

**Washington State Criminal Sentencing Task Force
Sentencing Alternatives Workgroup
Meeting Notes: March 22nd, 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*
- Greg Link, *WA Association of Defense Attorneys*
- Mac Pevey, *Department of Corrections (DOC)*
- Representative Roger Goodman, *WA House of Representatives Democratic Caucus*
- Judge St. Clair, *Sentencing Guidelines Commission*
- Clela Steelhammer (research & data support), *Caseload Forecast Council*
- Nick Straley, *Interests of Incarcerated Persons*
- Waldo Waldron-Ramsey, *Interests of Incarcerated Persons*

Guests: Bruce Glant, C.J., Cathy Johnston, Alex Mayo, G. Miller, Joanne Smieja

Guest Presenters from Sex Offender Policy Board (SOPB):

- Brad Maryhew, Chair, representing WA Association of Criminal Defense Lawyers
- Jedd Pelander, Vice-Chair, representing Dept. of Children, Youth & Families' Juvenile Justice & Rehabilitation Administration
- Dr. Michael O'Connell, representing WA Association for the Prevention and Treatment of Sexual Abuse—formerly the Washington Association for the Treatment of Sexual Abusers
- Whitney Hunt, Coordinator, SOPB

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

Meeting Purpose:

- Discussion on Special Sex Offender Sentencing Alternative (SSOSA), sex offenses, and ways the SOPB and Sentencing Alternatives Subgroup can coordinate their work.

Welcome & Agenda Review

Facilitator Amanda Murphy welcomed everyone to the meeting, noting that some members of the Grid Subgroup have joined this meeting. She asked Task Force members and alternates, and guests from the SOPB to introduce themselves.

Amanda then provided a brief overview of the meeting objectives and agenda. In 2021, the Sentencing Alternatives group had a presentation and discussion about the purpose and intent of the Special Sex Offender Sentencing Alternative (SSOSA). The group has also reviewed and discussed the statutory eligibility criteria and how SSOSA could overlay on the current and

simulated sentencing guidelines grids. During those discussions, members and alternates raised questions about how potential changes to the statutory eligibility could affect the implementation of SSOSA programs. Whitney Hunt, coordinator for the SOPB, briefly met with this group and provided reports and resources that may be of interest. Part of her follow up included a conversation with the Chair and Co-Chair of the SOPB, who expressed a willingness to meet with the Alternatives Subgroup. The purpose of today's meeting is to continue the conversation about sex offenses, SSOSA, and how the SOPB/Alternatives group could coordinate their work.

Overview of Sex Offender Policy Board (SOPB)

The SOPB was created by the Washington State Legislature in 2008 to promote a coordinated and integrated response to sex offender management¹. Brad Meryhew explained that the SOPB examines research and best practices related to sex offense policy in the interest of public safety. Members of the SOPB represent various sectors and constituencies. Past projects include: examination of the comprehensive sex offender registry, review of policies related to release and housing for individuals with a sex offense conviction, and policies and practices for minors who have committed sex offenses. The SOPB also conducted a review of SSOSA in 2013. Most projects for the SOPB involve a review of best practices and what's happening around the country, wrapped in a comprehensive literature review. The SOPB reports findings and recommendations to the Legislature—[those reports are also available to the public online](#).

Jedd Pelander added that the SOPB is not always active—it works at the direction of the Legislature. The SOPB just wrapped up projects last fall and does not have a current project.

SSOSA: Intent, Purpose, and Eligibility

Brad, Jedd, and Dr. O'Connell provided a brief overview of the history of SSOSA, including intent, purpose, and eligibility. SSOSA was created in conjunction with the 1984 Sentencing Reform Act (SRA). Advocates at the time pointed to a treatment program in the community which seemed to be working. Advocates also expressed concern that individuals may be less likely to report sex abuse if prison or jail were the only possible outcome for the defendant, especially if that individual was a family member or close contact.

Additional takeaways from overview and history of SSOSA:

- Over time, SSOSA has evolved: for example, the length of supervision has increased to 3 years and eligibility/exclusion criteria added.
- Have seen a decrease of SSOSA sentences issued.
- Department of Corrections, as well as presenters, noted that the availability and accessibility of treatment has also decreased over time—there are fewer treatment providers, especially in rural areas, and programs are more expensive.
- The victim's community worked hard to develop and maintain SSOSA, it would be important to include the voices of victims in the development of any changes recommended or enacted.

¹ More on the SOPB: <https://sgc.wa.gov/sex-offender-policy-board>

- Evidence suggests very little benefit from sex offender registration and significant harms from it. Based on research, the SOPB has recommended limiting or eliminating registration.

Questions & Discussion among Presenters, Task Force Members/Alternates:

- Group has been reviewing the statutory eligibility criteria – could you provide any thoughts?
 - Regarding requirement to admit guilt to all elements of a crime: a “denier’s curriculum” has been successful for individuals who do not admit to all charges
 - Research also shows that people who deny having committed a sex offense can still benefit from treatment.
- Task Force is looking at washout periods for violent offenses being different than washout periods for nonviolent offenses. Is there merit in differentiating certain types of sex offenses from other types.
 - violent/nonviolent distinction already exists
- Recent work was on juvenile sex offender registration--could you provide any information about adult sex offender registration and lifetime supervision?
 - Registration has challenges, but Washington has a reasonable approach to registration, in comparison to other states.
 - Washington has led other states in making changes to limit registration requirements for certain subsets of sex offenses. For example, specific offense classes that no longer carry mandatory registration requirements. Registration based on individuals risk and circumstances.
 - While research clearly shows little to no benefit from sex offender registration; however, the public at large has expressed strong support for registration.
- Department of Corrections pays close attention to the release, transition, and reentry for incarcerated individuals into the community. Housing and community supports play a much larger role in a person’s success than registration. With housing and community supports, a person is not likely to recidivate.
- Most, if not all, the other sentencing alternatives exclude individuals with a prior sex offense—could you provide more context/history?
 - Not many people or research conducted regarding individuals with a sex offense conviction could have access to sentencing alternatives.
 - For an individual with a past sex offense, a DOSA could make sense if substance use contributed to the commission of the offense, but not if sexual motivation was included.
- The group discussed eligibility requirement for “an established, prior relationship with the victim”
 - That specific criteria was added in 2006—some courts have interpreted that as familial relationship.
 - Several members discussed the program needs of individuals convicted through the Net-Nanny operations.

- Several members discussed contact and non-contact sex offenses. An SOPB member shared that individuals with non-contact offenses are often considered low-risk of re-offense. Dept. of Corrections has limited resources and so priority for treatment and programs is given to those with the highest risk. At present, DOC only has resources for 20-30% of the individuals who could benefit from sex treatment programming.
- Could you provide context regarding felony offense of failure to register?
 - Some individuals lack the capacity or means to register—often see that failure to register does not correspond with risk to the community.
 - A member requested additional information about the types of individuals with a failure to register, the circumstances in which those occur.
- What is used to measure and evaluate the risk of recidivism for those convicted of sex offenses?
 - Dr. Michael O’Connell shared that starting in the 1990s, increasingly precise actuarial risk assessment tools have been in place with monitoring and evaluation of their accuracy and effectiveness. Based on those tools, evidence shows that anyone over sixty is a very low risk of reoffending.
- A Grid Group member asked what an effective sentence would be for someone convicted of a sex offense.
 - Dr. O’Connor responded that a relatively short incarceration term *with treatment* would be most effective at limiting the risk to reoffend. Longer sentences do not lessen recidivism without treatment and may in fact be more harmful to this population when it comes to recidivism.
 - Others described additional factors that contribute to successful reentry and decreased recidivism:
 - Access to housing.
 - Affordability/accessibility of treatment.
 - Treatment opportunities for all individuals convicted of a sex offense.
 - Potential changes to lifetime registration, such as ways for individuals to petition off.
 - An SOPB presenter also noted the importance of increasing availability and resources for the victims and survivors of sex offenses.

Presenters and Workgroup members discussed some of the challenges associated with lifetime registration. A member shared that lifetime registration can be a barrier to things such as housing and employment, and contribute to feelings of hopelessness, increased risk of suicide, and may contribute to individuals recidivating.

The group then discussed the availability and process for the SOPB to review SSOSA, registration, and sex offense sentencing and develop recommendations for the legislature. SOPB wrapped up projects last fall and has not yet been assigned new work. For the SOPB to take on any work, the request must come from the chair of relevant legislative committees.

Representative Goodman, Chair of the House Public Safety Committee offered to make a written request to the SOPB to address five main topics that were identified in today’s

discussion: SSOSA (including eligibility), lifetime supervision, additional potential sentencing alternatives for individuals with sexual offense histories, washouts, and treatment (capacity, requirements, need, housing barriers, etc). The request will be to have a comprehensive set of recommendations with research and principals for each of these topics.

Amanda offered to connect Whitney Hunt, the SOPB Coordinator, with Representative Goodman and Nick Allen, since they're both co-chairs, and with Mac Pevey, since he serves on both the Task Force and the SOPB.

Action Items:

Representative Goodman, Chair of the House Public Safety Committee will make a written request to the SOPB to address five main topics that were identified in today's discussion: SSOSA (including eligibility), lifetime supervision, additional potential sentencing alternatives for individuals with sexual offense histories, washouts, and treatment (capacity, requirements, need, housing barriers, etc). The request will be to have a comprehensive set of recommendations with research and principals for each of these topics. The Facilitation Team will connect Rep. Goodman with the SOPB & Coordinator regarding next steps.

Next meeting – April 5th at 1:30pm, focusing on First Time Offense Waiver

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:

Joanne Smieja: Do the SOPB members believe we should expand the eligibility requirements for sentencing alternatives to include people convicted of a sex offense, i.e. the FTOW program, DOSA, etc.?

Do any of them think a sentencing alternative should be available for a first time, non-contact sex offenses such as voyeurism, viewing depictions, or possessing depictions?

Can we create a sentencing alternative for people who are assessed as very low risk or low risk?

Bruce Glant: Please ask if first time non-contact, and victimless net nanny individuals should be allowed an alternative to incarceration?

Couldn't the money used to pay for incarceration be used for housing and treatment?

Are the number of sex crimes against children increasing or decreasing?

What is the percentage of contact sex crimes as compared to non-contact regarding crimes against children?

has there been any discussion in the SOPB about the questionable Net Nanny sting individuals and acceptable alternatives? especially for first time offenders

Brad, what about lifetime supervision and lifetime registry, regarding those with victimless crimes or no contact crimes

Brain science now shows the brain is not developed until the age of 25, and even longer, regardless, is conversation taking place about looking at the 18–25-year-old age group differently?

I currently know of 3 first time offending Net Nanny individuals released or ready for release who cannot find housing due to financial and/or being allowed housing.