

Alternatives to Incarceration

A look at alternatives across Washington State

Survey Summary

**Board for Judicial Administration
Alternatives to Incarceration Task Force
Assessment and Information Work Group**

August 2023



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Introduction

In the fall of 2022, the Board for Judicial Administration (BJA) launched the Alternatives to Incarceration Task Force (Task Force). The goal of the Task Force is for pretrial and post-conviction incarceration alternatives to be uniformly available to courts throughout the state regardless of the person's ability to pay or the jurisdiction's resources.

In order to collect information on what alternatives are provided across the state, the Task Force's Assessment and Information Work Group implemented a survey to:

- (1) Identify jurisdictions that have pretrial and post-conviction adult alternatives to incarceration.
- (2) Determine what services they provide and how they are funded.
- (3) Gain insight into what is working and what is needed.

While a variety of alternatives to incarceration exist, they are fragmented and not available in every community. The Washington State court system is a decentralized judicial system. The Supreme Court has rule making power but implementation is left to individual courts, resulting in varied court procedures. While a decentralized system creates opportunities for creativity and innovation at the local levels, it is also dependent upon available resources, interest, and local leadership. Efforts often result in disparate access, services, and resources across and between local jurisdictions.

Survey Methodology

The Work Group wanted a better understanding of what services were being offered and how they were funded through a sampling of courts representing different court levels and geographic areas across the state. The Task Force conducted a survey in April-June 2023 to gather information about local alternatives and needs. The survey initially went to court administrators and then targeted outreach to specific, representative trial courts and probation officers helped increase response rates.

For the purposes of the Task Force and this survey, pretrial and post-conviction alternatives were defined as the services provided to or conditions imposed on criminal defendants prior to trial or after conviction as an alternative to being incarcerated. For example, alternatives may be a specific pretrial services program, drug and alcohol treatment or monitoring, a service through a third-party vendor, or work release instead of jail. For the purposes of this survey, the Task Force assumed that electronic home monitoring qualifies as an alternative.

The survey specifically focused on all adult alternatives to incarceration – whether they were formal, staffed programs, or informal requirements and services.

There were 75 responses across the different court levels.

Court Level	Number of Responses
Municipal	40
District	26
Superior	12

While the responses were low (approximately 33% from each court level), responses came from

various jurisdictions across the state, varying in court level, size, and geography. This was important as resources and procedures vary across the state.

The survey results are shared using both all participant responses and court level comparison responses when there were significant differences in responses by court level. Given the small sampling size, court level comparisons were often based on small numbers and may not be included even if there were differences. It is also important to note that court cases and caseload sizes vary per court level and that may impact alternatives available and how and when they are used.

Key Findings

Majority of respondents offer some type of alternatives

Of the respondents, 87% have provided pretrial or post-conviction alternatives in the past year. When alternatives were not provided in their courts, respondents reported that they needed more state and local funding, (with local funding being the highest reported need at 77%), staffing, and clarity on court authority to offer alternatives. The Task Force created a work group to explore legal authority considerations and questions in the use of alternatives.

Alternatives vary across the State

Respondents were asked to identify which alternatives were provided in their jurisdiction and if an alternative was provided; then a series of questions followed: who provided the alternative, when it was provided (pretrial, post-conviction, or both), who pays for it (court, probation, local funding, behavioral health tax, criminal justice funds, state funds, individuals, grants), and if indigent defendants need to pay for the alternative.

The following alternatives were asked about in the survey:

- Reminders for court (calls, texting, mail, email).
- Electronic/GPS monitoring.
- Drug and alcohol testing and monitoring.
- Drug and alcohol treatment/evaluations.
- Mental health treatment/evaluation.
- Work crew or work release.
- Community service.
- Scheduled or day reporting.
- Home visits.
- Case management services.
- Classes.
- Other – there was an opportunity for respondents to identify other alternatives not listed.

Reminders for court

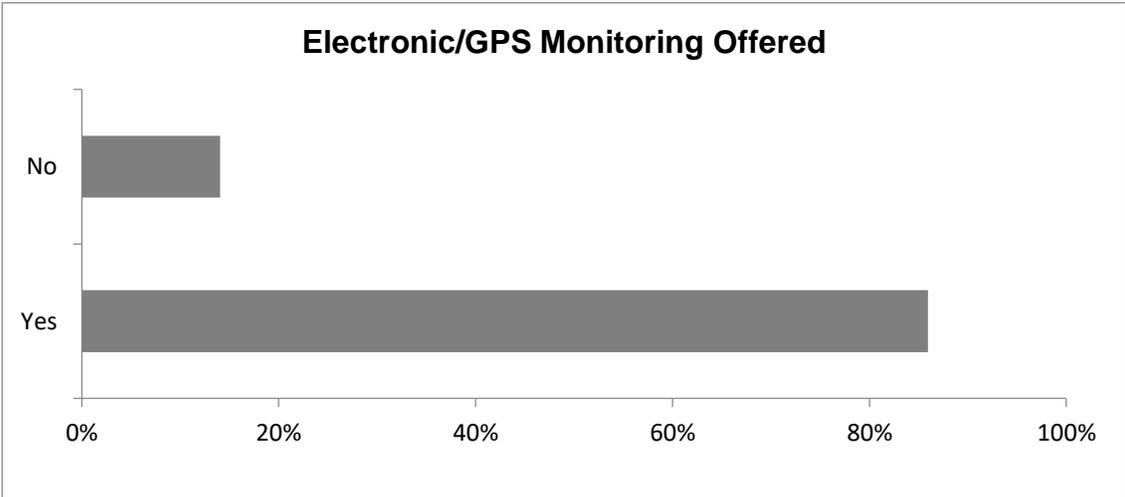
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Reminders for courts were only used in 34% of courts. There was not a significant difference in the use of reminders per court level; District Courts were slightly more likely to use reminders than Superior Courts or Municipal Courts.

Reminders are more likely to be provided by the court or probation office; are used in both pretrial and post-conviction; and defendants usually do not pay for this service. In some post-conviction probation situations, the individual pays a supervision fee which may include costs for court reminders and other alternatives.

Some courts may have not implemented court reminders since the state allocated funds for courts to implement reminders. These funds have not been disbursed at the time of this report. There also appears to be less urgency in implementing reminders for court hearings following recent amendments to CrR 3.4 and CrRLJ 3.4, which reduce the need for defendants to personally appear at court hearings and thereby reduce the potential for bench warrants to issue for failure to appear.

Electronic/GPS monitoring



Over 80% of respondents use electronic/GPS monitoring as an alternative. There was not a

significant difference in the use of electronic/GPS monitoring per court level.

Electronic/GPS monitoring was more likely to be provided by private vendors (65%), probation (22%), and jails (16%); used in both pretrial and post-conviction 78% of the time; and was required to be paid for by indigent defendants approximately 50% of the time.

Drug and alcohol testing and monitoring, drug and alcohol treatment/evaluations, and mental health treatment/evaluation

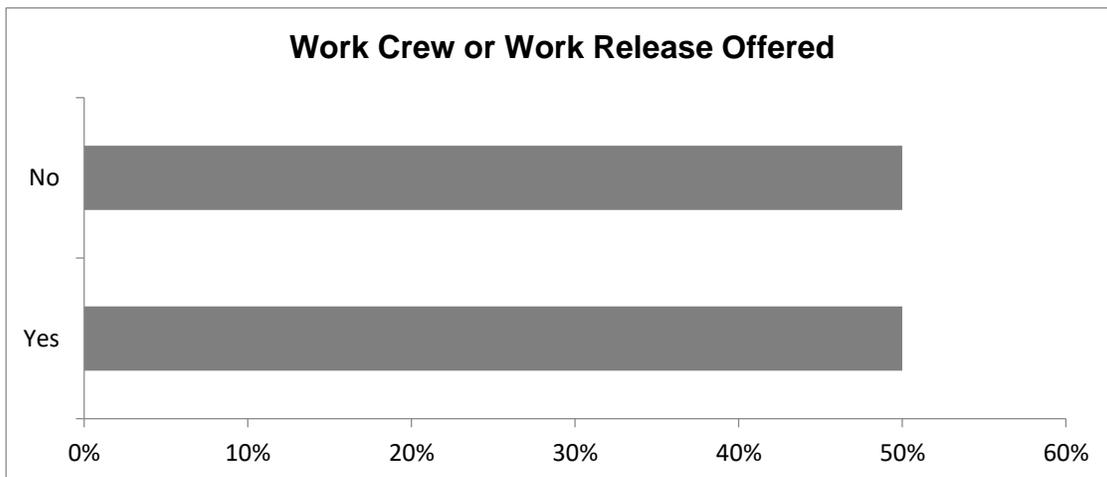
These alternatives were similarly used, approximately 59%–63% of the time. There was not a significant difference of when they were used per court level.

For all three alternatives, private vendors were more likely to be used the majority of the time with the exception that drug and alcohol testing and monitoring was also provided by probation 53% of the time (this number was much lower for the other categories). This is not surprising as treatment and evaluations usually require more specialized professions.

Drug and alcohol testing and monitoring were also more likely to be used for both pretrial and post-conviction (84%). While drug, alcohol and mental health treatment and evaluations were provided for both pretrial and post-conviction, they were more likely to be used in post-conviction situations.

The courts were more likely to pay for drug and alcohol testing and monitoring; and individuals (usually through health insurance, behavioral health tax, and grants) were more likely to pay for treatment and evaluations.

Work crew or work release

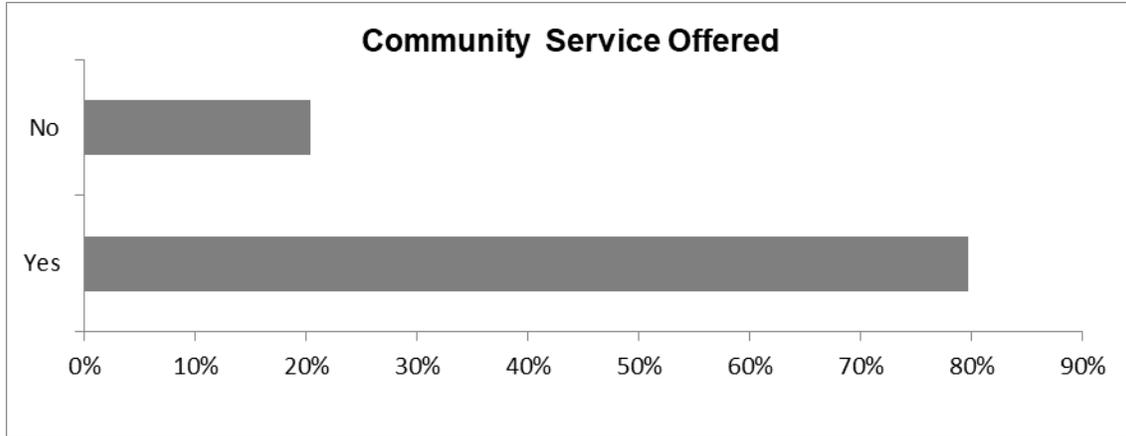


Work crew and work release were used by 50% of the respondents. There was not a significant difference of the use of work crew or work release per court level. These numbers may have been impacted by COVID. Work release and crew programs were suspended during the pandemic and some of the programs may not have been reinstated.

Work crew or work release is more likely to be provided by jails 42% of the time, other programs including the Department of Corrections (DOC) 32% of the time, probation 26% of the time, and

courts 23% of the time. It was also more likely to be used in post-conviction situations (74%) and paid for by local and court funding.

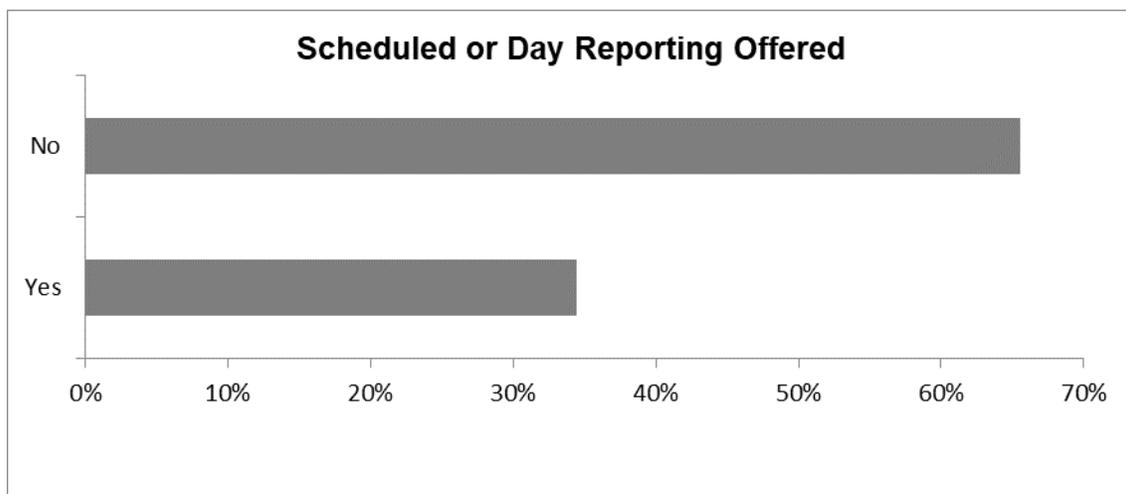
Community service



While District Courts and Municipal Courts were likely to use community service over 80% of the time, Superior Court respondents were likely to use community service only 50% of the time. It is easier to convert jail days to community service in District Court. Superior Courts are less likely to use community service because the Sentencing Reform Act, RCW 9.94A.680, limits Superior Court to converting only up to 30 days of jail to community service, and most Superior Court sentences include significantly more than 30 days of jail given the seriousness of the offenses.

Community service was provided more frequently by courts and probation and more likely to be used in post-conviction only (72%).

Scheduled or day reporting and home visits



Almost 70% of courts do not use scheduled or day reporting. While this is generally considered a less restrictive alternative to bail, all court levels were less likely to use scheduled or day reporting and when they did, it was more likely to be provided in post-conviction situations.

Additionally, 96% of courts said they do not provide home visits as an alternative.

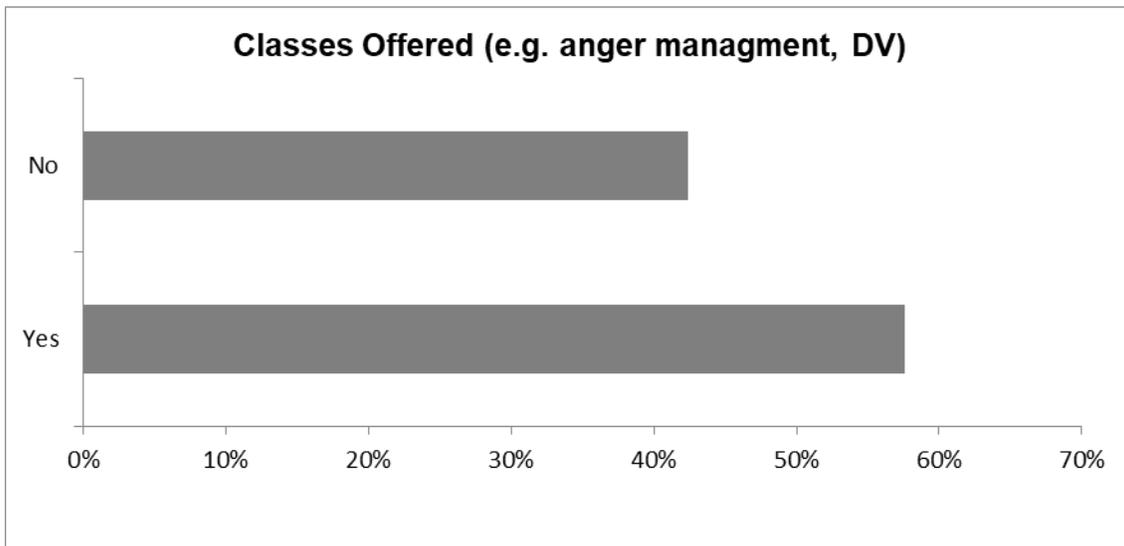
Case management services



Case management was provided by approximately 40% of the respondents and District Courts were more likely to use this than Superior or Municipal Courts.

Case management was more likely to be provided by probation (79%); provided equally in both pretrial and post-conviction; and generally paid for by local and court funding.

Classes



Classes were used by over 50% of the respondents as an alternative. There was no significant difference between court levels. Classes were more likely to be provided by probation and private vendors (55–45%); used almost equally in both pretrial and post-conviction situations; and paid for by local and court funding.

Other alternatives identified

Respondents identified other types of alternatives used in their courts: community courts, SCRAM as a specific alcohol monitoring alternative, DUI alternative programs, deferred prosecution, and other specialized courts.

Funding and staffing were top barriers to alternatives

It is no surprise that lack of funding and staffing were the top barriers reported to offering alternatives or certain types of alternatives. Alternatives may also not be provided if the service does not exist in the jurisdiction, if there were long waitlists for services that were provided, or if people lacked transportation to access the alternatives. The table below shows all of the barriers that respondents identified in their jurisdiction.

Barriers	Percentage Reported
Funding	85%
Staffing	78%
Service is not provided in our community	46%
Long waitlists for services that are currently provided in the community	37%
Lack of transportation to access alternatives	30%
Legal barriers such as plea agreements, prosecutorial/judicial discretion, statutory limitations	26%
Other such as collaboration, concerns around possible liability, not being offered.	9%
Inadequate bandwidth that limits technology related options	7%
Values of the community	0

Over 50% do some type of assessment and tracking of alternatives

When asked if respondents assessed, tracked and/or measured alternatives such as tracking appearance rates, recidivism, compliance: 27% responded they do this often; 31% do it some of the time; and 42% do not collect this information. If courts are not collecting information then it is hard to identify what is working, what is used most frequently, and what is needed.

What is working with alternatives

Respondents shared what is working well with alternatives provided:

- Day reporting.
- Work crew.
- Community service.
- Classes such as anger management, domestic violence education.
- Case management connects individuals to resources thus reducing re-offending.
- Treatment options.
- Keeping individuals out of jail by providing resources to stay employed, housed, etc.
- Support from county/city leadership, grants, and community.
- Accountability and addressing low level violations.
- Monitoring options instead of incarceration.
- Reduced jail population.
- Court reminders.
- Providing options that were not reliant on one's ability to pay.

- Pretrial services.
- Partnerships with community services and private vendors.

Recommendations

The survey findings reflect the various and often different ways that local communities and courts provide pretrial and post-conviction alternatives. In some instances, courts have many options for alternatives with little to no cost to the participant, while other courts may only offer a couple alternatives. Some of the alternatives provided may be dependent on court and community resources (funding and availability of services), level of court and types of proceedings, and staffing necessary to implement alternatives.

The survey findings identified:

- The top three alternatives used by respondents were electronic/GPS monitoring, community service, and drug and alcohol testing and monitoring.
- Electronic/GPS monitoring was used in 86% of the jurisdictions responding, although indigent defendants paid for this service approximately 50% of the time.
- Community service was used 80% of the time and was more likely to be used in post-conviction situations.
- Drug and alcohol monitoring were used 63% of the time and equally likely to be provided by probation or private vendor. Indigent defendants paid for this alternative 25% of the time.
- Lack of funding and staffing were the largest barriers to alternatives being offered.
- Indigency was not always considered when using alternatives.
- Mental Health treatment and evaluation, work crew or work release, community service, and scheduled or day reporting alternatives were more likely to be used post-conviction.
- 13% of the responding courts have not offered alternatives in the past year or at all.

The Task Force recommends the following:

- 1) The higher number of indigent defendants paying for electronic/GPS monitoring should be further explored to include development of indigency standards and use of alternatives, varying payment models, success rates, and consistency of implementation of this alternative across the state.
- 2) Develop assessment and data tracking considerations for courts using alternatives to measure effectiveness. The Task Force recognizes the amount of additional effort it takes to track this information. The Task Force will identify existing AOC manuals and online trainings which provide guidance and support to courts tracking data and develop considerations for tracking alternatives.
- 3) Investigate barriers to alternatives, including costs to individuals and courts, resource availability, community perceptions, etc.

- 4) Review findings from the Pretrial Reform Task Force's Recommendations Report in 2019. The Pretrial Reform Task Force recommended that governments should bear the cost of pretrial services rather than the accused; court reminders reduce the risk of failure to appear and should be available; services referrals should be voluntary and individualized; local stakeholders should be involved in reform efforts and provision of alternatives; and transportation should be offered to individuals to support court-ordered appointments.¹
- 5) The survey did not ask respondents to identify whether they had more structured pretrial services or protocols in place. Identify the considerations/relationship between formal pretrial services and the types of alternatives being used to help inform staffing and funding needs.
- 6) Review the [Washington State Institute Public Policy's](#) benefit-cost model and evidence-based policies to determine relevancy to alternatives to incarceration and the Task Force's work.
- 7) Develop best practices around the implementation of alternatives.

¹ Pretrial Reform Task Force. [Final Recommendations Report](#), February 2019, Pg. 13.