			signs release of information waivers required to allow info regarding current or prior child welfare cases to be shared with the department and the court.			
FTOW	FTOW is a sentencing alternative available for individuals convicted of their first felony offense. If imposed, the court waives the standard range and may sentence the individual up to 90 days confinement AND 6 months community custody, OR 12 months community custody if treatment is ordered.	Provides incentives to first time offenders so they will not commit additional crimes. FTOW offered sentencing options more inline with traditional probationary sentences. Original estimation was that 57% of convicted persons would receive a FTOW	Current offense is not categorized as a violent offense	No prior felony offense	No deferred prosecution	
			Current offense is not categorized as a sex offense			
			Current offense is not categorized as Manufacture, Delivery, or Possession with intent to Manufacture or Deliver a Controlled Substance Classified in Schedule I or II			
			Current offense is not categorized as Manufacture, Delivery, or Possession with intent to Deliver Methamphetamine,			
			Current offense is not categorized as Selling for Profit any Controlled Substance or Counterfeit Controlled Substance Classified in Schedule 1 (except for leaves or flowering tops of marijuana),			
			Current offense is not categorized as Felony Driving while Under the Influence or Physical Control of a Vehicle while under the Influence			
Mental Health Sentencing Alternative	Available for individuals diagnosed with a serious mental health illness. If imposed, court waives the imposition of a sentence within the standard range and imposes a term of community custody between 12 and 24 months if the midpoint of the standard range is 36 months or less, and if over 36 months a term of community custody between 12 and 36 months. If the individual does not comply, the court may revoke the alternative and impose the standard range sentece.	Provides treatment and support for individuals with serious mental illness	have been convicted of a felony that is not a serious violent or sex offense;			
			have been diagnosed with a serious mental health illness recognized by the diagnostic manual in use by mental health professionals at the time of sentencing;			
			would benefit, along with the community, from supervision and treatment (as determined by the judge); and			
			are willing to participate in the alternative.			