Washington State Criminal Sentencing Task Force
Sentencing Alternatives Subgroup
Meeting Notes: October 5, 2021
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*
- Rep. Roger Goodman, *Washington State Legislature*
- Mac Pevey, (Alt. for Julie Martin) *Dept. of Corrections*
- 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

Guests: Joanne Smieja, Bruce Glant

Ruckelshaus Center: Chris Page, Molly Stenovec, Amanda Murphy

WELCOME & AGENDA REVIEW

Chris and Amanda welcomed attendees and let the Subgroup know that the full Task Force agenda later in the week would focus on the sentencing alternatives and how to integrate them into the grid. Today the Subgroup will consider three potential options for incorporating sentencing alternatives into the grid and prepare to discuss those and any other ideas for how to do that with the full Task Force.

Chris and Amanda explained that the Subgroup would walk through potential ways to interlay alternatives on the different zones of the grid: offense seriousness levels (OSLs) 1-5, 6-9, and 10+. They posed the question: for the cells with sentencing ranges that straddle jail (<12 months) and prison (>12 months), aka the "straddle cells," could county-administered programs be interlaid here? The Grid group has asked Task Force and others to get together to have those conversations.

Purpose of Alternatives

A member asked, "Have we fundamentally talked about why sentencing alternatives exist?" They commented that the current system does not include programs to address the huge need for treatment in addition to incarceration. If the Task Force recommends, and the state adopts, a new system that has treatment and programs built into it, does it still make sense to include alternatives on the grid? With alternatives, while great that they provide something other than confinement, there has a disparate application in who gets issued a sentence with an alternative. If the components of treatment are built into the grid, then they can be available to more individuals.

Keri-Anne addressed the question, "Why do we have alternatives?" She explained that the Sentencing Reform Act (SRA) started with SSOSA and FTOW. Though FTOW was created to handle nonviolent offenses, its purpose has evolved since then. With SSOSA, there must be an established relationship between the defendant and the survivor. SSOSA provides a way for family members be able to report their relative so the individual can get treatment and support and lessens the length of confinement.

With changes over time to the grid, the perceptions exists that the FTOW is not being used as originally intended. Several members noted that FTOW is used primarily to get people to supervision who otherwise may not be eligible. A member posed the question, if a non-confinement only option gets created, would there still be a need for the FTOW?

A member pointed out that alternatives were created to provide a different approach to accountability than the sentencing grid, and since the vast majority of people who enter DOC get released back into society, then the function of alternatives of providing tools for those people is vital. Several members emphasized the importance of calling out that a confinement only form of accountability is not a tool for changing behaviors, especially in the context of disparity and disproportionality among individuals who receive alternatives.

A member noted that most of the alternatives speak to an engagement in programs or services, in order to address an underlying condition or behavior. They emphasized the need to keep that in mind during conversations about how alternatives could relate to the sentencing grid.

Presentation/Discussion: Ways to Integrate Alternatives onto the Grid & Account for Differences in Eligibility

Amanda asked the group to focus on the grid: how would it look like to overlay the alternatives on current grid? Since the alternatives are based on offense, rather than offense seriousness level (OSL), as the grid is, it's really complicated. She asked Lauren Knoth to walk the Subgroup through some options.

Lauren described how the various alternatives might get incorporated, explaining specific characteristics of each as she went:

- FTOW eligibility excludes violent and sex offenses. If other Task Force grid recommendations get implemented, then the FTOW would only be available on the grid for eligible offenses within criminal history score (CHS) 0 in OSL rows 1-9
- The parenting alternative and prison DOSA, with exceptions for violent and serious violent convictions, would then be available for all eligible individuals and sentences longer than 12 months.
- To be eligible for SSOSA, among other criteria, the maximum of a person's potential sentence must be less than 11 years (with some exceptions)

Keri-Anne displayed a spreadsheet showing all offenses in each seriousness level. If the Task Force recommendation that would reclassify those offenses gets implemented, then some offenses would move (e.g., Class B offenses in OSL 10+ would move to OSL 9 or lower).

A member expressed support for having the alternatives on the grid visually, highlighting or shading any given cell (or row) in the grid where one or more offense is eligible for the alternative. This could include both county-level programs and state-administered ones. A member suggested calling the former "community intermediate sanctions."

Option 1: Modify the grid to fit current eligibility requirements:

- Would not change the eligibility for a given alternative. Would provide the benefit of explicitly noting on the grid where alternatives are possible so they could be more transparently communicated to defendants, the community, and judges.

Option 2: Modify the eligibility requirements

- In theory, alternatives could simply be eligible for certain OSLs or specific CHSs.
- This option would not mean eliminating all current eligibility requirements. Eligibility could be expanded to include all current convictions
- This would streamline the approach to eligibility for alternatives, and the exclusions could be footnoted (*i.e., no prior violent convictions) so the exclusions and eligibility would all be in one place in statute and visible on the grid.

Option 3: Create a Community Intermediate Sanctions (CIS) program & place it over the grid

- In a broad designation on the grid, CIS could provide an option in which any individual sentenced to CIS would benefit from a certain level of universal program elements, which could be created or required by the state but administered at the community level.
- CIS could include conversions of time for incarceration to the equivalent community supervision.
- If the offense were drug/alcohol related, there must be an assessment and the alternative would follow treatment protocols.
- The Task Force could recommend the state build in various requirements, e.g., if the defendant has a CHS over 4, there could be at least some level of partial confinement.
- To apply to the grid: If the Task Force wanted to open up the eligibility, then it would look at which rows or columns to apply CIS to.
- For the FTOW, CIS could be an option. The court could impose electronic home monitoring or the FTOW could be a subset/program available for CIS for those with certain case characteristics.

Amanda asked the Subgroup to consider and offer input on those three options and suggest potential other ways the alternatives could be incorporated into the grid. Discussion points:

- If we put it on the grid, then the assumption would be that the alternative would be available for all offenses in the rows or cells of the grid where it appears, but we might

still have the challenge where programs or treatment options are not available in the community.

- Option 1 gives a simple solution to visualize current eligibility. Option 2 is a much different conversation: there are more factors involved with potentially doing that
- Are there other options that could/should be plugged in? Hesitate to go from 1 to 2 (feels like making lots of changes), so support going with option 1 and then considering how to modify from there.
- Modifying the eligibility for the alternatives is its own project. Layering the alternatives on the grid would increase transparency.
- Option 1 might be a simple fix, but are we aiming for simplicity or effectiveness? Taking on the big work of modifying the eligibility requirements seems like worth doing to make it more effective. We have some big issues regarding who is getting them vs. who is not, in terms of racial disparity. Our main goal should be to make effective system
- Option 1 would be confusing if we are aiming for simplicity and transparency since people would still have to refer to the statute about who would be excluded. Eligibility requirements are partially based on current conviction, but also in part on the person's criminal and program history (which varies).
- Support access and fairness to the alternatives. Right now, white defendants benefit more than non-white defendants from the alternatives.
- If drug treatment is needed, then a person's criminal and program history should not prevent them from accessing treatment.

Eligibility for Alternatives

- Eligibility is a barrier to access. Restrictions are not necessarily rooted in science, but in retributive, not rehabilitative sprit. The biggest bang for impact comes with people who are high risk, high needs. If a person has violence in background, then those need the programs. For a low risk, low needs person it could cause more harm if the individual is on supervision with lots of requirements.
- Worry about needing a key to interpret how the alternatives are placed on the grid. Thinking about maps – maybe there could be an overlay for eligibility?
- When it comes to eligibility, what went into determining the criteria?
    - It's a political process. For example, DOSA was originally only for very limited number of offences/convictions but over time that has increased, so prison DOSA was created. The parenting alternative has increased as program shown success. The question or topic of eligibility has been an ongoing conversation over the years.
- Step 1: how can we make alternatives more transparent and visible on the grid? Step 2: how can we expand the possibility for alternatives to be ordered? Step 3: how can we expand eligibility for the alternatives?
- Prosecution is open to talking about the eligibility criteria. That conversation gets political quickly, because the community has strong opinions of who should be eligibility based on what they read and hear. It is hard to think about enacting things that don't have a degree of public support.

- Eligibility criteria for drug court were federally mandated because the feds put money on the table. Some of the federal restrictions remain to this day.
- Eligibility standards related to violence and sex have not been modified, though others have as more information has become available.
- Shouldn't we talk about addressing eligibility as a tool to address the disparity/ disproportionality in the system, especially since most people are going to return to their community? If we are really thinking about making change, we need to make that case in a way that is politically palatable.
- Option 3 blends community and state sanctions. It could address the concern about the communities that don't have alternative programs or resources, since the state alternative options could provide way for individuals could get the treatment (similar to prison/residential DOSA). It could be that the sentence includes a term of partial confinement also.

NEXT STEPS/ACTION ITEMS

- Prepare to discuss potential recommendations and how to bring the Task Force up to speed on all this.

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:

Bruce Glant: Most Net Nanny Sting offenders are 1st time offenders, harming NO ONE, and are seriousness level 12, and are Violent Offenders. Counseling and education are the proper alternative to incarceration. In fact, these offenders should be reclassified and the crime renamed.

Joanne Smieja: I encourage the subgroup to expand the eligibility for all of the sentencing alternatives. All serious violent offenses are class A felonies so it makes sense to treat them similarly. Similarly, of the 39 violent offenses, a large majority are class A (30 are class A and 9 are class B). However, of the 39 sex offenses, 9 are class A, 17 are class B, and 13 are class C so it doesn't make sense to treat all these offenses as the same. I encourage the members of the sub-group to change the eligibility requirements so that only class A felonies are ineligible for a sentencing alternative.