

CSTF: Sentencing Alternatives Work Group

**POTENTIAL RECOMMENDATIONS:
CREATING A STATE-FUNDED COMMUNITY INTERMEDIATE SANCTIONS PROGRAM &
POLICY CHANGES TO CURRENT SENTENCING ALTERNATIVES**

DRAFT as of 5.13.22

SECTION 1. STATE-FUNDED COMMUNITY INTERMEDIATE SANCTIONS PROGRAM

The Sentencing Alternatives Workgroup has been looking various options for integrating sentencing alternatives onto the sentencing guidelines grid. At the May 3, 2022 Sentencing Alternatives Work Group meeting, members expressed interest in further exploring Potential Recommendation 9 which would keep straddle cells and create a state-funded community intermediate sanction program. Provided below is background on potential recommendations 7-9. Beginning on page 3 is a draft proposal for a State-Funded Intermediate sanctions Program.

A. Background and Context

Potential Recommendation 7: *If the maximum sentence based on the formula is 12 months or less, the minimum is automatically reduced to zero.*

	0	1	2	3	4	5	6	7	8	9+										
V	3	10	3	12	4	15	5	18	6	22	8	26	9	32	11	38	13	46	16	54
IV	2	9	3	10	3	12	4	15	5	18	6	22	8	26	9	32	11	38	13	45
III	2	7	2	8	3	10	3	12	4	14	5	17	6	21	7	25	9	30	10	36
II	0	3	1	6	2	7	2	8	3	10	3	12	4	14	5	17	6	21	8	27
I	0	2	0	3	1	5	1	6	2	7	2	8	3	10	3	12	4	14	5	18
Unr	0 - 365 days																			

	0	1	2	3	4	5	6	7	8	9+										
V	0	10	0	12	4	15	5	18	6	22	8	26	9	32	11	38	13	46	16	54
IV	0	9	0	10	0	12	4	15	5	18	6	22	8	26	9	32	11	38	13	45
III	0	7	0	8	0	10	0	12	4	14	5	17	6	21	7	25	9	30	10	36
II	0	3	0	6	0	7	0	8	0	10	0	12	4	14	5	17	6	21	8	27
I	0	2	0	3	0	5	0	6	0	7	0	8	0	10	0	12	4	14	5	18
Unr	0 - 365 days																			

Affects minimums that are 3 months or less.

Under this potential recommendation, the number of cells in which there is an option for 0 months of incarceration would be expanded. However, the actual impact on incarceration will vary because of pre-trial confinement. Under the current system, some individuals sentenced in the southwest corner are sentenced to time served, therefore they do not receive additional incarceration after sentencing. This potential recommendation expands ranges in the southwest corner where WSIPP found frequent

disproportionality in sentencing. However, this change could lead to geographic differences due to differences in varying philosophies of punishment in combination with wide ranges. And, judges may be unlikely to sentence to 0 months incarceration without some other alternative (e.g., probation).

In addition, a major effect of this potential recommendation is it will create straddle cells – such that sentences may be jail or prison confinement.

	0	1	2	3	4	5	6	7	8	9+
V	3 10	3 12	4 15	5 18	6 22	8 26	9 32	11 38	13 46	16 54
IV	2 9	3 10	3 12	4 15	5 18	6 22	8 26	9 32	11 38	13 45
III	2 7	2 8	3 10	3 12	4 14	5 17	6 21	7 25	9 30	10 36
II	0 3	1 6	2 7	2 8	3 10	3 12	4 14	5 17	6 21	8 27
I	0 2	0 3	1 5	1 6	2 7	2 8	3 10	3 12	4 14	5 18
Unr	0 - 365 days									

Yellow cells were previously presumptive prison sentences, but are “straddle” cells with the formula, such that sentences may be jail or prison confinement.

Two options to address straddle cells have been put forward:

Potential Recommendation 8 eliminates straddle cells: *If the maximum based on the formula is more than 12 months, the minimum must be at least 12 months and a day.*

The effects of this potential recommendation are that it would create variability in the width of the ranges such that some ranges will be very small (for example, sentence range 12-14months). Not having straddle cells (as is current law) creates more predictability in caseloads for local and state facilities and clarity/predictability about whether a defendant will face a jail or prison sentence. It also prevents an increase in local resources (jail sentences).

The second option is **Potential Recommendation 9: Keep Straddle Cells and Create an Intermediate Sanction Zone.**

Under this potential recommendation for the sentences in this zone of the grid the presumptive sentence is a sentencing alternative that is served locally. Sentences for individuals in straddle cells are paid for by the state. For sentences in this zone, sentences that are DOC sentences (more than 12 months) could have an option for state Intermediate Sanctions. These cells will have a lower mid-point, likely facilitating a small decrease in sentence lengths. A state-funded intermediate sanctions program would provide support for Counties while still allowing State oversight to ensure that community services meet certain standards and would support rehabilitative and non-incarcerative alternatives without increasing financial burden on counties. It could help support expansions of community services/resources that local counties could then use for other individuals under local sanctions (e.g., SW

corner of the grid). And it would shift focus from retribution/confinement to rehabilitation and community reintegration thus reducing collateral consequences of incarceration.

At the May 3, 2022 Sentencing Alternatives Work Group meeting, members expressed interest in further exploring Potential Recommendation 9 and putting together a more detail proposal for a creating a Community Intermediate Sanctions Program.

B. Draft Proposal for a State-Funded Community Intermediate Sanction Zone

		Simulated Grid																			Agg Departure Cap	Repeat SV/Violent								
		0	1	2	3	4	5	6	7	8	9+																			
		18	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																											
Zone 4: State Prison	17	240	320	252	336	264	352	277	370	291	388	306	408	321	428	337	450	354	472	372	496	48 mos	60 mos							
	16	104	138	114	152	126	168	138	184	152	203	167	223	184	246	203	270	223	297	297	397	48 mos	48 mos							
	15	93	124	102	137	113	150	124	165	136	182	150	200	165	220	182	242	200	267	267	356	36 mos	48 mos							
	14	82	110	90	121	100	133	110	146	121	161	133	177	146	195	161	214	177	236	236	315	36 mos	48 mos							
	13	71	95	79	105	87	116	95	127	105	140	115	154	127	169	140	186	154	205	205	274	24 mos	36 mos							
	12	61	81	67	89	74	98	81	108	89	119	98	131	108	144	119	158	131	174	174	233	24 mos	36 mos							
	11	50	67	55	73	60	81	67	89	73	98	81	108	89	119	98	130	108	144	144	192	24 mos	24 mos							
	10	39	52	43	58	47	63	52	70	58	77	63	85	70	93	77	102	84	113	113	151	24 mos	24 mos							
Zone 3: CIS/SIS, DOSA, FOSA, State Prison	9	16	21	19	25	23	31	27	37	33	44	40	53	48	64	58	77	69	92	81	108	12 mos	12 mos							
	8	14	19	17	22	20	27	24	32	29	39	35	47	42	56	51	68	61	81	71	95	12 mos	12 mos							
Zone 2: CIS/SIS, DOSA, FOSA <=12 Jail; >12 Prison	7	12	16	14	19	17	23	21	28	25	34	30	40	36	48	44	58	52	70	61	82	12 mos	12 mos							
	6	10	13	12	16	14	19	17	23	21	28	25	34	30	41	37	49	44	59	51	69	12 mos	12 mos							
Zone 1: CIS, RDOSA, Jail	5	3	10	3	12	4	15	5	18	6	22	8	26	9	32	11	38	13	46	16	54	6 mos	6 mos							
	4	2	9	3	10	3	12	4	15	5	18	6	22	8	26	9	32	11	38	13	45	6 mos	6 mos							
	3	2	7	2	8	3	10	3	12	4	14	5	17	6	21	7	25	9	30	10	36	6 mos	6 mos							
	2	0	3	1	6	2	7	2	8	3	10	3	12	4	14	5	17	6	21	8	27	6 mos	6 mos							
	1	0	2	0	3	1	5	1	6	2	7	2	8	3	10	3	12	4	14	5	18	6 mos	6 mos							
Zone 0: Unranked	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.
- **SIS:** State Intermediate Sanctions. For sentences more than 2 years, up to 50% of the individuals sentence may be served in a community-based intermediate sanctions program administered by DOC.
- **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.

Stipulate that sentences for individuals in straddle cells are paid for by the state.

- Justification: if they are not prison sentences, it is saving DOC funding by reducing DOC caseloads, so that funding could be diverted to the local courts to support non-incarcerative alternatives.

For sentences in this zone, presumptive sentence is a sentencing alternative that is served locally.

- Could be operated by local courts but funded by the state.
- Reduces prison sentences/beds/costs, so cost savings can be used to fund the county intermediate sanctions programs.

County would operate their intermediate sanctions programs and the State would oversee to ensure programs meet a minimum level of care.

- Counties would operate their intermediate sanctions program, but the program must receive state approval every XX years to ensure that the programs are meeting a minimum standard. The state could set requirements for that plan that must be reviewed annually or biannually (i.e., approvals for each 2 year budget cycle).
- The state could also set requirements for the type of data that must be collected and reported to the state on an annual basis.
- The state may establish certain minimum levels of care for the general intermediate sanctions program, but also for specific populations of individuals. For example, the state may require that individuals receiving a IS sentence for an offense at a certain seriousness level or for an individual with a certain level of criminal history must have a higher level of supervision such as electronic home monitoring or day reporting centers. Similarly, the state may require that all individuals sentenced to the IS program receive some type of needs assessment to inform treatment.
- The state may also create consistent standards for what types of behaviors would require a revocation of the IS sentence and a return to local incarceration.

For sentences in this zone, sentences that are DOC sentences (more than 12 months) could have an option for State Intermediate Sanctions. Alternatively, state intermediate sanctions could be reserved for individuals sentenced in Zone 3.

- Partial confinement – could be similar to prison DOSA where individuals serve ½ of the midpoint or something similar.
- Portion of the sentence served in the community may require higher levels of restriction/supervision (e.g., electronic home monitoring, day reporting centers, etc.)
- Allows DOC to assume the financial/resource responsibility for community supervision portion of the sentence and to provide continuous case management from the incarceration portion of the sentence through the community supervision portion of the sentence.
- Includes an emphasis on rehabilitation and programming.
- In many ways, this may look similar to DOC's GRE program.

Funding would be provided by the State to counties through a block grant based on a formula, modeled on the Juvenile Court Block Grant Program.

Juvenile Court Block Grant: In accordance with RCW13.06.020, the state appropriates approximately \$38 million to local county juvenile courts each two-year budget cycle. In order to reduce reliance on state-operated institutions, this funding provides community-based responses for youth who commit crimes.

The funding also assists with the application of disposition (sentencing) programs. DCYF's JR program administers these dollars across the 33 county juvenile court jurisdictions.

A similar grant system could be created for county-based intermediate sanctions programs. Funds would be allocated based on county size, caseloads, use of the IS program, etc. There should be a minimum level of funding to ensure that there is the basic funding necessary to support staffing and capital costs of running an intermediate sanctions program.

The funds from the block grant can support staffing and capital costs that may also allow counties to expand the types of services offered to individuals in jail or individuals sentenced in district court. Thus, this program could have beneficial spillover effects for an even larger population of individuals involved in the criminal legal system.

Intermediate Sanctions

Sentencing options that fall between probation and incarceration. Examples include:

- Intensive supervision probation
- Day reporting centers
- House arrest
- Electronic home monitoring
- Community service
- Intermittent confinement (e.g., work release or weekenders)
- Mandatory treatment conditions
- Residential community corrections (e.g., halfway houses)

Some remaining questions:

- How should requirements for an IS sentence be determined? Would the terms (e.g., EHM vs. day reporting center) be determined by the judge ordering the alternative or by the local IS program supervisor?
- What level of quality assurance and oversight would the state provide? For Juvenile EBPs, the state operates quality assurance protocols and standards for the local court programs. The proposed IS structure is intended to provide more flexibility to the local courts, so there may not be an exhaustive list of specific programs offered in the courts.
- Should the grant funding include funds for ongoing research/evaluation?

SECTION 2. POLICY CHANGES TO CURRENT SENTENCING ALTERNATIVES

The Sentencing Alternatives Workgroup has also reviewed and discussed the State's current Sentencing Alternatives, looking specifically at eligibility criteria. Below are potential recommendations the group has proposed to date along with a link to the notes from the meeting in which the potential recommendation was discussed.

Potential recommendation: Eliminate eligibility exclusions related to prior convictions for a violent offense from prison and residential drug offense sentencing alternatives. [2.22.22 Sentencing Alternatives Work Group meeting](#)

Potential Recommendation: Eliminate eligibility exclusions related to prior convictions for a violent offense from Sentencing Alternatives. [2.8.22 Sentencing Alternatives Work Group meeting](#)

Potential recommendation: eliminate cap on the number of DOSA sentences that an individual can receive in a 10-year period. [1.25.22 Sentencing Alternatives Work Group meeting](#)

Potential recommendation: eliminate cap on the number of DOSA sentences that an individual can receive in a 10-year period and instead let judges have discretion/flexibility. [1.25.22 Sentencing Alternatives Work Group meeting](#)

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