

**Washington State Criminal Sentencing Task Force
Sentencing Alternatives Subgroup
Meeting Notes: February 8, 2022
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*
- Julie Martin, *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*

Guests: Bruce Glant, Joanne Smieja

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

Meeting Purpose: Discussion on how residential DOSA could integrate onto the sentencing grid.

Welcome & Agenda Review

Amanda welcomed members, recapped the previous meeting and past options on how to integrate sentencing alternatives onto the grid, and provided an overview of the agenda. The purpose of this meeting is to continue the conversation on options for integrating sentencing alternatives onto the grid by specifically looking at how residential DOSA applies based on the current grid and the simulated grid.

Sentencing Alternative Grid Overlay Options

Amanda reminded the group that during the full CSTF meeting in October 2021, the Task Force looked at potential options to integrate sentencing alternatives to the grid to reduce complexity and increase transparency of sentencing options to all parties.¹

Amanda provided a brief overview of those options:

- Option 1: Maintain current eligibility and modify grid to fit current eligibility requirements. For example, create sub rows within an OSL for offenses that may be eligible for an alternative. The Task Force did not express much interest in this option.
- Option 2: Modify eligibility requirements. This could result in a similar design as Option 1 but would modify offense specific eligibility to fit with OSLs and CHSs.

¹ Presentation available at: https://s3.wp.wsu.edu/uploads/sites/2180/2022/02/Sent.Alt.-Options-on-grid_CSTF_PPT_10.07.21.pdf

- Option 3: Place overarching alternatives on grid – current alternatives and also create a community sanctions option, with requirements and components based on individual’s needs (current offense, criminal history, and results of screenings).

At the January 2022 meeting, the Sentencing Alternatives Subgroup discussed Option 3 and expressed interest in discussing Option 2—using a specific alternative and the offenses that may or may not be eligible to inform that conversation.

Keri-Anne Jetzer created a detailed spreadsheet of the current and simulated sentencing grids for residential DOSA (rDOSAs), which included specific offenses that were and were not eligible for rDOSAs within each OSL, and the specific cells where rDOSAs would apply where the midpoint of the standard range is 26 months or less. Amanda reminded the group they had been discussing modifications to specific eligibility criteria in the interest of potentially making alternatives available to more defendants in the system.

Members & Alternates Discussion:

- The potential simulated grid increases the number of cells (both in OSL and CHS) with a midpoint of 26 or fewer months—so without any changes to offense specific eligibility, the courts could consider the applicability of rDOSAs in more instances.
- How does this comport with the policy goals of reducing complexity, advancing public safety, and improving the effectiveness of the system?
 - Responses/ideas from members and alternates included: have one sentencing grid where judges could see where alternatives could be considered; more instances where individuals could have access to residential treatment, rather than in a prison.
- Several members discussed the intended purpose of sentencing alternatives, including means of accountability that is an alternative to confinement and a means to provide treatment. Several discussed the importance of a relationship between the offense and a behavior in determining the applicability of a sentencing alternative. Specifically, an rDOSAs sentence is for a person with an underlying substance use disorder that contributed to/led to a crime.
- Several members discussed various felony offenses to weigh whether individuals charged with them should have access to alternatives, e.g., “Hit & Run – Death” or “Promoting Prostitution 1.”
 - If substance use disorder truly contributed to a hit and run death (or other violent offense) and they had a CHS of 0 or 1 then would rDOSAs be reasonable?
 - FTOW may be more applicable, if a person does not have prior felony convictions. If evidence showed drugs contributed to a hit and run, then it would likely be charged as vehicular homicide and would not qualify for the alternative.

Amanda asked the group: *what would happen if all eligibility criteria were eliminated?*

Members/Alternates Discussion:

- Those criteria serve as gatekeepers, as a way to allocate finite resources. Another member shared that it provides an opportunity for treatment options, while also recognizing that in instances of significant harm a period of confinement could also be warranted.
- Eliminating criteria/exclusions would simplify the system and reduce complexities. And it could address public safety by increasing instances where treatment oriented sentencing options could be considered.
- A member observed that alternatives vary as to whether an individual with a past felony violent conviction could be considered for a sentencing alternative. For example: no prior adult violent convictions within 5 years of current offense (SSOSA), within 10 years of current offense (DOSA), no past serious violent convictions (FOSA).
- Several members expressed interest in developing a recommendation to eliminate past convictions for violent offenses as an exclusion, with a member expressing interest in eliminating all exclusions for violent and serious violent offenses, so those individuals could have the access to treatment options under a sentencing alternative.
- Some suggested eliminating the exclusion criteria that bars people with current violent offense(s) from eligibility. A member brought up that this may be something their constituency could not support, but most likely could support the elimination of the prior violent conviction exclusion.
- Increasing eligibility does not guarantee that someone will receive an alternative—the judge determines whether that is appropriate.

Potential Recommendation: Eliminate eligibility exclusions related to prior convictions for a violent offense from Sentencing Alternatives.

Brief Discussion on other Alternatives

- What about the criterion for the Special Sex Offender Sentencing Alternative that stipulates the defendant must have an established relationship with the victim—does that merit changing, based on the input from members of the public regarding Net Nanny and theoretical victims?
 - This comes up in cases with child pornography charges too since the defendant does not have a relationship with the victim there.
- The group also touched briefly on the Mental Health Sentencing Alternative created based on a recommendation from the Task Force, noting that there is no eligibility based on prior record.
- Matt Landon’s data could be helpful when looking at potentially eliminating the criteria stipulating that people with a prior violent offense conviction are not eligible for alternatives.

Recap:

- The group found it helpful to see detailed lists of those offenses in each OSL that would be eligible for rDOSAs, with highlights on the CHS columns showing that eligibility cell by cell.

- They agreed that viewing and discussing this type of shaded overlay showing eligibility by grid cell (with detailed offense lists) for each alternative would help.
- The group expressed support for coordinating with the Sex Offender Policy Board to request participation from the Board’s coordinator (or potentially its Chair) at that meeting.
- **Potential Recommendation:** Eliminate eligibility exclusions related to prior convictions for a violent offense from Sentencing Alternatives.

Action Items

- Facilitation team contact coordinator of Sex Offender Policy Board to see if they can attend the workgroup’s meeting on February 22nd.
- Keri-Anne to create a similar color-coded simulated grid overlay for pDOSAs for next meeting and the other alternatives for subsequent meetings (in turn).

Next meeting:

Focus on SSOSA or pDOSAs, depending on scheduling

Next meeting – February 22nd 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:

Joanne Smieja: Are the words crossed out in the orange box proposed changes in eligibility?

Joanne Smieja: More directly, is the group suggesting that to be eligible for resDOSAs, a person can have a prior sex offense just not a current sex offense?

Bruce Glant: How about start with offenses that do not harm anyone. As I've told you before, those individuals I represent have been arrested by very questionable tactics and deception to create the probable cause in order to make the arrest to begin with. As I've also stated before, many are classified as violent sex offenders and listed as a seriousness level 12 even though they've never harmed anyone. These stings create a much different type of offense than what they are arrested for, convicted, and sentenced for. Conversations should be held about sex offenses in general, especially those that do not harm anyone, and only law enforcement and prosecutor's assumption that the individual would even commit a crime to begin with

Bruce Glant: will this same type of discussion be had regarding sex offenses? Talk of WHO should be eligible for alternatives might be very valuable

Bruce Glant: Even if the legislature might not look at suggestions this go around, it will at least be food for thought for possible later changes, and they should be told what this committee believes to be a better mouse trap

Joanne Smieja: Once again, the mental health alternative excludes all sex offenses, class A, B, and C. SSOSA is only eligible for a 5 of the 36 sex offenses. These 5 are all Class A. Why aren't there any alternatives for the other 31 sex offenses most of which are non-violent.

Bruce Glant: what is the difference between violent and serious violent?

Bruce Glant: Families have been broken and destroyed for those arrested in the stings.... fyi

Bruce Glant: how about the children of those caught in these stings. I could tell you stories where the children are forbidden contact with there bothers, fathers, relatives etc

Joanne Smieja: Thank you. There are no alternatives for first time offenders who commit a non-violent, non-contact sex offense such as viewing an illegal picture on the internet.

Bruce Glant: child pornography and net nanny are different in NO HUMAN OR CHILD is EVER involved in anyway.

Bruce Glant: In Net Nanny, the detectives groomed our son for 3 days in order to get him to travel to a location. He went there believing the adult woman would possibly have sex with him

Joanne Smieja: In 2006, viewing and possessing illegal pictures were classified as sex offenses for the first time.

Bruce Glant: There are currently no impacted people convicted of a sex offense on the SOPB. To be fair we should have at least two. An impacted person, and a loved one.