

**Washington State Criminal Sentencing Task Force  
Sentencing Alternatives Workgroup  
Meeting Notes: March 8, 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*
- Mac Pevey, *Department of Corrections (DOC)*
- Judge St. Clair, *Sentencing Guidelines Commission*
- Clela Steelhammer (research & data support), *Caseload Forecast Council*
- Waldo Waldron-Ramsey, *Interests of Incarcerated Persons*

**Guests:** Bruce Glant, Joanne Smieja, Inside out Toastmasters

**Presenters:** Katrina Avent & Susie Leavell, *Department of Corrections*

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

**Meeting Purpose:**

- Discussion on how Family Offender Sentencing Alternative (FOSA) could integrate onto the sentencing grid.

**Welcome & Agenda Review**

Amanda welcomed everyone to the meeting and provided a brief overview of the meeting objectives and agenda. She provided follow up information on the previous meeting and conversations with Whitney Hunt, Coordinator of the Sex Offender Policy Board (SOPB). Amanda noted that the chair and vice-chair of the SOPB will be attending the March 22<sup>nd</sup> meeting, adding that some members of the Grid Subgroup might also join that meeting.

**Discussion: Family offender sentencing alternative (FOSA)**

The facilitation team, with additions from Clela Steelhammer, briefly revisited the purpose and overview of FOSA before diving into a conversation on its statutory eligibility criteria. With passage of the Parenting Sentencing Alternative, the legislature created two pathways for individuals to serve/receive a reduced period of incarceration: the Community Parenting Alternative (CPA) and the Family and Offender Sentencing Alternative (FOSA). CPA is implemented and overseen by Department of Corrections (DOC) and allows individuals to transfer from prison to electronic home monitoring for up to the final 12 months of a prison sentence. FOSA allows judges to waive a sentence at the high end of the standard range for a current offense that is greater than a year and impose 12 months of community supervision, along with conditions for treatment and programming, for eligible individuals.

Katrina Avent and Susie Leavell, Department of Corrections, shared their reflections on the implementation and programmatic elements of both CPA and FOSA, with emphasis on FOSA.

**Key takeaways:**

- The court can request DOC to conduct a risk assessment. Each assessment contains a victim’s impact statement. Risk assessment is individual to a person’s circumstance and life situation and prioritizes the interest and needs of the child(ren).
- The DOC supervision model uses a strengths-based approach to support healthy parenting. Goal of program is to support development of parenting skills and to interrupt the generational cycle of incarceration. Some fundamentals of the alternative are based on social work practices, it includes dedicated time to read to children and shared mealtimes without electronic distractions.

**Statutory Eligibility Criteria:**

FOSA has specific statutory eligibility criteria and exclusions based on the current case and prior conviction record, as well as programmatic eligibility, i.e. definition of parent/guardian.

**Eligibility changes, also shown in the graphic below:**

- Expand definition of parent and guardian
- Individuals with a past violent conviction not excluded

<u>SSB 6639 - June 2010</u>	<u>SSB 5291 June 2020</u>
The defendant has physical custody of his or her minor child or is a legal guardian or custodian with physical custody of a child under age 18, at the time of the current offense.	The defendant is <ul style="list-style-type: none"><li>• A parent with physical custody of a minor child;</li><li>• An expectant parent;</li><li>• A legal guardian of a minor child; or</li><li>• A biological parent, adoptive parent, custodian, or stepparent with a proven, established, ongoing, and substantial relationship with a minor child that existed at the time of the offense.</li></ul>
The defendant has no prior or current conviction for a felony sex offense or a violent offense.	The defendant has no prior or current conviction for a felony sex offense; a serious violent offense; or a felony offense where the defendant was armed with a firearm or deadly weapon in the commission of the offense.
The defendant has not been found by the United States attorney general to be subject to a deportation detainer or order and does not become subject to a deportation order during the period of the sentence.	The defendant has no current conviction for a violent offense.

**Discussion among the Workgroup members:**

- How do the 2020 changes expand eligibility?
  - The expansion of the definition of “parent” to include stepparents and then also allowing people accused of a prior violent offense (unless committed with a

firearm or deadly weapon) allows the court to consider a FOSA sentence in more instances.

- Why do some counties use FOSA significantly more than others?
  - We don't really know why some counties use it more, the way Cowlitz County has for example.
- Is the approach different for people with a sex offense?
  - We have started screening folks with juvenile sex offenses (via Sex Offender Treatment Program (SOTP) providers) to gauge their suitability for FOSA. We want people to benefit from the SOTP if possible, to help them return to their families and the community successfully.
- What are on recidivism rates for individuals who successfully complete a parenting alternative?
  - Individuals received the CPA were 70% less likely to commit a felony than those who did not go through the program.
  - FOSA Outcomes: 73% (357) of participants have successfully completed the program, 489 total participants, 132 (27%) revocations, on average about 2.5 years before a new criminal offense occurs.
- How much do the statutory eligibility criteria determine who can access the Parenting Alternatives—as opposed to the risk assessment (which might deem a person not appropriate to receive the alternative)?
  - Individuals must demonstrate their relationship and physical custody of a minor child, which can be challenging for individuals seeking access to CPA from a prison sentence. More flexibility to meet the statutory definition of parent and relationship to a minor, to allow the risk assessment to gauge suitability, could allow more people to be successful in reentry to the community.
- Can people with a violent offense get the CPA?
  - A person with a prison sentence for a violent offense, may be eligible to receive CPA. FOSA: individuals with a past violent conviction are eligible, but would not be eligible with a current violent conviction
- Could you provide more information why individuals with a current violent conviction are eligible for CPA but not FOSA?
  - Individuals participating in CPA may spend months to years in prison prior to transferring to electronic home monitoring. Prosecutors objected to someone who has committed a violent offense, especially one that included the use of a firearm or deadly weapon, receiving a sentencing alternative involving zero incarceration.
- If the restrictions based on what type of offense were eliminated or changed, would it make sense to do it for both CPA and FOSA?
  - A member encouraged the group to think about the differences between those who are transferring from total confinement to electronic home monitoring from those who will be participating in a term of supervision as an alternative to prison. For some serious current offenses, a period of time in jail may be

warranted and appropriate. Some added that those individuals could potentially work towards and benefit from the CPA program for the final year of a sentence.

- Another member noted that past convictions should not exclude an individual from seeking a FOSA sentence, if otherwise eligible, noting that
- people have the ability to change over time. Preventing anyone who has ever been convicted of a serious violent crime, even 15+ years ago, does not take that into account. They suggested the workgroup could develop a recommendation that would eliminate prior convictions as criteria excluding individuals from potential FOSA sentences.
- A member encouraged the workgroup to think about what changes could allow FOSAs to be considered in more instances for eligible individuals, allowing for a more individualized approach to
- A member of the Grid Subgroup shared a presentation by Dr. Megan Kurlychek at Penn State University, who has examined the risk of recidivism for people over time, and that research has found that individuals with violent or serious violent crimes have no more risk than people with no criminal history after about 4-7 years; for individuals who have committed property crimes it takes 7-10 years.

### **Overlay of FOSA on the Current Sentencing Grid and the Simulated Grid**

Keri-Anne shared an overlay of FOSA on the current sentencing grid and the simulated grid. The current OSL and CHS eligibility for FOSA is the same as pDOSAs, with some offense specific differences. Specifically, a difference between DOSAs and FOSAs is that felony DUI is eligible for FOSA. She asked the workgroup whether it would make sense to create a zone on the grid in which each sentence falling into the cells within the zone would be eligible for FOSA. She also asked the group whether it might want to suggest a recommendation to the Task Force around removing some of the prior offense eligibility exclusions from FOSA.

Several members discussed the rationale for excluding individuals based on prior criminal history and potential impacts if those exclusions were modified.

### **Discussion among the Workgroup members:**

- A member observed that eliminating exclusions based on prior history, would not automatically guarantee a sentencing alternative for individuals—the court would still consider the individuals' circumstance and needs, and if those needs could be met safely in the community.
- FOSA eligibility was modified to allow individuals with a past serious violent conviction.
- The group reviewed eligibility criteria regarding prior history for other sentencing alternatives. Observations included: The new mental health sentencing alternative does not include any exclusions based on an individual's prior conviction history; and most alternatives provide some allowance for individuals with a past violent felony conviction to be considered for an alternative.

**Recap and action items:**

- Continue conversation about exclusions for past convictions.
- **Next meeting** – March 22<sup>nd</sup> at 1:30pm, with Chair and Vice Chair of Sex Offender Policy Board.

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**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: Why are people with a prior sex offense ineligible?

Bruce Glant: Do they really require a special level of care, or have we just carved them out SAYING and believing they need a special level of care. Is there ANY data that confirm it's needed, or is it a fear factor brought on by law enforcement and the media.