

**Washington State Criminal Sentencing Task Force
Sentencing Alternatives Workgroup
Meeting Notes: February 22, 2022
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*
- Mac Pevey, *Department 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: Bruce Glant, Joanne Smieja, Carolyn Gray, Heidi Brodt

Presenter: Whitney Hunt, Coordinator, *Sex Offender Policy Board*

Ruckelshaus Center: Molly Stenovec, Amanda Murphy, Maggie Counihan

Meeting Purpose:

- Meet coordinator for Sex Offender Policy Board, continue discussion on SSOSA
- Discussion on how residential DOSA could integrate onto the sentencing grid.

Welcome & Agenda Review

Amanda welcomed everyone to the meeting and provided a brief overview of the meeting objectives and agenda.

Discussion: SSOSA and Sex Offender Policy Board

Amanda provided an overview of the groups previous conversations on SSOSA, including potential changes to eligibility criteria and how SSOSA could overlay on the sentencing grid. Since sex offense policies and programming requirements are complex, the facilitation team invited Whitney Hunt, coordinator for Sex Offender Policy Board (SOPB) to join this meeting so that the group could learn more about the board, what it's worked on in the past, and explore how the workgroup/SOPB could effectively partner and/or divvy up the work.

Whitney briefly introduced herself and the [Sex Offender Policy Board](#) (SOPB). The SOPB, which is based in the Office of Financial Management, was created in 2008 to “promote a coordinated and integrated response to sex offender management and create an entity to respond to issues that arise, such as integrating state and federal laws in a way that enhances the state's interest in protecting the community with an emphasis on public safety.” The SOPB conducts projects at

the direction of the Legislature—[report on review of SSOSA available online](#), as well as [all other reports](#).

Amanda asked members to share some of their discussions that would help Whitney better understand the work of the Task Force and prior Sentencing Alternatives conversations.

Takeaways shared by members/alternates include:

- The Criminal Sentencing Task Force is comprised of individuals with diverse backgrounds and perspectives across the system. Task Force has interest in alternatives for treating sexual deviancy, and recognize that the group could learn from, and benefit from the expertise of the SOPB and feel there are ways for the two groups to partner in a way that meets interests and reflects skillsets. For example, Task Force and this workgroup have talked about the challenges with lifetime supervision policies—the SOPB could inform what that policy could/should look like.
- Sentencing Alternatives Workgroup has looked at eligibility and accessibility regarding SSOSA. Some of those conversations and questions/challenges identified during those discussions include:
 - Requirement for defendant to have an established relationship with the victim/survivor—group has been thinking about the individuals who may not meet this eligibility criterion but could still benefit from sexual deviancy programming and that treatment could occur in the community. Specifically thinking about defendants in situations with non-contact or fictional victims.
 - **Follow up question:** is there a way for the court, with support from expert testimony, to establish findings that defendants without an established relationship could benefit from treatment and that treatment could be provided in the community?
 - Exclusions for past violent and serious violent convictions—how do those prohibition serve public safety? Are they exacerbating the punitive nature of the legal system?
 - Exclusions for prior sex offense convictions in many, if not all, current sentencing alternatives— What are the reasons or motivations behind those exclusions? How could their substance use treatment needs be met? For example, are there ways individuals with a prior sex offense could participate in a DOSA sentence? What would a judge or court need to make that determination?
 - Requirement that individuals pay for their treatment and cost of participation in SSOSA—expressed concern that individuals who may otherwise be eligible for SSOSA are not able to participate because of their financial status. See this criterion could disproportionately affect people of color.
- Expressed desire to learn more about rationale and eligibility requirements for lifetime sex registration and lifetime supervision – particularly if the length of supervision exceeds the statutory max for that specific offense (i.e., class C offenses have a five-year maximum).
 - Whitney provided an overview of the federal component regarding supervision and registration: the [Sex Offender Registration and Notification Act](#) (SORNA) is a

federal policy established in 2006 that establishes minimum standards for sex offender registration and notification in the United States. Washington deviates from federal policy—she specifically noted that the state does not meet the established minimum requirements for offense-based tiering and required duration of registration and frequency of reporting. If compliant, then states can access federal dollars. There have been discussions in Washington about complying with federal policy; however, this state has routinely said that our risk-based approach, which considers expertise from treatment providers, works better. The SOPB has gathered evidence to support the risk-based approach. WA is not the only state out of compliance (Full SORNA – [State and Territory Implementation Progress Check, 2020 Report](#)).

- Potential action item: Whitney will send the facilitation team additional resources and information on sex offense policy and risk-based approach to registration and supervision.
- SOPB has also completed a robust literature review of juvenile sex offense registration—while registration can be beneficial in some cases, it’s generally harmful.
 - Potential action item: Whitney will send facilitation team some of these reports.
- Amanda shared a recent conversation among members of the Grid Subgroup regarding washouts: that group has been considering whether some sex offenses should wash out and what ways sex offenses could be differentiated, similar to the way offenses can be classified as violent or serious violent. For example, could sex offenses be differentiated as violent/nonviolent, whether children or physical contact involved.
 - A member asked if the SOPB has had any discussion on washouts or made any legislative recommendations?
 - Potential action: Whitney will look through past SOPB reports and send relevant reports to the facilitation team. She will also look for relevant reports and policy analysis released at the federal level.

Whitney shared some information about her role and how the SOPB operates: as the coordinator, does not speak on behalf of the SOPB, but can share reports and resources gathered by the SOPB with the Sentencing Alternatives Workgroup. She will send the facilitation team an email listing resources.

The Legislature directs the work of the SOPB. Mac Pevey, as a member of both the Task Force and the SOPB, offered to help coordinate communication between the two groups.

Discussion: Overlay of Prison Drug Offense Sentencing Alternative on the Sentencing Grid

The Workgroup spent the remainder of the meeting looking at how sentencing alternatives could integrate to the sentencing grid. Keri-Anne provided an overview of how the prison Drug Offense Sentencing Alternative (pDOSAs)—what it looks like on both the current grid and the emerging simulated grid, including the offenses that are and are not eligible. She specifically noted that:

- Lower limits of pDOSA eligibility based on criterion that sentences are at least 12 months and a day, that it must be a prison sentence
- On the current grid: upper most eligible OSL is essentially OSL 10. Only one offense in OSL 12 could be eligible, however that offense has rarely, if ever, been charged—Malicious Placement of an Imitation Device.
- On the potential simulated grid: pDOSA would be available up to OSL 9 as effect of other potential recommendations that would eliminate Malicious Placement of an Imitation Device and reclassify other offenses.

Discussion among Task Force members/alternates:

- The overlay would increase transparency regarding which offenses could be eligible for consideration of pDOSA. With the simulated grid—it wouldn't necessarily create more access to pDOSA?
 - Correct. But with this information, the group could discuss how changes to offense specific eligibility criteria could affect access. For example, what would change if pDOSA were available for all individuals facing an offense at OSL 9?
- Thinking about the purpose of pDOSA—those individuals will spend time in prison, why are some current offenses excluded?
 - A member expressed support for eliminating exclusion for individuals with current violent offenses. Another member observed that would expand access to pDOSA through OSL 15.
 - pDOSA is an incentive program where successful individuals can earn an early release from prison—at the high OSL, how much do we want to incentivize time off a prison sentence for individuals who may have caused serious harm.
 - Another member observed that some individuals currently participate in pDOSA primarily as a way to reduce their time in prison and expressed concern about implications to public and survivor/victim safety if eligibility expanded to include individuals facing a current violent conviction. Also noted that individuals should have access to treatment when they want and need it.
 - For participation in pDOSA, there needs to be a nexus between the crime and the substance use disorder—expressed uncertainty about the correlation between substance use and causing serious violent harm. Would support focus on treatment and programs as part of reentry requirements for sentences associated with violent and serious violent offenses.
- Last week this group discussed a potential recommendation to eliminate the exclusion for prior violent convictions—does the group want to consider that recommendation for pDOSA?
 - Prosecution expressed support, adding they're less concerned about eliminating the exclusion of pDOSA than residential. With residential, there is some concern about turning a jail sentence into a community sentence and mixed confidence in individuals access to and success in residential programs. pDOSA: individuals still serve partial prison sentence with personal incentive to participate in treatment programs and earn early release.

- Several others also expressed support.
- **Potential recommendation: *Eliminate eligibility exclusions related to prior convictions for a violent offense from prison and residential drug offense sentencing alternatives.***
- What about the exclusion for current charge for felony DUI?
 - Currently a DUI becomes a felony offense if the defendant has three or more prior impaired driving offenses in the previous ten years, or has a prior conviction for felony DUI, vehicular homicide, or vehicular assault while under the influence of intoxicating liquor or any drug. For felony DUI—there could have been prior opportunities for treatment, so would focus on incapacitating that individual and reentry planning and supports.
 - Another member mentioned [SB 5573](#) – concerning drug offender sentencing alternatives for offenders convicted of driving or control of a vehicle while under the influence.
- Regarding pDOSA and rDOSA eligibility: current policy have very similar criteria, although there has been some movement towards differentiation. Prosecution expressed some concern about the trend to differentiate.
- Encouraged group to also focus on expanding capacity for treatment, when developing recommendations to expand eligibility.
 - Follow up question by facilitation—Mac, could you provide more context on ‘capacity’ and how treatment is provided at Dept. of Corrections (DOC) facilities? Mac, representing DOC, shared that the geographic locations of some DOC facilities and institutions are not well situated for professionals to serve those communities. Some communities struggle to attract and retain those individuals, so then struggle to provide availability and access to treatment and professionals.
 - Several members described some of the ways that courts and all professions have adapted dramatically because of the pandemic—what are the ways those lessons could be applied to increase access to treatment and programs? Are there other ways to think creatively to better meet the need for treatment and programs?

Recap and action items:

- The Workgroup proposed the following **potential recommendation: *Eliminate eligibility exclusions related to prior convictions for a violent offense from prison and residential drug offense sentencing alternatives.***
- Whitney will send out additional information and resources to the facilitation team, who will forward out to the full group.
- Mac and Whitney will stay in touch and keep communications between SOPB and Alternatives Workgroup.
- The workgroup was interested in exploring eliminating prior violent convictions as a criteria for all alternatives and what the impact of that change may be. Clela mentioned that this change was recently made for FOSA and that she will look for the bill report.

- **Next meeting:** Discussion of specific offenses and overlay of the Family Offender Sentencing Alternative (FOSA) on the current and potential sentencing Grids. Mac will invite Susie Leavell to join the conversation.

Next meeting – March 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: To the best of my knowledge, there was only one minor, age 17 who was arrested. The stings appear to be and are spoken of during the buy in with prosecutors, to be aimed and agreed to charging the harshest of charges and sentences.

Bruce Glant: She never really completed her comment about how or what crimes about young children.... ??? I don't understand what she was trying to say

Bruce Glant: Can Whitney expand on what she means by "pretty Darn Harmful" in what ways and to whom?

Heidi Brodt: What about those individuals that are convicted of a violent crime with no victims?

Joanne Smieja: Also excluding anyone convicted of viewing or possessing illegal depictions obtained from the internet.

Joanne Smieja: Only 17 states are SORNA compliant.

Joanne Smieja: This morning we discussed contact versus non-contact sex offenses.

Joanne Smieja: No, the SOPB has not looked at washouts.

Bruce Glant: You must consider also if a person can attend because the court says they're guilty, but they still maintain their innocence, and is appealing their conviction?

Bruce Glant: The savings for incarceration could more than pay for counseling in any and every community