

**Washington State Criminal Sentencing Task Force
Sentencing Alternatives Subgroup
Meeting Notes: August 9th, 2022
Meeting via Zoom**

ATTENDEES

Task Force Members/Alternates

- Rep. Roger Goodman, *House Democrats*
- Mac Pevey, *Department of Corrections (DOC)*
- Clela Steelhammer, *Caseload Forecast Council*
- Waldo Waldron-Ramsey, *Interests of Incarcerated Persons*

Public: Heidi Brodt, Bruce Glant, Cathy Johnston

Ruckelshaus Center: Chris Page, Molly Stenovec, Maggie Counihan, Zack Cefalu, Alec Solemslie

Meeting Purpose:

- Discussion on the Community Intermediate Sanctions & Reintegrative Services (CISRS) program recommendation considering the feedback from the June Task Force meeting;
- Finalize CISRS as a proposed recommendation for the August 31st Task Force meeting;
- Discussion and finalization of three non-CISRS recommendations related to alternatives;
- Discussion on sunsetting the Sentencing Alternatives Workgroup and rejoin the subgroup with the Grid Group.

WELCOME & OVERVIEW

Chris welcomed the group and provided a summary of the feedback from the Task Force on potential recommendations set forth by the Sentencing Alternatives Workgroup.

Potential Recommendation 40: Eliminate cap on the number of Drug Offender Sentencing Alternative (DOSA) sentences that an individual can receive in a 10-year period.

Chris shared some of the themes and comments that emerged during the CSTF discussion on this recommendation, which included:

- Need to clarify is this rec about rDOSA or pDOSA or both?
- Prosecutors could support for pDOSA but not for rDOSA.
- Some concerns about whether cap should be removed.
- Need more clarity from DOC on this potential rec

Discussion:

- Currently individuals come into DOC with multiple past DOSA sentences because of difficulty tracking past DOSA participation. In practice, there is no cap on DOSA

sentences for an individual. Also recognize that recovery is a process, and that individuals may need to participate in a treatment program more than once. Eliminating the statutory cap would support the science on substance abuse treatment.

- DOC would advocate for an increase in capacity, which would allow them to better meet needs of individuals who need treatment, and for treatment to start earlier rather than the later. DOC would need resources for treatment within facilities and out in the in the community.
- Expressed interest in understanding the concern about this recommendation applying to just prison or residential DOSA. See benefit in both treatment options being considered for as many individuals.

Chris noted that the Task Force had a conversation about the revocation process during the August 4th meeting—the group then had a discussion about the revocation process and potential modifications:

- WSSIP is currently doing a review of pDOSAs, which includes an investigation in revocation rates.
- DOC shared that pDOSAs revocation usually happens when an individual fails to engage in the programming or treatment while in prison. Those present discussed whether revocation from DOSA should be handled by DOC or by the courts. Currently, DOC handles revocations.
- there is merit to DOSA revocation being under the purview of the courts rather than DOC personnel. Revocation is very different than an infraction during incarceration. There would be a logistic and capacity issue moving revocations to the courts

Chris asked the group about how the revocation process occurs with other sentencing alternatives, and who has the authority?

- pDOSAs can be revoked in prison or in the community and is conducted by DOC. The Family and Offender Sentencing Alternative (FOSA) and SSOSA alternatives are revoked by the courts. Moving DOSA to the courts for revocation would be consistent with other alternatives.

The subgroup expressed support for putting forward the following proposed recommendation for the consideration of the full Task Force:

Proposed Recommendation: Eliminate cap on the number of Drug Offender Sentencing Alternative (DOSAs) sentences that an individual can receive in a 10-year period.

Potential Recommendation 38: Include and visually depict all sentencing alternatives on the felony sentencing guidelines grid.

Chris reminded the group that many members of the Task Force expressed interest in this recommendation—and no one made suggested changes or expressed an inability to live with this recommendation.

The subgroup expressed support for putting forward the following proposed recommendation for the consideration of the full Task Force:

Proposed Recommendation: Include and visually depict all sentencing alternatives on the felony sentencing guidelines grid.

Potential Recommendation 39: Eliminate eligibility exclusions related to prior convictions for a violent offense from Sentencing Alternatives. This would eliminate eligibility exclusions related to prior convictions for a violent offense from a prison and residential drug offense sentencing alternatives.

Discussion:

- Does this recommendation apply to only DOSA? Should exclusions for prior convictions of violent offenses apply to all alternatives?
 - Molly, a member of the facilitation team, reminded the group of their conversation when reviewing the statutory eligibility criteria for all current sentencing alternatives: only the Special Sex Offender Sentencing Alternatives (SSOSA) and pDOSA and rDOSA have exclusionary language related to prior violent offenses. Other alternatives, such as FOSA, have already had these exclusions removed or don't have such exclusions. Since the SOPB is reviewing SSOSA and all sentencing for sex offenses—the second sentence clarifies that this recommendation applies to DOSA. Removing the exclusion for prior violent offenses would align DOSA with FOSA and FTOW.

The group suggests the following language for recommendation 39 and moves its status to proposed recommendation:

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

The group then had a discussion about exclusion criteria based on the current offense and how the new Mental Health Sentencing Alternative has few exclusion criteria based on the current offense—the alternative cannot be considered if the current offense is a serious violent or sex offense. The group puts forward the following recommendation:

Potential/Proposed Recommendation: Eliminate eligibility exclusions based on current offense/s – modeled after Mental Health Sentencing alternatives. Maintain exclusions if the current offense is a violent or sex offense.

DOC expressed concern about tort risk and liability against the department with such recommendations. DOC suggested a provision of protection from tort risk as recommendations widen the net for DOC supervision.

- A member suggested that tort reform is a separate effort and something that has been in the process for several years.
- The group agreed that tort reform for DOC should be a note in these recommendations or a separate recommendation. Local agencies and jurisdictions will also face increased tort risk. A note in the CISRS recommendation or a standalone recommendation shall be drafted to highlight to the legislature that in order to achieve the projected outcomes of these recommendations that DOC and local jurisdictions will need additional help and tort protection.
- Molly reminded the group that has discussed liability and developed a [recommendation in 2020 to address those concerns: Recommendation 18](#) includes the following language “Because addressing liability concerns will be an important element of any new supervision model, parties directly affected should address this issue and keep the Task Force updated on their work.”

Potential Recommendation: Allocate funding to create incentives for more jurisdictions to create drug courts.

Chris poses this recommendation to the group from discussion by the task force.

The group discussed how drug courts are not a sentencing option but rather a pre-adjudication option. It is up to each local jurisdiction on how they would like to structure a drug court, with funding provided by the state.

Proposal: The group decided that this recommendation is not in their scope and will move forward without proposing this as a recommendation.

Potential Recommendation: Creating a Community Intermediate Sanctions & Reintegrative Services (CISRS) Program

Chris then transitioned the group to reviewing the proposal to create a community intermediate sanction and reintegrative services program. During the August 4th discussion, members of the Task Force generally expressed support for the concept, with comments/questions focusing on the details of how the alternative could operate. He then shared a draft proposal of CISRS which included those suggestions and input.

The summary below includes a description of the input and then how the members decided to move forward.

Task Force Suggestion: To address the concern about quality assurance, there will be the implementation of quality assurance protocols and standards, down to the county level.

- The group includes it in the CISRS write-up.

Task Force Suggestion: The terms for an Intermediate Sanction would be determined by the Judge issuing the sentence and could be informed by the local programs supervisor/administrator.

- The group agrees that it should be determined by the judge. A member noted that this would have implications for J&S forms since there is no current IS. Another member noted that a committee would update forms upon finished legislation.
- The group includes it in the CISRS write-up.

Task Force Suggestion: There is regular data collection and evaluation to ensure equitable application of the program, ideally with a centralized database. Annual or biennial evaluation of the data would be needed to ensure the money is being properly used.

- The group agreed that an annual basis may be difficult to do. Nevertheless, the group agreed an annual or biannual evaluation of the date would be needed to ensure funding is being used properly. A centralized database would avoid conflict of multiple jurisdictions reporting.
- The group includes it in the CISRS write-up.

Task Force Suggestion: Individuals should report to one jurisdiction, whether at the county level or with DOC.

- The group discussed different approaches to supervision – among counties, DOC rollout and implementation of iCOACH – and reporting requirements.
- Molly reminded the group that this suggestion emerged during the Task Force discussion in June. A member noted that individuals can be in situations where they are serving multiple terms of supervision both with DOC and county oversight—expressing concern about creating situations where individuals would report to multiple jurisdictions simultaneously. Suggestion was intended to allow courts to consider which jurisdiction would be most appropriate for the individual to be successful.
- The group agrees with the suggestion and moves to include it in the CISRS write-up.

Task Force Suggestion: Engaging victim advocacy groups in creating and implementing this program and its policies, perhaps on an advisory committee; the legislature should, at a minimum, work with counties and DOC to develop CISRS

- The group discussed how the juvenile block grant might have an advisory committee. Having an advisory committee here would align with precedent.
- The group agrees with the suggestion and moves to include it in the CISRS write-up.

Task Force Suggestion: In Zone 2, the CISRS program would be the default for those individuals meeting its criteria; to sentence to incarceration, prosecutors and/or judges would have to articulate how CISRS are not appropriate.

- The group agrees with the suggestion and moves to include it in the CISRS write-up.

Task Force Suggestion: The legislature should allocate enough funding up front to ensure adequate levels of staffing and programming (fewer individuals in prison/jail would allow for DOC and counties to provide additional services to those incarcerated).

- The group agrees with the suggestion and moves to include it in the CISRS write-up.

Questions The Sentencing Alternatives Workgroup Has Identified So Far:

- Could the State have general types of services that qualifying CISRS program should provide: e.g., employment/job training, education, housing, cognitive behavioral training?
 - The group agreed that there is a general description of CISRS that has been developed and there is this list of general types of services that is included in the CISRS description.
- How do the therapeutic programs develop locally? What about locations that don't have access to these types of programs?
 - The group discussed that this is what the funding addresses: state funding and technical assistance would incentivize local jurisdictions that don't have access to these types of programs to develop them.
- How to address Tort concerns with local liability?
 - The group is making a note in the explanation of CISRS in Task Force Report that this needs to get addressed
- How could the implementation structure (i.e., centralized, decentralized, hybrid) most equitably serve individuals who do not reside in their bounty of conviction and court oversight?
 - The group decided that this is something difficult to advise on. Individuals need to go to areas where they have the most support for a successful transition. The question remains unresolved. This question needs further attention with the group suggesting WSSIP should look into what other states are doing.
- Resource allocations: recognize different resources needs—to build a new program, further support existing under-resourced programs, or expand robust programs.

- The group agreed that there needs to be protected funding for small jurisdictions to ensure adequate resource allocations. Smaller jurisdictions cannot compete with better funded and resourced jurisdictions.

Members expressed interest in putting forward the following proposed recommendation, which will include a detailed description:

PROPOSED RECOMMENDATION: Create A Community Intermediate Sanctions and Reintegrative Services Sentencing (CISRS) Alternative. Counties would operate their intermediate sanctions (CISRS) programs and the state would oversee to ensure programs meet a minimum level of care.

Action: The facilitation team will integrate modifications discussed into the CISRS recommendation.

Moving Forward:

Chris asked the group if they think if this subgroup needs to continue meeting. The members present agreed that they felt confident they have done all they can to move these recommendations forward as proposed recommendations and now is the time to fold this work into the Grid Subgroup.

Adjourn