

**Washington State Criminal Sentencing Task Force
Sentencing Alternatives Subgroup
Meeting Notes: January 25, 2022
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*

Guests: Bruce Glant

Ruckelshaus Center: Molly Stenovec, Amanda Murphy, Maggie Counihan

Meeting Purpose: Review Sentencing Alternatives and Statutory eligibility criteria spreadsheet & discuss potential modifications to criteria

Welcome & Agenda Review

Amanda welcomed members to the meeting. She then provided an update on conversations from last year on sentencing alternatives for individuals with a sex offense. After the December Alternatives meeting, the co-chairs discussed developing a request to the Sex Offender Policy Board (SOPB) to review the Special Sex Offender Sentencing Alternative (SSOSA). The facilitation team will connect co-chairs with Mac, since he's a member of the SOPB, to complete the crafting and submitting of that request.

Amanda provided an overview of the agenda. The purpose of this meeting is to continue the conversation on statutory eligibility criteria for alternatives and for Task Force members and alternates to share suggested changes. At the Task Force meeting, the group will have time to give an update.

Sentencing Alternative Statutory Eligibility Criteria

The facilitation team, with review by the research team, compiled a spreadsheet that shows each current alternative with sections on an overview, the purpose, eligibility (current offense, prior record, prior participation in alternative), and any other groups that have done work on or looked at changing the criteria. Amanda asked members for proposals or changes they want to put forward and how any such proposals or changes would meet the Task Force policy goals.

Discussion around potential proposed changes:

A member observed that current eligibility excludes individuals with more than two DOSA sentences in the past 10 years, however individuals are often coming to DOC facilities with multiple DOSAs. Current practice already differs from statutory eligibility.

Takeaways from group discussion on DOSA eligibility:

- Relapse is a part of recovery. Individuals should be given more than one opportunity to receive treatment.
 - There needs to be a mechanism to consider mental health, housing, job, etc. since negative changes to these may trigger a relapse.
- Why are people coming into DOC facilities with so many DOSA sentences?
 - Partly because sentences will be issued in multiple jurisdictions, partly because of understanding of substance use disorders and recovery.
- Courts now acknowledge that substance use disorder is a public health issue. In DOC, anyone who has a DOSA is prioritized for treatment.
- Does having a previous residential DOSA sentence prevent eligibility for prison DOSA (pDOSAs)?
 - Yes.
 - One member noted that policy does not allow for an individual to “fail” in a residential program to then qualify for prison DOSA. Another stated that, even in cases of relapse and recidivism, having access to community resources may still provide better support for an individual’s recovery than treatment in a prison.
- Suggestion to develop a recommendation to eliminate criteria that says an individual can’t receive more than two DOSAs in a 10-year period and instead let judges have discretion/flexibility.

Potential recommendation: eliminate cap on the number of DOSA sentences that an individual can receive in a 10-year period.

A member suggested the group consider suggesting changes to the process and criteria for revocations, to reduce the frequency. Often those individuals need coaching or mental health services. Another member noted that relapse is part of the recovery process but said people also need accountability. Others described the need for flexibility, for considering what success looks like for an individual or their desire to participate and change. Some noted the need for tort/liability reform to allow courts and DOC that flexibility.

Amanda asked if eligibility changes, would there be a change in who receives a sentencing alternative? Could anyone provide information on why current exclusions are based on specific crimes or classes of offenses?

Member/Alternate discussion:

- Excluding serious violent offenses eligible for DOSA might be because of federal requirements of original drug courts.
- A member shared discussion about making drug court available to individuals with a sex offense, however individuals with substance use and sexual deviancy behavior need different programs/resources than individuals with substance use disorders.
- Some treatment facilities cannot accommodate individuals with past convictions for a sex offense or arson due to concern for safety of other individuals participating in treatment.
- Suggestion to eliminate all exclusions for sentencing alternatives, noting that the judge would still consider community safety and an individual's unique circumstances in determining whether to issue a standard prison/jail sentencing or an alternative. Another member expressed support for that suggestion, noting that individuals should have access to all tools and resources necessary to maintain a crime-free life, regardless of past convictions.
- Suggestion to maintain current eligibility criteria but allow judge the ability to consider mitigating circumstances.
- Geographic disparities would still exist even if all criteria and exclusions were eliminated.
- A member expressed concern about eliminating all the eligibility criteria but was curious about how judges would use more discretion. A member said judges would be interested in more flexibility at sentencing.
- The SRA was implemented to even out sentences to similar defendants, but we have seen that it is not applied equally. Suggestion to "sunshine" what is happening and create a dashboard for what judges are doing.
- Several members noted that an individual may receive a DOSA sentence, but the WA One Assessment may reveal that the individual may benefit from additional programs or supports. DOC focuses on fulfilling requirements in judgement and sentencing form.

Amanda observed a couple themes the conversation was generating: a need for flexibility at sentencing to better meet the needs identified in an individual's risk needs assessment, while still considering community safety and individual accountability. She then shared the graphic of the community intermediate sanctions option discussed by the Alternatives group and Task Force in October 2021 (below). The graphic also presents an option to integrate alternatives onto the grid.

How Sentencing Alternatives could Integrate to the Grid: Option 3

	0	1	2	3	4	5	6	7	8	9+											
XVI	Life Sentence without parole/death penalty for defendants at or over the age of 18. For defendants under the age of 18, a term of 25 years to Life																				
XV	240	320	250	333	261	347	271	361	281	374	291	388	312	416	338	450	370	493	411	548	
XIV	123	220	134	234	144	244	154	254	165	265	175	275	195	295	216	316	257	357	298	397	
XIII	123	164	134	178	144	192	154	205	165	219	175	233	195	260	216	288	257	342	298	397	
Zone 3: PDOSA, FOSA, State Prison	XII	93	123	102	136	111	147	120	160	129	171	138	184	162	216	178	236	209	277	240	318
Zone 2: CRS, DOSA, FOSA, State Prison	XI	78	102	86	114	95	125	102	136	111	147	120	158	146	194	159	211	185	245	210	280
Zone 1: CIS	X	51	68	57	75	62	82	67	89	72	96	77	102	98	130	108	144	129	171	149	198
<=12 Jail	IX	31	41	36	48	41	54	46	61	51	68	57	75	77	102	87	116	108	144	129	171
>12 Prison	VIII	21	27	26	34	31	41	36	48	41	54	46	61	67	89	77	102	87	116	108	144
	VII	15	20	21	27	26	34	31	41	36	48	41	54	57	75	67	89	77	102	87	116
	VI	12.05	14	15	20	21	27	26	34	31	41	36	48	46	61	57	75	67	89	77	102
	V	6	12	12.05	14	13	17	15	20	22	29	33	43	41	54	51	68	62	82	72	96
	IV	3	9	6	12	12.05	14	13	17	15	20	22	29	33	43	43	57	53	70	63	84
	III	1	3	3	8	4	12	9	12	12.05	16	17	22	22	29	33	43	43	57	51	68
	II	0	3	2	6	3	9	4	12	12.05	14	14	18	17	22	22	29	33	43	43	57
	I	0	2	0	3	2	5	2	6	3	8	4	12	12.05	14	14	18	17	22	22	29
Unr	0 - 365 days																				

CIS: County Intermediate Sanctions. Sentences less than 2 years may be served in a county intermediate sanctions program administered by the local court.
 CRS: County Restrictive Sanctions. Up to two years of the individuals sentence may be served in a county intermediate sanctions program administered by the local court.
 RDOSA: Residential DOSA, for eligible individuals based on offense type and criminal history
 PDOSA: Prison DOSA, for eligible individuals based on offense type and criminal history
 FOSA: Parenting Sentencing Alternative, for eligible individuals
 //cells in the hatched zone may be eligible for the FTOW sentencing alternative.

Member/Alternate Discussion:

- Several expressed support for further discussion on an alternative that encompasses all other alternative-suitable circumstances that aren't covered under any current alternatives. A member suggested that a set of findings or criteria could be developed to guide judicial decision-making. Another member suggested use of risk needs assessment to guide creation of requirements for the alternative.
- What is the purpose of sentencing alternatives?
 - Incentive for someone to engage in the process of treatment and programs
- Several members discussed the concept of zones of eligibility for county sanctions, as well as current alternatives:
 - One expressed support for idea of zones on the grid- as a way to look at criteria differently and to build in some of the risk analysis onto the grid.
 - In terms of current alternatives—many of the exclusions are for violent, serious violent, sex offenses. A member noted that there are some sex and violent offenses in the lower OSLs and expressed interest in getting understanding of what specific offenses are within each OSL and exploring opportunities to align eligibility criteria with zones based on OSL and CHS. For example, they could see potential to grant eligibility to an alternative for individuals with a low CHS and a low OSL violent offense conviction.
 - A member noted that the group will need to consider the current grid, as well as the potential grid under development.

Recap:

The group identified the following options for addressing eligibility criteria:

- Status quo: Maintain all statutory eligibility criteria
- Eliminate all statutory eligibility criteria and exclusions
- Create a mechanism for a court to conduct analysis and/or make findings for individuals that are ineligible to be eligible for an alternative if shown that they and the community would benefit.
- Maintain the current alternatives and their statutory eligibility criteria and create a broader overarching alternatives program, such as a community intermediate program that would meet the needs of individuals where current alternatives may not be accessible or appropriate.

Potential recommendation: eliminate cap on the number of DOSA sentences that an individual can receive in a 10-year period and instead let judges have discretion/flexibility.

The Alternatives Subgroup will also continue exploring what a locally administered community sanctions program could like that would meet the needs of individuals where current alternatives may not be accessible or appropriate.

Action Items/Next meeting:

- Revisit earlier discussions on how sentencing alternatives could integrate to the sentencing grid. Will begin by looking at residential DOSA.

Next meeting – February 8th 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: any statistics of those currently incarcerated for sex crimes versus actual hands-on sex crimes, (nondomestic violence), but hands on versus those arrested in adult dating site sex stings? involving fictitious children

hasn't it been proven that people change, and don't we want to allow for rehabilitation and alternatives? We keep carving those with sex offenses out of almost everything, yet they have the lowest recidivism rates.