

**Washington State Criminal Sentencing Task Force  
Sentencing Alternatives Subgroup  
Meeting Notes: October 19, 2021  
Meeting via Zoom**

**ATTENDEES**

**Task Force Members/Alternates:**

- Nick Allen, *Interests of Incarcerated Persons*
- Tiffany Attrill, *Interests of Victims*
- 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*
- Clela Steelhammer (research & data support), *Caseload Forecast Council*
- Jon Tunheim, *Washington Association of Prosecuting Attorneys*

**Research/Technical Support:** Lauren Knoth, *Washington State Institute for Public Policy*

**Guests:** Joanne Smieja, Bruce Glant

**Ruckelshaus Center:** Chris Page, Molly Stenovec, Amanda Murphy

**Meeting Purposes:**

- Review three options for placing Alternatives on the Grid & Task Force Input on them
- Open conversation on Options to determine upcoming approach, timeline

**WELCOME & AGENDA REVIEW**

Amanda welcomed attendees and reminded the Subgroup that the full Task Force had heard and discussed information on the existing state sentencing alternatives at its last meeting, before reviewing three options for incorporating the alternatives to the sentencing grid. Since the Task Force had so many questions about the three options, the facilitation team thought it could help for the Subgroup to walk through them again before discussing eligibility for the sentencing alternatives.

**Presentation/Discussion: Review Options to Build Alts into Grid & Task Force Input on Them**

Lauren Knoth reviewed the three potential options for incorporating alternatives into the grid:

- Option 1: Modify the grid to fit the current eligibility requirements. This option could entail creating sub-rows within an Offense Seriousness Level (OSL) for Alternatives and applicable offenses or adding a color-coded overlay and footnote noting that sentencing alternatives may be available in those rows, depending on the current offense and an individual's criminal history.

### Modify grid to fit current eligibility requirements.

	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
XIV	123	220	134	234	144	244	154	254	165	265	175
XIII	123	164	134	178	144	192	154	205	165	219	175
XII	93	123	102	136	111	147	120	160	129	171	138
XI	78	102	86	114	95	125	102	136	111	147	120
X	51	68	57	75	62	82	67	89	72	96	77
IX	31	41	36	48	41	54	46	61	51	68	57
VIII	21	27	26	34	31	41	36	48	41	54	46
VII	15	20	21	27	26	34	31	41	36	48	41
VI	12.05	14	15	20	21	27	26	34	31	41	36
V	6	12	12.05	14	13	17	15	20	22	29	33
IV	3	9	6	12	12.05	14	13	17	15	20	22
III	1	3	3	8	4	12	9	12	12.05	16	17
II	0	3	2	6	3	9	4	12	12.05	14	14
I	0	2	0	3	2	5	2	6	3	8	4
Unr	0 - 365 days										

Cells in the green zone are presumptive jail sentences. Depending on the offense, individuals may be eligible for a residential DOSA or SOSSA disposition.  
 Cells in the yellow zone may be eligible for a residential DOSA, FOSA, or SOSSA disposition depending on the offense and the types of offenses in an individual's criminal history.  
 Cells in the blue zone may be eligible for a prison DOSA, FOSA, or SOSSA disposition depending on the offense and the types of offenses in an individual's criminal history.  
 Cells in the hatched zone may be eligible for the FTOW sentencing alternative.

- Option 2: Modify eligibility so alternatives fit into grid. Discussions about where in grid alternatives are appropriate could lead to recommendations that modify offense-based eligibility to criteria based on grid location. Restrictions could still apply.

### Modify eligibility requirements.

Could result in a similar design as option 1, but you could eliminate the offense specific criteria so that all offenses in the shaded cells are eligible for the sentencing alternative.

	0	1	2	3	4
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
XIV	123	220	134	234	144
XIII	123	164	134	178	144
XII	93	123	102	136	111
XI	78	102	86	114	95
X	51	68	57	75	62
IX	31	41	36	48	41
VIII	21	27	26	34	31
VII	15	20	21	27	26
VI	12.05	14	15	20	21
V	6	12	12.05	14	13
IV	3	9	6	12	12.05
III	1	3	3	8	4
II	0	3	2	6	3
I	0	2	0	3	2
Unr	0 - 365 days				

Could also change the zones, expanding or contracting.

Cells in the green zone are presumptive jail sentences. Depending on the offense, individuals may be eligible for a residential DOSA or SOSSA disposition.  
 Cells in the yellow zone may be eligible for a residential DOSA, FOSA, or SOSSA disposition **depending on the offense** and the types of offenses in an individual's criminal history.  
 Cells in the blue zone may be eligible for a prison DOSA, FOSA, or SOSSA disposition **depending on the offense** and the types of offenses in an individual's criminal history.  
 Cells in the hatched zone may be eligible for the FTOW sentencing alternative.

- Option 3: Overlay current sentencing alternatives on the grid, then also create broader sentencing alternatives that allow different requirements/components depending on the type of offense or criminal history. Such programs could be administered by the local court and provide options for accountability that allow a mix of partial or non-confinement and local programming.

Criminal Sentencing Task Force: Sentencing Alternatives Workgroup Meeting Notes – October 19, 2021

	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: XII	93	123	102	136	111	147	120	160	129	171	138	184	162	216	178	236	209	277	240	318
PDOSA, XI	78	102	86	114	95	125	102	136	111	147	120	158	146	194	159	211	185	245	210	280
FOSA, State Prison X	51	68	57	75	62	82	67	89	72	96	77	102	98	130	108	144	129	171	149	198
Zone 2 IX	31	41	36	48	41	54	46	61	51	68	57	75	77	102	87	116	108	144	129	171
CRS, DOSA, FOSA, State Prison VIII	21	27	26	34	31	41	36	48	41	54	46	61	67	89	77	102	87	116	108	144
Zone 1: VII	15	20	21	27	26	34	31	41	36	48	41	54	57	75	67	89	77	102	87	116
CIS VI	12.05	14	15	20	21	27	26	34	31	41	36	48	46	61	57	75	67	89	77	102
RDOSA V	6	12	12.05	14	13	17	15	20	22	29	33	43	41	54	51	68	62	82	72	96
<=12 Jail IV	3	9	6	12	12.05	14	13	17	15	20	22	29	33	43	43	57	53	70	63	84
>12 Prison 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 individual's 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.

**Alternatives Subgroup Questions & Discussion**

- A member said they have been thinking about racial/ethnic disparity in application of sentencing alternatives and would like everyone to have access and opportunity to benefit from alternatives.
- **Q:** Is Option 3 essentially Option 1 with the addition of county-based sanctions, such as community intermediate (or restorative) sanctions (CIS/CRS), while Option 2 involves changing eligibility? If that understanding is accurate, is it possible to have an option four that modifies eligibility AND creates a county program? **R:** Lauren confirmed that about Options 2 and 3 and added that this Subgroup could propose the Task Force create additional Options.
- A fourth Option, to modify eligibility to current alternatives and creates the county or community-based program, is also on the table.
- **Q:** Does expanding eligibility increase judicial discretion, for making decisions about what is most appropriate for the people in the court? **R:** That depends on how you view sentencing decisions. It could increase discretion because it gives judges more tools; however, we also hear prosecutors have great discretion over charging decisions so this could give them more tools there.
- **Q:** County intermediate sanctions – will that be dependent on available county resources, whereas state programs depend on state resources? **R:** It would be a county run program, but early conversations have envisioned block grants from state to counties: counties would submit plans and the state would set standards for what the county must provide. Like juvenile block grants, this would allow more access to community programs and family supports. It could reduce program administration by DOC and allow individuals who would benefit from proximity to community to remain in the community.
- The Task Force could also think about creating a “direct to DOC program” in the event a county was unwilling or had not developed a county-administered program.
- Some of the thinking on the county programs came from discussions during the grid group...people noting the importance of community administered programs, for individuals to remain near family – this was something brought forward as a suggestion.
- A member expressed support for expanding eligibility AND creating CIS programs.

- Related to county of origin: when we think about a county-directed program, we should make sure we don't create barriers for individuals not residing in their county of origin or conviction.
- The block grant for juveniles works well. We need to make sure the Legislature recognizes that this recommendation will require funding. This could be done by reinvesting dollars saved from fewer incarceration costs.
  - Follow up comment: Note that the Task Force has already made a recommendation calling for resources and funding to implement recommendations.
- Eligibility is a big conversation, and we should talk about that – but that's a separate political process. There have been increases in eligibility for the Family and Offender Sentencing Alternative.
- Even if the state provides funding there will still be geographic disparities.
- We should pair these potential changes with tools to address racial/ethnic disparities: instead of disparities in length of confinement, we may see disparities in who receives alternatives, so we need monitoring and oversight.
- **Q:** Are there examples of how address rural disparities, access to programs in rural areas? **R:** Some counties have partnered, so Benton and Franklin Counties offer regional programs. Issues arise around group-based programs, for which program administrators might not have enough people to manage the groups.
- Electronic home monitoring, day reporting – those can work well at the local level, but then may have regional treatment centers.
- One possible way to address disparity: statute could mandate that alternatives need to be the first consideration, and if an appropriate alternative cannot be found then the court must document and provide sentencing rationale for NOT using an alternative.

Amanda asked the group about expanding eligibility: what does that mean? What would you like to see addressed? If something prevents a person from accessing that program, then change those restrictions or criteria to allow a wider range of options for individuals with charges and let people receive the treatment they need.

FOSA eligibility has changed: previously, violent offenses in one's past prevented individuals and families from accessing the alternative, so the Legislature eliminated a past violent offense as a restriction preventing someone from accessing FOSA.

- **Q:** If the state changes eligibility, would that change the kind of person or population receiving the program? And if so, how would the program needs change? For example, would an individual with past violent convictions need different types of programs or services than are currently available? **R:** So far, restrictions on programs have been more political than substantive. The Legislature has been looking at the Special Sex Offender Sentencing Alternative (SSOSA) to consider expanding eligibility (beyond established relationships with the victim/survivor).
- **Q:** Why is there eligibility for alternatives on OSL 12? **R:** That is due to "malicious placement of an imitation device," which is NOT a serious violent, violent, or sex offense – so that offense would be eligible for the First Time Offender Waiver (FTOW), or prison-based Drug Offender Sentencing Alternative (pDOSAs). However, grid group has suggested the Task Force potentially recommend

moving that offense to a lower offense seriousness level (OSL) since it's a Class B—or recommend eliminating the offense since it has not been charged in the more than 20 years it has existed.

- My constituency would support alternatives where there is a nexus between the treatment and the behavior underlying the offense.
- From the victim's perspective: considering recommendations that would lower sentence ranges for most of the grid and thinking about recidivism, working with families of victims, we see a wide range of individuals with a long history of recidivism and failed participation in programs.
- A member expressed support for judges to consider the victims' perspectives when determining whether to issue a sentencing alternative.

The following points emerged as the Subgroup discussed eligibility for alternatives for people committing sex offenses with fictitious victims:

- WSIPP is conducting an evaluation comparing individuals convicted via the "Net Nanny" program with those who have the same or similar charges but were not convicted via Net Nanny. Currently, individuals who had a "real" victim may have access to SSOSA, whereas people with a conviction that was the result of Net Nanny arrest may be ineligible due to a lack of an established relationship with the victim. Perhaps the Task Force should look at recommending making individuals eligible for SSOSA if the conviction was the outcome of a fictitious undercover sting operations.
- Follow up: Could there be a different crime or other way to differentiate between individuals with fictitious and real victims? Often individuals are charged with Attempt Rape of a Child.
- SSOSA was created largely for families not really for the individuals who are "grooming" kids.

The Subgroup continued its discussion of eligibility for alternatives:

- **Q:** Regarding FOSA: if someone harms their family, would they be eligible? Criteria notes person must have custody of the child and the court must determine the alternative is in the "best interest of the child" for the defendant to be eligible—for example, if a dad commits crime and the mom is a survivor of domestic violence, can dad receive the FOSA? **R:** For FOSA, that should emerge during the family assessment. In at least one case, a mom got charged with neglect, but she received mental health treatment between time of charge and sentencing decision, so court found that the alternative was in the best interest of the child. The individual circumstances are important.
- It makes sense to talk with program providers about what works and doesn't work in terms of the characteristics of people that can benefit from treatment and thus should be eligible for a given alternative.
- As a court considers sentencing alternatives, an evaluation looks at the individual's challenges and opportunities leading up to the incident when the offense occurred. For DOSA, that is self-reporting, so it ensures there is some upfront investment from the individual.
- For DOSA, we know that when we stick an individual in treatment who does NOT have an addiction, see they sometimes come out WITH an addiction. We want to make sure that the programs and treatments match the need.
- The state could benefit from real evidence-based decision making on the eligibility, since so far eligibility seems more political than anything else. We should work to ensure a more just and fair

sentencing system, that both provides the best outcome for an individual charged, the community, and the survivors. Alternatives are a key part of that conversation.

- Eligibility is a core part of our purview if alternatives help improve public safety, but we should be willing to stay out of some areas of eligibility because other groups with more expertise are weighing in, e.g., the SOPB is in a much better position to make informed decisions and recommendations on SSOSA.

Amanda noted a couple of ways we could proceed: the group can dig more into eligibility OR continue discussing how alternatives fit into the grid. Now that the group is familiar with all the alternatives, we could go alternative by alternative and look at the eligibility criteria. Several expressed support for this approach, noting that some criteria vary a great deal from alternative to alternative. A member expressed support for beginning discussion on the FTOW.

Amanda also asked the group to think about what boards, commissions, or other entities have expertise on different alternatives, i.e., who could provide more information. Those experts should be asked to bring in data (not anecdotes). A member added that the group should also think about the origins of each alternative: why it exists, what was the history that helped shape each alternative?

#### **Next Meeting & Action Items**

- Next meeting: begin a discussion on the FTOW, eligibility
- All: think about what boards, entities could provide more expertise and information on various alternatives – for example the Sex Offense Policy Board.

#### **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: Representative Goodman brought up the comment about crimes with no victims which raises my question of, Is this Alternative Committee going to discuss Alternatives to sentencing and even charges for law enforcement induced criminal behavior against of individuals against fictitious victims. Many of these charges are ROC 1, a serious violent crime, for individuals who have no criminal history. but it is law enforcement induced, and an assumption of a crime. There is never an opportunity for the individual to NOT commit the crime. Law enforcement makes no attempt to confirm the individuals has true intent or desire to actually commit the crime. All they have to do is LURE the individual to a location.

Joanne Smieja: According to the meeting notes from August 24, the SOPB recommends expanding SSOSA or another community-based treatment alternative to Non-Contact Sex Offenses. According to the SOPB 2014 SSOSA Review, they referred to non-contact offenses as internet-assisted child sexual pornography crimes.

Bruce Glant: The fact is, these individuals went onto 18 and older dating sites looking for adult relationships only to be intervened by law enforcement. We have found NO actual children were rescued which was the actual intent of the legislature in forming this task force. These individuals

should have an alternative sentence and ability to remove the charges from their record based upon completion of their counseling. This would apply to first time offenders.

Bruce Glant: thank you to those who are bringing up the Net Nanny discussion to look into alternatives of these individuals who are charged with these outrageous charges based on assumption and never given the opportunity NOT to commit a crime

Joanne Smieja: When you look at the FTOW, could you find out why all people convicted of a sex offense are ineligible?