

**Washington State Criminal Sentencing Task Force  
Sentencing Alternatives Subgroup  
Meeting Notes: September 21, 2021  
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*
- 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*

**Guests:** Heidi Brodt, Bruce Glant

**Presenter/Technical Expertise:** Karl Jones, *Dept. of Corrections*; Lauren Knoth, *Washington State Institute for Public Policy*

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

**WELCOME & AGENDA REVIEW**

**PRESENTATION: Prison & Residential Drug Offender Sentencing Alternatives**

Mac Pevey, Dept. of Corrections and Jon Tunheim, Washington Association of Prosecuting Attorneys, provided an overview of the Drug Offender Sentencing Alternative (DOSA) is a sentencing alternative for chemically dependent and eligible individuals.

**Prison DOSA:** Available for certain chemically dependent individuals. Sentence length may depart from the standard range and consists of a period of total confinement in a state facility for one-half the midpoint of the standard sentence range or 12 months, whichever is greater; and one-half the midpoint of the standard sentence range as a term of community custody, which must include appropriate substance abuse treatment.

**Residential DOSA:** Available for certain chemically dependent individuals. Sentence consists of a term of community custody equal to one-half the midpoint of the standard range sentence or two years, whichever is greater, conditioned on the individual entering and remaining in residential chemical dependency treatment for a period between 3 and 6 months.

The intent is to get the person into treatment ASAP, then the court reviews the individual's community custody. The court can issue sanctions if person is not in compliance, with the

ability to impose a sentence of half the mid-point (of the standard range for the offense) in confinement.

Two statutes (listed at end of these notes) govern residential and prison versions of the DOSA and specific eligibility criteria. Eligibility for DOSA includes the following criteria:

- No violent offences (no convictions in last 10 years)
- No firearm/deadly weapon enhancements
- No felony DUI or physical control
- No current/prior sex offense
- 2<sup>nd</sup> degree robbery that does not involve a firearm, not reduced from a robbery 1
- Have not received one prior DOSA in the past 10 years
- No deportation orders
- Must be for a drug offense involving a small amount (court can determine what constitutes a small amount as opposed to a large amount)

At sentencing, court can order a risk assessment report, where court can look at needs, history of substance use, and social/community supports available to the individual prior to sentencing.

#### **COMMENTS, QUESTIONS, AND RESPONSES**

- Expressed concern that revocations can occur too easily, such as due to tension between the individual and the provider. Is there space for graduated sanctions?
- Suggestion to develop a recommendation about providing individuals the right to legal counsel in the violation hearings. Right now, people have the right to request counsel but not many use that, so we end up with people with mental health problems or cognitive challenges representing themselves in a violation hearing. The DOC hearings officer would make the decision on counsel.
- Encouraged the Task Force to expand eligibility based on current offense as a way to address the racial disparity around who is getting DOSA and not getting it.
- How long is someone in prison-based treatment before they go to community supervision?
  - Individuals are in total confinement for one-half the midpoint of the standard sentence range or 12 months, whichever is greater; and one-half the midpoint of the standard sentence range as a term of community custody, which must include appropriate substance abuse treatment.
- This program has a 40% success rate—is that effective?
  - Currently, when someone terminated from treatment it counts as a failure. A 10% program success rate could still positively affect a person's life, their family, and generational outcomes.
  - Washington State Institute for Public Policy did a cost benefit analysis of drug court: [https://www.wsipp.wa.gov/ReportFile/1577/Wsipp\\_Washingtons-Residential-Drug-Offender-Sentencing-Alternative-Recidivism-Cost-Analysis\\_Report.pdf](https://www.wsipp.wa.gov/ReportFile/1577/Wsipp_Washingtons-Residential-Drug-Offender-Sentencing-Alternative-Recidivism-Cost-Analysis_Report.pdf)
- Does the individual have to pay for residential DOSA?
  - DOC provides funding for treatment.

- Concern about inclination to sentence an individual without a home to prison DOSA since that person is likely to lose all their stuff.
- Suggestion for the group to think about how to incorporate both sanctions and tolerance for relapse. For example--sanctions that might not include jail time or that could escalate with repeat violations so that if someone does escalate to termination, it's big – they've stopped showing up for supervision.
- Who determines if drug court or DOSA is utilized?
  - Drug court is not a sentencing decision, but is agreed upon before sentencing, and typically the charge gets dismissed. All parties must agree, but prosecutor has significant influence.
- Eligibility for drug courts: generally, a defendant must be charged with a drug possession offense, have a drug/alcohol problem, have no history of violent offenses, and have no history of mental health problems.
- When does the Drug Sentencing Grid get used?
  - It is used for drug related crimes.
- Often, legal financial obligations (LFOs) come with the property offenses, so the person needing to keep up with their LFOs may agree to gross misdemeanors to avoid the felonies
- Would it be possible to relieve the state of administering residential DOSA with something like a county intermediate program, where counties could apply for block grants for funding?
  - That would depend on local capacity, funding, etc.
- Reminded group to consider how supervision eligibility has changed. Supervision is not necessarily based on risk/need, but because someone had a DOSA sentence. For example, an individual with a property crime conviction may receive supervision as part of DOSA sentence, where a similar action/same conviction with a standard sentence, would NOT be eligible for supervision.
- The state's Criminal Justice Treatment account is dispersed on a percentage basis. This funding becomes the foundation and way to leverage other resources. In King County, a drug court judge also oversees the DOSA calendar. In some counties, drug court has more resources than the DOSA.
- If the Task Force has a potential recommendation on straddle cells and discusses county/community intermediate programs, how does the discussion on county programs, or DOSA, connect with the Grid Group conversation?
  - County/community intermediate sanctions (CIS) could operate as an umbrella program. For drug-related offenses or someone with substance use disorder, there would be some combination of treatment and supervision, so residential DOSA could be one version of a CIS program. Prison DOSA could be on a part of the grid. Instead of having alternatives be offense-based, treatment and sanctions could be based on scores on a drug/alcohol assessment – so sanctions could include both in-home monitoring AND substance use disorder treatment.
- Is there more information about things that disqualify a person from DOSA? How could this be tied to the grid?

- At the Legislature, it came down to what people were willing to spend money on, and they were not willing to spend on those with violent convictions. However, now we know there may be value in investing in those high-risk individuals – 90% of individuals will be coming out of prison/jail, so how can we help them?
- It seems like revocations happen way too often. Legal counsel at revocation hearings was changed to reduce burden on the courts.
- How can we address disparities?
  - Look at the eligibility criteria and disqualifications, and how something might contribute to racial disparity. Encourage the group to prioritize how to provide someone needed treatment, which is good for public safety.
- What are the resources and program that support survivors and victims of crimes? What do they need?
  - We do disservice to victims all the time. We use them at the trial for their testimony, and then discard. We need mental health and trauma supports – by supporting the victim at one point, we may prevent that individual from committing a future crime. We need to think about how to bring victim health and community health to the forefront. Can we have CIS place victim services as a centerpiece?
- Need for therapy, counseling, for victim services, outpaces availability and doing that work on zoom is a challenge.
- One challenge with residential DOSA involves the location of treatment: DOC contracts with locations in Spokane and Chehalis. It would help to have treatment options available in whatever community an individual resides in because people can benefit from supports in their local community.
- In communities with robust drug courts, the courts are opting to use local drug court rather than residential DOSA.

#### **NEXT STEPS/ACTION ITEMS**

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

#### **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: I'm asked by others, both incarcerated individuals and loved ones who have been caught in these Adult Dating site sex stings by WSP if there will ever be discussion as to Alternative sentencing for these crimes that harmed no one. These are being mass produced by the WSP since 2015 through the Net Nanny stings, and are treated, convicted, and sentenced as violent sex crimes as if there is a real live victim.

WSIPP report mentioned: [https://www.wsipp.wa.gov/ReportFile/1577/Wsipp\\_Washingtons-Residential-Drug-Offender-Sentencing-Alternative-Recidivism-Cost-Analysis\\_Report.pdf](https://www.wsipp.wa.gov/ReportFile/1577/Wsipp_Washingtons-Residential-Drug-Offender-Sentencing-Alternative-Recidivism-Cost-Analysis_Report.pdf)

WSIPP's Benefit Cost analysis of Drug Courts

<https://www.wsipp.wa.gov/BenefitCost/Program/14>

DOSA RCW's:

[https://app.leg.wa.gov/rcw/default.aspx?cite=9.94A.660#:~:text=\(c\)%20The%20court%20may%20order,to%20make%20satisfactory%20progress%20in](https://app.leg.wa.gov/rcw/default.aspx?cite=9.94A.660#:~:text=(c)%20The%20court%20may%20order,to%20make%20satisfactory%20progress%20in)

<https://app.leg.wa.gov/rcw/default.aspx?cite=9.94A.662>