

2023 Update: Oregon’s Family Sentencing Alternative Pilot Program

I. Background

In 2015, Oregon HB 3503 established the Family Sentencing Alternative Pilot Program (FSAPP) to encourage the preservation of family groups and cultivation of family bonds through child-oriented justice decisions.¹ The goals of FSAPP are to reduce recidivism, promote the health and wellbeing of children, reduce the burden of parental incarceration on the foster care system, and prevent potential future involvement in the criminal justice system by children who experience parental incarceration.² The FSAPP ten-year pilot began in January 2016 with five participating counties—Multnomah, Marion, Deschutes, Jackson, and Washington.³ Since then, Columbia County has replaced Deschutes County. As of 2021, 212 primary caregivers of 391 minor children had participated.⁴ Officials involved with FSAPP have noted the positive impacts of the program, citing lower caseloads and consequently, increased ability to focus attention on families facing separation.⁵

A. Eligibility

Incoming program participants generally have a presumptive sentence of at least one year’s imprisonment and would serve that sentence if not for FSAPP. However, because the program is

¹ Oregon Department of Corrections & Oregon Department of Human Services, *Family Sentencing Alternative Pilot Program: Report to the Senate and House Committees on Judiciary* (January 1, 2021), https://www.oregonlegislature.gov/citizen_engagement/Reports/Joint%20Family%20Sentencing%20Alternative%20Pilot%20Project%20Report%201_1_2021.pdf (hereinafter “2021 Oregon Report”).

² Oregon Department of Corrections & Oregon Department of Human Services, *Family Sentencing Alternative Pilot Program: Report to the Senate and House Committees on Judiciary* 5 (January 23, 2019), <https://www.oregon.gov/cjc/SAC/Documents/FSAPPJointReport2019.pdf> (hereinafter “2019 Oregon Report”).

³ *Id.* at 4.

⁴ 2021 Oregon Report at 2.

⁵ Interview by Hinson, M., with FSAPP PO #1 (March 2019) (hereinafter “Interview PO #1”); Interview by Hinson, M., with FSAPP PO #2 (April 2019) (hereinafter “Interview PO #2”); Interview by Hinson, M. with FSAPP PO #3 (June 2019) (hereinafter “Interview PO #3”).

time and resource intensive while being focused on the wellbeing of children, participants must meet specific eligibility criteria. To qualify for participation in FSAPP, a defendant must: (1) be the guardian of a minor child or be pregnant at the time of the offense; (2) not have committed a person or sex crime; (3) be eligible for a downward departure in sentencing; and (4) agree to participate in the program.⁶

In order to be selected to participate in FSAPP, either the defense attorney or prosecutor must recommend a client for the program.⁷ The probation officer (PO) must then determine if the client is a good fit for FSAPP based on various risk assessments (e.g., Women’s Risk Needs Assessment), home visits, and professional instinct.⁸ POs generally look for clients who have parented within the last year.⁹ Throughout their assessment, they maintain a willingness to take on high-risk clients that would otherwise go to prison.¹⁰ The PO then passes their evaluation to a judge for approval. Once a PO recommends a client, it is rare for a judge to reject assignment to FSAPP.¹¹

B. Program Features

The central difference between FSAPP and traditional probation is the amount of contact between probation officers and clients.¹² FSAPP POs have ample flexibility to support program participants with a variety of resources, which is a feature that the POs appreciate.¹³ The POs oversee a reduced maximum caseload of 30 clients (compared to 50).¹⁴ As a result, they have more time and independence to advocate for their clients.¹⁵ FSAPP POs provide wide-ranging support

⁶ 2021 Oregon Report at 3.

⁷ Interview PO #2, *supra* note 5.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² Interview PO #1, *supra* note 5; Interview PO #2, *supra* note 5; Interview PO #3, *supra* note 5.

¹³ *Id.*

¹⁴ Interview PO #1, *supra* note 5.

¹⁵ Interview PO #2, *supra* note 5.

for families: they have gone to parent-teacher conferences, picked up medicine for clients' children, and worked with participants to ensure that they are able to stay healthy and safe in the community.¹⁶ To do this, POs connect FSAPP participants with local resources such as substance abuse treatment, parenting classes, and vocational training.¹⁷ While these resources are always available to POs, FSAPP provides the funding and flexibility necessary to fully integrate these resources into the participants' programming and support.¹⁸ While there is no set budget per participant,¹⁹ each county receives a set amount to run the FSAPP program. For example, Multnomah County, population 795,083,²⁰ received \$280,000 from the state to run their FSAPP program in fiscal year 2019.²¹

FSAPP also establishes a collaborative relationship between the Oregon Department of Corrections (DOC) and Oregon Department of Human Services (DHS), with the intention of cultivating and supporting the wellbeing of children.²² POs communicate with DHS to ensure that clients are meeting DHS requirements to maintain custody of their children.²³ They also advocate for clients if DHS makes an impractical request (for example, imposing a paperwork deadline that is difficult to meet, or requiring attendance at redundant programming).²⁴ By involving DHS, FSAPP maintains a focus on the welfare of children and provides important advocacy for their needs. The DOC also works with local DHS offices, district attorneys, and treatment providers to deliver programming and resources.²⁵ In Washington County, a team consisting of POs, DHS, a

¹⁶ Interview PO #1, *supra* note 5.

¹⁷ 2021 Oregon Report; *see also* Interview PO #2 & Interview PO #3, *supra* note 5.

¹⁸ Interview PO #1, *supra* note 5.

¹⁹ Interview by Guo, N., with FSAPP PO #4 (March 2023) (hereinafter "Interview PO #4").

²⁰ US Census Bureau, *Multnomah County: Population Estimates, July 1, 2022, (V2022)*.

²¹ Multnomah County, OR, FY 2020 Adopted Budget, vol. 2 at 59 (2020), <https://multco-web7-psh-files-usw2.s3-us-west-2.amazonaws.com/s3fs-public/FY%202020%20Adopted%20Budget%20Vol%20%20Combined.pdf>.

²² 2021 Oregon Report.

²³ *Id.*

²⁴ Interview PO #1, *supra* note 5.

²⁵ 2021 Oregon Report at 2.

treatment counselor, and a recovery mentor combine efforts to ensure their clients' maximum chances of success.²⁶

FSAPP heavily supervises its participants (contact once per week instead of once per month),²⁷ provides parenting support for participants, and offers learning opportunities to families.²⁸ POs regularly communicate with local DHS agencies to ensure the wellbeing of clients' children.²⁹ Formerly incarcerated parents also serve as mentors to provide additional guidance and support to FSAPP participants.³⁰ FSAPP has a budget dedicated to serving several needs, including housing and access to public transportation.³¹ The housing budget in the Washington County, for instance, is allotted to participants for up to six months. Participants are typically assigned to clean and sober living houses on a month-to-month basis, with attention towards grouping mothers and their children together where possible.³² Other non-necessaries are assessed and apportioned on a case-by-case basis subject to each participant's need.³³

Clients who do not abide by FSAPP program expectations can face disciplinary action in the form of community service hours, loss of weekend passes, violations of probation, and in some cases, even loss of custody.³⁴ In some counties, an incentives structure is used wherein program compliance is rewarded (with gift cards, movie tickets, etc.), and non-compliance can result in loss of incentives.³⁵

²⁶ Interview PO #4, *supra* note 19.

²⁷ Interview PO #1 & Interview PO #2, *supra* note 5.

²⁸ 2021 Oregon Report.

²⁹ *Id.*

³⁰ Interview PO #1, *supra* note 5.

³¹ Interview PO #4, *supra* note 19.

³² *Id.*

³³ *Id.*

³⁴ Justice Reinvent (JRI), Family Sentencing Alternative Pilot (FSAP) Program (April 18, 2022) (unpublished PowerPoint presentation) (on file with author).

³⁵ Interview PO #4, *supra* note 19; Interview by Guo, N., with FSAPP PO #5 (March 2023) (hereinafter "Interview PO #5").

Clients are eventually “phased out” of FSAPP and placed under a regular probation caseload.³⁶ A PO may assess her client’s readiness for probation depending on several factors, including satisfaction of program requirements and Earned Discharge. In any case, a former client can be returned to the FSAPP PO’s caseload should the client require intensive supervision again.³⁷

II. Results

The Oregon DOC and the Oregon DHS stated in their 2019 and 2021 joint reports that the development and operations of the first three years of FSAPP had been effective.³⁸ As of January 2021, the DOC reported that 74 participants were currently in the program, 45 participants had been revoked from probation and sentenced to prison, 16 participants had a warrant out for their arrest due to absconding from supervision, and 93 participants had successfully completed the program.³⁹ Oregon’s Criminal Justice Commission assessed FSAPP and found that “FSAPP participation was associated with lower rates of recidivating or revocation events,” as compared with non-FSAPP participation.⁴⁰

This association becomes stronger when a parent is involved with the program for more than a year.⁴¹ The DOC and DHS found the preliminary results encouraging, noting that the program ultimately results in cost savings for the state both by diverting the parent from prison initially and reducing costs associated with recidivism in the future.

³⁶ Interview PO #3, *supra* note 5.

³⁷ *Id.*

³⁸ 2019 Oregon Report; 2021 Oregon Report.

³⁹ 2021 Oregon Report at 4.

⁴⁰ *Id.* at 6.

⁴¹ *See id.*

Interviews with FSAPP POs also anecdotally suggest that FSAPP has been a successful and productive alternative sentencing program.⁴² In 2021, Oregon DHS reported that POs have observed that their clients are more patient with their children, more engaged and motivated under FSAPP supervision, and more optimistic about their future.⁴³ According to POs, FSAPP accomplishes this through intense supervision, increased client interaction, improved and increased parenting resources, and family programming.⁴⁴ While restorative justice programs can also provide programming encompassed by FSAPP, this fragments services and creates redundancy for clients. Indeed, one PO said it was more helpful to have one specific program (FSAPP), rather than trying to piece multiple programs together.⁴⁵

FSAPP has also demonstrated the capacity to divert young people from the foster care system. Between January 2016 and January 2020, FSAPP helped 212 participants maintain their role as primary caregivers to 391 children who may otherwise have entered foster care.⁴⁶ Caregiver incarceration in Oregon results in an average of 1,066 days in foster care for the convicted individual's children.⁴⁷ While some children of FSAPP participants do enter the foster care system, their average length of stay (706 days) was over one year shorter than the statewide average for incarcerated parents, based on 2020 data.⁴⁸ FSAPP's ability to keep children with their parents is therefore likely to save the state money on foster care placements over time.

III. Lessons Learned

While the pilot program has demonstrated strong results, some programs have ended. For example, Deschutes County's withdrawal from the program may illustrate some challenges and

⁴² Interview PO #1, Interview PO #2, & Interview PO #3, *supra* note 5.

⁴³ 2021 Oregon Report at 4–5.

⁴⁴ Interview PO #1, Interview PO #2, & Interview PO #3, *supra* note 5.

⁴⁵ Interview PO #3, *supra* note 5.

⁴⁶ 2021 Oregon Report at 2.

⁴⁷ *Id.* at 5.

⁴⁸ *Id.*

lessons for future implementation. POs cited a relatively small population in Deschutes County as a reason for a lack of referrals, which consequently led to the program's conclusion.⁴⁹ Deschutes, population 206,549,⁵⁰ had less than a thousand clients under supervision, less than 200 of whom were female.⁵¹

Washington County, which continues to run a FSAPP program, has a population of 600,176⁵² and has ample access to resources, including a substantially larger referral pool and various housing options.⁵³ However, Washington County's program was affected by the COVID-19 pandemic, which led to office shutdowns and housing complications.⁵⁴ For instance, prior to the pandemic, Washington County had a house reserved for FSAPP participants.⁵⁵ The house allowed for participants and their children to interact and relate to one another, in addition to allowing mentors to consolidate their visits.⁵⁶ Since the pandemic, POs have been forced to compensate by assigning participants to various rooms in clean and sober houses, thus sacrificing the community aspect.⁵⁷

When asked if they had any advice for legislators looking to enact a similar bill in another state, Oregon FSAPP POs had several ideas. For one, they suggested collaborative efforts between POs and attorneys to ensure that referred participants were good fits.⁵⁸ They also advised that an emphasis on gender responsiveness would be prudent.⁵⁹ For instance, evidence-based practices specifically for women might entail motivational interviewing skills, showing empathy, or doing

⁴⁹ Interview PO #5, *supra* note 35.

⁵⁰ US Census Bureau, *Deschutes County: Population Estimates, July 1, 2022, (V2022)*.

⁵¹ Interview PO #5, *supra* note 35.

⁵² US Census Bureau, *Washington County: Population Estimates, July 1, 2022, (V2022)*.

⁵³ Interview PO #5, *supra* note 35.

⁵⁴ Interview PO #4, *supra* note 19; Interview #5, *supra* note 35.

⁵⁵ Interview PO #4, *supra* note 19.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ Interview PO #5, *supra* note 35.

strength-based case planning.⁶⁰ Finally, POs suggested that the effort ought to be a communal one, rather than one that relies on any single actor.⁶¹ If community stakeholders, legislators, POs, and attorneys alike can buy in to the program, this presents the greatest opportunity for success.⁶²

⁶⁰ *Id.*

⁶¹ Interview PO #4, *supra* note 19.

⁶² *Id.*