

Washington State Criminal Sentencing Legislative Task Force
FINAL Meeting Summary: October 24, 2019
Criminal Justice Training Center, 19010 1st Ave. S., Burien, WA

Task Force Attendees:

- Lydia Flora Barlow
- Roger Goodman
- Jon Tunheim
- Nick Allen
- DeVitta Briscoe
- Suzanne Cook
- Senator Manka Dhingra
- Sonja Hallum
- Russ Hauge
- Gregory Link
- Chief Rafael Padilla
- Judge Roger Rogoff
- Chief James Schrimpsker
- Tarra Simmons
- Secretary Stephen Sinclair
- Judge Veronica Alicea-Galvan
- Councilmember Derek Young
- Clela Steelhammer
- Mac Pevey (attending on behalf of Sec. Stephen Sinclair)

Facilitation Team: Chris Page, Michael Kern, and Molly Stenovec – William D. Ruckelshaus Center

WELCOME & INTRODUCTIONS

Chris Page welcomed the Criminal Sentencing Task Force (Task Force) and asked members to share name, affiliation, and response to the following question: *If you could pick just one thing about the sentencing system to change, what would that be and why?*

Many Task Force members described broad systemic changes, for example:

- Shifting the focus to reentry, rather than re-offense.
- Making a more humane system that can incorporate the intersection of race and justice.
- Addressing the disproportionality of the existing system.
- A system that holds people accountable for their actions, not just by incarceration, then supports and welcomes individuals back into the community.
- A system that better integrates the needs of victims, incarcerated persons, and the community.

Many talked about a sentencing system grounded more on evidence and research—some felt that would require a fresh start and creation of a new sentencing grid.

Some members focused on specific areas of the sentencing system: diversion, sentencing, and reentry:

- In terms of diversion, some talked about the twin needs of investing in people *before* they enter the system and providing alternatives to incarceration.
- With respect to sentencing:
 - Some expressed a desire to increase the amount of information provided to judges for sentencing, to allow the judge to better assess the person and the sentence.
 - Others described greater flexibility in the sentencing grid for judicial discretion,
 - Some would increase opportunities for post-sentencing review.
- For reentry, responses included: simplified supervision laws, addition of merit-based benchmarks, and overhaul and expand community reentry and supervision program.

REVIEW AGENDA and DRAFT 9/30/19 MEETING SUMMARY

After a brief review of the agenda (available at <https://ruckelshauscenter.wsu.edu/meetings-and-materials-criminal-sentencing-task-force/>), the Task Force did not have any questions regarding the agenda.

The Task Force then asked questions and provided comments on the draft summary from the September 30th meeting. Chris reminded the group, given their short timeline and sizable task(s), of the importance of reading materials in advance.

Question (Q): How does consensus decision-making and a collaborative process differ from Robert’s Rules of Order?

Response (R): Rather than a majority rule voting process, this group seeks to make decisions acceptable to all entities. If someone does not support a decision, then the group will continue discussion and seek solutions that allow all members to “live with” the proposal (have their thumb sideways or up—see [operating procedures](#) for details). Meeting summaries of collaborative processes capture the key points of discussions and decisions, rather than time-stamped minutes.

Decision: All Task Force members present accepted the September 30th meeting summary as final (available on website).

OPERATING PROCEDURES

Molly Stenovec invited members to review the Task Force roster and asked members to send her any corrections, missing contact information, or designations of alternates.

Molly presented the revised draft operating procedures. Members discussed, offered suggestions, and made decisions on further modifications.

The following paragraphs summarize the discussion and specifies decisions the Task Force made:

Section C: Given that the proviso explicitly names entities and perspectives to serve on the Task Force, the Facilitation Team suggested that the operating procedures seek to include “additional perspectives,” rather than “additional members.”

Decision: All Task Force members present conveyed consensus to rename section C “Additional Perspectives.”

Resignation: The Facilitation Team offered the following revision: The Task Force can make recommendations on how to fill the vacant seat, [including inviting the organization or constituency represented to provide a replacement.](#)

Decision: All Task Force members present conveyed consensus to the above revision.

Consensus decision-making: The Task Force discussed absences and the process of integrating those absent in the decision-making process, particularly if there is not a quorum present.

The Facilitation Team offered the following proposal: *If a quorum (14 members) is not present, the Task Force can utilize electronic polling after the meeting. If polling does not lead to a consensus decision, then Co-Chairs shall decide if the decision needs to come back to the full group.*

Some members expressed concern that this could delay decision-making.

Decision: All Task Force members present conveyed consensus to the following addition: [Task Force members pledge to attend all meetings in person if possible; however, electronic or phone participation in meetings will be permitted if necessary.](#)

Decision: With the above revisions, as well as minor grammatical changes identified by the Facilitation Team, all Task Force members present agreed on and finalized the operating procedures.

CO-CHAIR COMMENTS

Chris Page invited the co-chairs to provide opening thoughts and comments.

- Lydia Flora Barlow shared that entering the Criminal Justice Training Center is difficult for her. As a member of the Task Force, she works with people and in facilities that led to the death of a brother; however, she also expressed a deep level of respect to work with this group and in this place to make something better.
- Jon Tunheim noted that the Task Force is positioned to achieve some remarkable change and significant improvements to Washington’s criminal sentencing system. He encouraged the group to stay focused on the task of revising the state’s sentencing practices.
- Representative Goodman thanked everyone for taking the time to engage with the Task Force. He expressed optimism for the group’s work of delving into the Sentencing Reform Act, while cautioning that multiple crucial perspectives would be missing from today’s conversation. He concluded by asking: “How are we notifying the wider audience of people, including media, who might want to engage in this process?”

SENTENCING GUIDELINES COMMISSION PRESENTATION and DISCUSSION

Russ Hauge, Chair of the Sentencing Guidelines Commission (SGC), presented recent findings and recommendations in the SGC’s [“Review of the Sentencing Reform Act.”](#) The goal of the presentation was to enable the Task Force to develop a mutual understanding of the SGC work and report and inform the ensuing Task Force deliberations on its 2019-2020 workplan.

Russ began with background and context on Washington’s criminal sentencing system. Washington has a determinate sentencing system, which means the Legislature plays a strong role in providing sentencing parameters.

The Sentencing Reform Act (SRA) of 1981 created the SGC to promote accountability and equity in the system and to recommend improvements. In 2018, the Legislature tasked the SGC with reviewing the SRA and developing policy recommendations to simplify the sentencing grid. Russ emphasized that the SGC did not fully develop its policy recommendations, but rather saw their effort as the creation of a starting point for the efforts of this Task Force.

The presentation, with an overview of the policy recommendations and two options to simplify the sentencing grid, is online at: <https://ruckelshauscenter.wsu.edu/meetings-and-materials-criminal-sentencing-task-force/>

Questions and Dialogue on Sentencing Grid Options 1 & 2

The following paragraphs capture the questions by and dialog among Task Force members on Options 1 and 2 (see slides 6-13 for an overview; for more details, see pages 17-19 of the Review of the SRA).

Q: How does the current sentencing grid work and how do Options 1 & 2 differ?

R: The current sentencing grid provides a framework for calculating sentences by factoring in the history of felony convictions (“offender score”/horizontal) and the seriousness of the crime (vertical). The corresponding cell stipulates a prison or jail cell range, for example 6-9 months.

- **Option 1** would, among other things, increase prison cell ranges by 20% on the upper and lower ends and change jail cell ranges to 0-365 days, regardless of the “offender score” (see slide 8 for example grid).
- **Option 2** would create a new two-step grid and modify “offender score” and offense classifications (see slides 9-13). Currently, each felony gets classified (A, B, or C) to rate its seriousness, but the sentencing grid does not include A, B, or C; this creates the possibility for Class B and Class C felony convictions to lead to a similar sentence. Option 2 retains the letter system but increases the options (A+ through C-) to ensure different sentencing options get associated with different felony classifications. Option 2’s two-step sentencing process has legislature develop a broad mandatory grid. The courts and judges would then work within a presumptive grid to individualize sentencing.

Q: How did the SGC define “public safety”?

R: The SGC did not explicitly create a working definition but understood that public safety includes more than removing a person who commits a crime from the community. NOTE: the system developed in ethos of “do the crime, do the time.”

Q: Has a racial equity lens been applied to either of these options?

R: Conversations on race and equity will need to be part of a process of further developing and refining these options.

Comments:

- While the sentencing grid itself may appear complicated, additional complexity lies in the calculation of the “offender score” (that calculation gets even more complicated if a person’s history extends beyond Washington).
- Option 2 would permit judges to go beyond the suggested sentencing parameters (whether higher or lower) and explain their rationale before the court.
- In support of judicial discretion, some noted that judges hold elected office and can get voted out of office if their communities no longer deem their opinions fair; others felt that such a process may not work as well in all parts of the state.

Various Task Force members observed that while elected officials (the state legislators) created and tends current system, much of the day to day decisions and discretion are granted by non-elected officials (prosecuting & defense attorneys).

Recommendations for Policy Changes: Sentencing, Supervision, Other

An overview of the SGC policy recommendations can be found on slides 14-24. The following paragraphs reflect the questions by and dialog among Task Force members.

Q: Did the SGC look at including alternatives to confinement within the sentencing grid?

R: The drug sentencing grid attempts that to some degree but bringing alternatives into the grid would increase the complexity of the system. The SGC is now reviewing alternatives to confinement.

Q: Regarding enhancements, would these recommendations be applied retroactively?

R: Enhancements could be eligible for good time, similar to the base sentence.

Comments

Pre-Sentence Investigations

Some Task Force members talked about how that Pre-Sentence Investigations (PSIs) can help judges make more informed decisions and individualize sentencing. Others suggested that PSIs would need a consistent process statewide (which would then get implemented locally). A few emphasized the need for corresponding resources to implement, ideally by a reimbursement process.

Supervision

Multiple Task Force members expressed frustration with various aspects of current supervision policies and implementation, noting that eligibility for supervision depends on the crime for which a person was convicted—not their risk of recidivism. Several described ways that supervision feels like a barrier to reintegrating in the community such as the difficulty to travel and testify on legislation. Others noted a need for a conversation on how supervision is experienced and what it means for various communities, particularly impacts of “swift and certain” responses to violations.

Many members support shifting the paradigm of supervision. Some described a shift from an adversarial relationship between an individual and the Department of Corrections (DOC) to one of coaching and mentoring. Though some see a need to house supervision in a new state entity, others pointed to institutional changes as indicators that DOC staff have the commitment to reframe supervision. Specific modifications discussed included adopting a Risk Need Responsivity (RNR) approach to supervision and expanding DOC’s range of options to include more than swift and certain incarceration in their response to violations.

Sovereign Immunity

The Task Force briefly discussed the SGC’s recommendation regarding sovereign immunity. Some acknowledged the need for punitive actions in situations of negligent supervision, while noting that the lack of a sovereign immunity doctrine contributes to a risk-averse approach to supervision.

Reentry

Members also discussed reentry. Specifically, some talked about the effectiveness of frontloading resources and support at the point of reentry, rather than over the course of an extended supervision period.

Evidence and Data

Task Force members expressed the importance of measuring the effects of the current sentencing system, any changes, and the impacts on different communities. Many support using data to inform Task Force recommendations. Members of the Task Force and audience provided overviews of current information gathering efforts separate from, but which may inform Task Force deliberations:

- An assessment of Washington’s RNR program. The Washington State Institute for Public Policy (WSIPP) is using data from December 2017-October 2019 to evaluate the program by looking at how an individual’s risk level may change over time, and whether that lessens the need for supervision. WSIPP plans to release the final report in June 2020.
- At Senator Dhingra’s request, WSIPP is also preparing an assessment on the frequency that the most serious charge at arrest is the most serious conviction charge—by gender, race, age, and county. This report will not include information on which jurisdiction makes the arrest.
- The SGC will release an inventory of alternatives to incarceration utilized at the county level, which will be released spring of 2020.

Disparities

The Task Force also discussed disparities in the criminal sentencing system, articulating the need to look at racial and cultural disparities with the existing system AND with any recommendations considered by the group. Others mentioned disparities at the county level; some saw the SRA as meeting its intent of standardizing sentences across the state, while others noted that different counties treat the same crimes differently.

Credible Messenger Programs

Some noted success with “credible messenger programs” as a means of deterrence. However, such programs are less successful when the government runs them.

POTENTIAL 2019 EARLY ACTION ITEMS & 2020 WORKPLAN

After lunch, the Facilitation Team offered the Task Force the choice of reviewing the results of its September brainstorm exercise and prioritize topics and tasks to develop a workplan or considering potential early action recommendation proposals from Representative Goodman and others. The Task Force decided to look at potential areas of early action for the 2020 Legislative session.

Representative Goodman shared the following six topics for the 2020 Legislative session:

1. Uniform judgment & sentencing forms
2. Concurrent periods of supervision
3. Mandated and funded pre-sentence investigations
4. More discretion in swift and certain response to supervision violations
5. Compliance credit

6. Ranking the unranked crimes

Members of the Task Force provided additional potential recommendations for the 2020 Legislative session, including:

- Delink Legal Financial Obligations (LFOs) from funding for victims' services
- Restoration of voting rights
- Tolling

The Task Force also talked about proposed legislation generated by other individuals and entities that may interest the Task Force (and that relate to its mandate).

The following paragraphs capture potential 2020 topic areas brought forth by the Task Force and the ensuing discussion.

Judgement & Sentencing Forms: Some desire a common form or a consistent worksheet; others pointed to the challenges of creating such a form—both in the development and implementation. Specifically, the lack of a unified (county) court system means many different programs, technology systems, and sentencing forms exist. Others expressed concern that a legislatively-created common sentencing worksheet may penalize individuals who filled it out incorrectly. Several members felt that errors in calculating sentences occur, in part, because the complexity of the calculations—such as challenges tracking tolling or someone's history in the criminal sentencing system. A less complicated sentencing computation could lead to fewer errors and eliminate the need for DOC or any other entity to review a sentencing form.

Concurrent Supervision: Building on the morning's discussion, members observed that consecutive supervision may postpone access to programs or services due to the sequence of base conviction and enhancements. Others noted the SGC unanimously supported concurrent supervision.

Pre-Sentence Investigations: During the afternoon discussion on PSIs, members focused on who would conduct them and how they would be resourced. Some expressed concern that the prosecution would have significant resources, where the defense attorney may be better positioned to ascertain the life circumstances of the defendant. Those familiar with the SGC deliberations shared that the federal court system utilizes an independent PSI writer.

Swift & Certain Responses: As in the morning discussion, some voiced frustration with the "swift and certain" approach to supervision violations and the limited options with which DOC may address such violations.

Compliance Credit: The group again suggested the ability for "goodtime" to be applied in enhancements. Many supported this a 2019 action item, though some suggested this should be addressed in 2020 within the context of examining the full criminal sentencing system.

Ranking Unranked Crimes: The SGC recommends assigning a seriousness level to all unranked felonies. Some expressed support for this; others suggested this should be considered in concert with the examination of the overall sentencing grid.

Legal Financial Obligations (LFOs): Some support examining LFOs, specifically a recommendation to shift how those moneys are used (while ensuring existing programs funded by LFOs are kept whole) or exploring ways to provide additional financial relief. Others brought forth the suggestion for the adult restitution system to emulate the insurance model of the juvenile system. In terms of victims' needs, some suggested that an upfront payment, such as for funeral expenses, may help more and mean more than small payments over an extended period.

Tolling: Supervision is not always seamlessly ongoing, it can be paused while an individual receives mental health treatment or spends time incarcerated (e.g., for a missed court day). Some noted that tolling has the effect of extending supervision without benefits in return and increasing the complexity of knowing when one is under supervision.

Right to Vote: Some members suggested that restoring voting rights to individuals with a felony conviction would restore a sense of enfranchisement in the community, which in turn can help reduce recidivism. Some suggested that the issue of felony voting rights exceeds the scope of the Task Force; others countered that because it (losing voting rights) is a consequence of sentencing, it is part of the sentencing system.

Enhancements: Many members said they could identify specific enhancements and possibly develop recommendations to address clearly excessive sentencing or create opportunities for judges to collapse enhancements.

Legislation related/of interest: Some members shared bills they or their organizations plan to introduce in the 2020 legislative session, on topics such as: opportunities to vacate a criminal record, development of pathways for individuals to volunteer at schools, allowing elderly incarcerated persons to a hearing to revisit base sentence, and bills related to the Drug Offender Sentencing Alternative.

Additional topic/recommendations for consideration (for 2020 Task Force workplan):

- Resources and training to support victim / "offender" dialogues (pre-sentencing)
- Offender score: rename "offender score" and consider whether and how juvenile convictions should be integrated into the adult system
- Sentence calculations: consider ability to revisit drug prosecutions from more than 10-20 years ago
- Conversation on effect of drug convictions in communities
- Diversions, specifically alternatives to incarceration
- Statement regarding need to consider racial impact in sentencing
- Trauma informed care and gender responsive classification
- Independent review of practices

- Budget proviso requests to gather information which would inform group deliberations and recommendations
- What does concurrent v. consecutive supervision look like?

Disparities & Equity: Several members requested to consider racial disparities—where they currently exist and how proposals may reduce or exacerbate them. Some wanted to focus efforts on the areas of the sentencing system with the greatest disproportionalities. Members also encouraged deliberately and thoughtfully looking at potential unintended consequences of any Task Force recommendation across the entire criminal sentencing system.

Information Needs:

Members identified areas of inquiry to help the group make evidence-based decisions:

- Where are the points of greatest disproportionality in the sentencing system?
- What are the situations leading to the need for the 10+ column?

TASK FORCE WORKPLAN & 2019, 2020 REPORT DEADLINES

Members expressed the need for more information promptly in order to have enough time to for conversations with their constituents to gauge comfort and interest in some of these proposals.

The Task Force then spent time developing clusters of topics and a potential work timeline for 2020.

Decision: All Task Force members decided to focus on the following potential early action recommendations at their November 18th meeting:

- Tolling
- Concurrent supervision
- Swift & certain response to supervision violations
- Compliance credit

Action Item (Ruckelshaus Center Facilitation Team): The Task Force asked for potential bill language, bill numbers for legislation introduced in previous sessions, and/or overviews prepared by DOC by November 1 to inform their conversations with constituents prior to the November 18th meeting.

Additional topic/recommendation clusters for 2020 include:

Reentry:

- Legal Financial Obligations
- Voting Rights
- Rehabilitative programs and services

Sentencing Accuracy:

- Judgement & sentencing worksheet
- Pre-sentencing investigations

Additional topics/areas of focus:

- Adult General Disproportionality Report, produced by the Caseload Forecast Council
- Work of the Reentry Council

DRAFTING OF DECEMBER 31, 2019 REPORT

The Facilitation Team provided a proposed outline for the December 31, 2019 preliminary report:

- Purpose of Task Force
- 2019 Accomplishments
 - Overview of meetings, decisions, and agreements
 - Recommendations in principle for 2020 legislative session
 - Conceptual workplan for 2020

In closing, Co-Chair Barlow urged the group to carefully consider “the water in which we swim,” about the real lives and communities affected and to articulate the care in which the Task Force will fulfill their legislative mandate and address racial disparities.

DECISIONS, SCHEDULE, NEXT STEPS, REFLECTION

See the table below for an overview of decisions, action items, and resources mentioned.

Members shared the following thoughts on how they experienced the meeting:

- Still hopeful—we’re developing a rhythm and language for working together
 - Engaging, thought-provoking, and exhausting
 - Conflicted, hearing really good things, but concerned about voices absent
 - Share the optimism, but we still have a huge and daunting task ahead
 - Feel comfort about what the process actually is, optimistic, everyone really cares
 - Optimism. feel that we’re building trust. Impressed by the deep engagement. Concern about reporting to and reflecting back their constituency
 - Thought provoking. See self as a big part of the system
 - Learning so much. Getting some relief, feeling less alone in perspective and appreciative of that community
 - Appreciative to hear perspectives that I would otherwise not hear
 - So much energy around a common goal and direction
 - Very encouraged after 1st meeting, even more after this one. Want to hear voices of those absent
 - Most struck by the level of engagement, level of compassion and engagement
 - Very excited about getting into the substance
 - Today was very educational, want to hear from the missing voices
 - Excited about the energy and the sentiment that the status quo is unacceptable. Excited to be on the forefront of that change
 - Very encouraged that we’re all finding our way even as the scope keeps getting bigger
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RECAP OF DECISION AND ACTION ITEMS

Task Force Decisions:

- The Task Force accepted the September 30th meeting summary as final (available on website).
- The Task Force made the following revisions to the Operating Procedures (additions in red):
 - Rename section C “Additional Perspectives.”
 - If a member resigns, the Task Force can make recommendations on how to fill the vacant seat, including inviting the organization or constituency represented to provide a replacement.
 - Task Force members pledge to attend all meetings in person if possible; however, electronic or phone participation in meetings will be permitted if necessary.
- With the above revisions to the Operating Procedures, as well as any grammatical changes identified by the Facilitation Team, the Task Force agreed on and finalized the operating procedures.
- Group identified pattern of first Thursdays for 2020 Task Force meetings.
- November 18th meeting will focus on: tolling, concurrent supervision, swift & certain response to supervision violations, and compliance credit.

Task Force Action Items:	Due date/Status:
Members will discuss draft legislation on tolling, concurrent supervision, swift & certain response to supervision violations, and compliance credit with their constituents	Ongoing

Facilitation Team Action Items:	Due date/Status
Provide information on potential early action items (tolling, concurrent supervision, swift & certain, compliance credit) to Task Force members by November 1, so members can meet with their constituencies prior to the November meeting.	Sent by email on 11/1
Provide remote meeting participation option.	In progress
Share report mentioned by Senator Dhingra: <i>Reducing Recidivism with Technology: State of Arkansas and SAP Co-Invention 2019</i> https://www.sap.com/documents/2019/06/84ce1713-557d-0010-87a3-c30de2ffd8ff.html	
Develop 2020 meeting schedule which follows pattern of first Thursdays but also considers holidays.	Sent by email on 11/1. In progress: post on website
Follow up with members unable to attend October meeting.	Left voicemails /messages with all individuals on 10/28