

**Washington State Criminal Sentencing Task Force**  
**Meeting Summary: December 6, 2019**  
Criminal Justice Training Center, 19010 1<sup>st</sup> Ave. S., Burien, WA

**Task Force Attendees** (in person, all day unless noted):

- Judge Veronica Alicea-Galvan (p.m. only)
- Nick Allen
- DeVitta Briscoe (p.m. only)
- Suzanne Cook
- Senator Manka Dhingra
- Rep. Roger Goodman
- Sonja Hallum
- Russ Hauge
- Rep. Brad Klippert
- Carolina Landa (on behalf of Lydia Flora Barlow)
- Gregory Link
- Senator Mike Padden
- Judge Roger Rogoff
- Secretary Stephen Sinclair
- Angee Schrader (on behalf of Tarra Simmons)
- Chief James Schrimpsheer (a.m. only)
- Clela Steelhammer (attending on behalf of Elaine Deschamps)
- Jon Tunheim
- Chief Rafael Padilla
- Councilmember Derek Young (a.m. only)

**Facilitation Team:** Amanda Murphy, Michael Kern, and Molly Stenovec – William D. Ruckelshaus Center

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## **WELCOME and INTRODUCTIONS**

Project Co-Lead Amanda Murphy welcomed the Criminal Sentencing Task Force (Task Force) and asked members to share name, affiliation, and response to the following question: *What would you like to take away from this meeting?*

Many members described tangible outcomes: a more developed 2020 work plan, a nearly final initial report, and as many early action items as possible. Others hoped to gain better understanding of others' perspectives and a sense of accomplishment. Many emphasized that while the group has a deadline to submit a preliminary report, they hope the group takes the time to consider the philosophical and systemwide impacts of potential recommendations.

## **REVIEW AGENDA, DISCUSSION GROUNDRULES and DRAFT MEETING SUMMARY**

The Task Force reviewed sections of its operating procedures on the definition of consensus and the process for consulting members absent when a decision was made. The Task Force also reviewed that, while the operating procedures urge the Task Force to work hard toward reaching consensus, in instances where the group cannot reach consensus, the pros and cons of the different alternatives can be presented in a succinct manner in the Task Force's reports.

Members did not suggest any revisions or clarifications to the November meeting summary. The Facilitation Team noted that Lew Cox needed to be added as a meeting attendee.

**Decision: all members present<sup>1</sup> accepted the November meeting summary as final with the correction noted above.**

## **COMMENTS FROM THE CO-CHAIRS**

- Lydia Flora Barlow could not attend this meeting.
- Jon Tunheim thanked everyone for taking the time to participate in the Task Force and expressed enthusiasm for the discussions ahead.
- Representative Goodman expressed appreciation for the engagement from members and attendees. He noted the progress the group has already made, including two early action recommendations, on a gargantuan task. He also expressed enthusiasm for the work in 2020.

## **DISCUSS and PROVIDE FEEDBACK ON DRAFT REPORT**

Amanda reviewed the draft December 2019 report to the Legislature prepared by the Ruckelshaus Center (Center) on behalf of the Task Force. The report includes language from the budget proviso, a short recap of each 2019 meeting, the early action recommendations, and a draft 2020 work plan (it will include more information on the Center and full meeting summaries as attachments). Members provided grammatical and clarifying feedback and suggested changing references to Positive Achievement Time or “good time” to “compliance credit”.

The group discussed topic areas it considered for early action recommendations at its November meeting. Some expressed concerns about who conducts community supervision and how it is conducted; a few about the caseload volume under Department of Corrections (DOC) management. Others noted that the recommendations will align Washington with national research and would allow DOC to better allocate resources to individuals who need the most support.

**Decision: all members present conveyed consensus to the overall approach to the initial report with the following modification: that all references to positive achievement time be switched to “compliance credit.”**

*Note: The meeting was ahead of schedule, so the Task Force reviewed a draft 2020 work plan developed by the Facilitation Team, a conversation it continued in the afternoon. For cohesion, this summary includes both discussions as one segment later in this document.*

## **TOLLING OF COMMUNITY SUPERVISION TERMS**

Mac Pevey (DOC) provided a brief overview of tolling<sup>2</sup>. Tolling occurs when an individual is unable to participate in the terms of their community supervision, either because they are in confinement or otherwise unavailable. Each tolling event requires DOC staff to recalculate the end date of that term of supervision. DOC seeks changes that would reduce the number of events that cause tolling to occur. Mac also suggested the group think of this proposal as “truth in sentencing” or “truth in supervision” since currently, tolling events lead to constantly changing supervision end dates.

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<sup>1</sup> Exception: Senator Padden abstained from the decision since he did not attend the November meeting.

<sup>2</sup> More information on Tolling can be found with the November 2019 meeting materials at: <https://ruckelshauscenter.wsu.edu/meetings-and-materials-criminal-sentencing-task-force/>

To summarize the ensuing discussion, comments, and question/responses on tolling of community supervision terms:

- Some members raised concerns about eliminating confinement for a separate charge as a tolling event. Specifically, if the “supervision clock” continues to run while an individual is in confinement, they have less time available to access programs and services in the community.
- Others felt rushed and identified needs for additional information and/or a conversation about factors contributing to recidivism while on supervision and how to address root causes such as homelessness, addiction, mental health, etc.
- DOC would like a less complicated process to administer and the ability to focus resources for an individual in crisis, rather than just an extension of time on supervision.
- *Public safety*: A few noted that law enforcement currently sits on the front line of how community supervision plays out in the community. DOC representatives shared that the agency is seeking to reduce recidivism, which increases public safety; however, the agency needs the ability to reallocate resources.
- Several observed that only a few states in the country utilize “tolling.”
- Others clarified that community supervision is not 24-hour supervision, but rather minimal contact once a month.
- *Eligibility*: Some expressed concern that an individual’s eligibility for supervision does not lie with the sentencing judge, or align with best available research. Specifically, individuals convicted of property crimes do not qualify for supervision or other resources/programs to facilitate their reentry, despite research indicating the value of such programs reducing recidivism.
- A few suggested ways to reframe the conversation for 2020. Suggestions include:
  - Rather than look at list of tolling events that DOC would like to keep, the group could consider the full list of current events which cause tolling, and then make recommendations on which should be eliminated.
  - Think of community supervision as the length of time and way in which DOC engages with a person who is reentering the community after a period of incarceration (rather than an extension of punishment).

**Decision: all members present conveyed consensus to include tolling in their 2020 work plan, and for the consideration of the Reentry and Reducing Recidivism Working Group, but not as an early action item.**

## **SWIFT and CERTAIN COUNT, PART I**

Amanda Murphy reminded the group that the Task Force discussed both the “swift and certain” count and the “underlying 21” designation<sup>3</sup> at its November meeting, suggesting the group focus on the former as a potential early action item. Mac Pevey (DOC) then reviewed DOC’s proposal and rationale. With respect to swift and certain count, DOC proposes to eliminate the process count for low-level violations. The agency would continue to address violations to community supervision terms, while considering the severity of the violation and the individual’s unique circumstances.

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<sup>3</sup> More information can be found with the swift and certain packet in the November 2019 meeting materials at: <https://ruckelshauscenter.wsu.edu/meetings-and-materials-criminal-sentencing-task-force/>

He described a common example: an individual receives five citations for positive urine analysis early in their supervision term and then, after several months of progress, that individual fails to properly communicate to their Community Corrections Officer (CCO) and receives a “failure to report” as a sixth low-level violation. The resulting 30 days of confinement, he noted, can hinder that individual’s ability to maintain the things supporting their reentry – job, housing, etc. According to Mac, the existing process count (of five low-level citations making a sixth automatically high-level) was based on a best guess and a need to provide consistency as to how CCOs dealt with violations to supervision terms.

The paragraphs below summarize the lengthy discussion, comments, and question/responses.

- Some support discretion to allow a CCO with face-to-face relationship to consider an individual’s unique circumstances. Others expressed concern about DOC’s capacity to manage its existing caseload or track supervision violations; a few noted that discretion may lead to disproportionality/bias.
- With respect to individual accountability, some saw a need to differentiate between high- and low-level violations; others want to maintain the swift and certain count to address the volume of low-level violations.
- Some suggested the group should consider the high population of incarcerated individuals. Full facilities mean that a CCO needs to spend time transporting an individual to a facility with space.
- **Q:** what is the current process for an individual to challenge violations/sanctions? **A:** The 1<sup>st</sup>-5<sup>th</sup> low-level violations lead to three days of confinement—that time has already elapsed by the time a person could appeal. The sixth violation can be challenged via a grievance process.
- Some raised concerns about DOC continuing to manage community supervision; others urged reforming the existing system, rather than build a new one. DOC representatives stated that their proposals would allow the agency to support more effective reentry and supervision.

The Task Force considered several potential proposals, including:

- Presumption of confinement after a certain number of violations, unless an individual has demonstrated other benchmarks towards progress;
- Development of supervision violation grid;
- The following revision to statute: “After an offender has committed and been sanctioned for five low level violations, ~~all~~ subsequent violations committed by that offender ~~shall~~ **may** automatically be considered high level violations.”
- The following revisions to the DOC proposal:
  - Remove statutory language regarding responses to violations of conditions of community custody behavior that differentiates sanctions based solely on the number of low-level violations, creating a system **(based on best practices)** that ~~is fair and just given the personal liberty impacts~~ **more effectively fosters successful reentry.**
  - The group also considered whether to include the following sub-bullets:
    - DOC will continue to define low-level and high-level violations in policy, as well as factors that may mitigate or aggravate a specified response. Violation level will be based on risk and the seriousness of the behavior. Clear definitions promote consistent responses to violations.

- DOC will outline in policy a range of allowable sanctions, which will include both confinement and non-confinement options consistent with RCW 9.94A.633.
- Community Corrections Officers will continue to impose sanction for low level violations. High level violations will continue to be addressed through a DOC hearing/review, with sanctions imposed by the presiding Hearing Officer.

**Decision: all members present conveyed consensus to include swift and certain count in their 2020 work plan, rather than as an early action item.**

## **JUDGMENT and SENTENCING (J&S) FORMS**

Amanda Murphy asked Representative Goodman to share opening remarks on this topic, before opening the floor for comments and questions from the full Task Force. Representative Goodman noted that J&S forms, which communicate court decisions to DOC, differ in every county. Roughly 10% of the forms contain inaccuracies.

Several years ago, he co-sponsored a bill with Senator Padden to develop a common sentencing calculation worksheet for judges to utilize. The bill was near passage in the Senate and the House but was withdrawn because DOC requested the opportunity to work with the Administrative Office of the Courts (AOC) to develop a form. He encouraged the Task Force to include a recommendation on a sentencing worksheet as an early action item.

To summarize the ensuing discussion, comments, and question/responses on J&S forms:

- Many expressed concerns with respect to a common worksheet/form. Some raised concerns about using legislation to create a new form that could also (like the J&S forms) get filled out incorrectly.
- Others questioned the ability of a form to address sentencing inaccuracies, noting that individuals may differ in their interpretation of the statute and therefore differ in sentencing calculations.
- Judge Rogoff shared that judges and DOC have renewed their conversations and would like time to continue. He is willing to work with those entities to develop a timeline to share with the Legislature.
- A few expressed the desire for an improved process for DOC to communicate errors, for parties to return to the courts, and for parties to communicate with the AOC. The group considered a proposal that would require DOC to follow up with the courts. DOC staff said they already do some follow up work and expressed concern about the capacity to follow up on all J&S forms.

**Decision: all members present conveyed consensus to include Judgement & Sentencing Forms in their 2020 work plan, and for the consideration of the Sentencing Effectiveness Working Group.**

## **PRE-SENTENCE INVESTIGATIONS**

The Task Force considered pre-sentence investigations (PSI) as an early action recommendation. To summarize the ensuing discussion, comments, and question/responses:

- Russ Hauge noted that the Sentencing Guidelines Commission (SGC) strongly recommended increasing the use of PSIs; however, he urged the Task Force not to consider PSIs for early action. The SGC envisioned PSIs adding value to a sentencing system where a judge had more leeway to issue supervision, and the conditions and length of that term. To make informed decisions, a judge

would need more information from PSIs. The SGC envisioned PSIs as a work product that a judge would have more than 10 minutes to read, with enough time to influence his/her decision.

- **Q:** Should PSIs be presumed mandatory? Who could/should conduct them? **A:** The SGC does not recommend mandatory PSIs.
- The counties are well positioned to conduct the work of PSIs, since there is value in the work done at the local level, and counties already have expertise about people standing before the court. However, the Legislature would need to provide resources and clear guidelines to ensure consistent implementation of PSIs.
- Several members observed that PSIs once were common (at least in some jurisdictions), but legislation authorized the cut during the Recession. In the era of PSIs, DOC used to have a person assigned to a court – which required significant resources.
- Some noted the conversation should not focus on the value of PSIs, but on who could conduct PSIs, when, and how to provide the necessary resources.
- Some mentioned the need to utilize lessons learned, to ensure consistency in the way PSIs get conducted, to minimize disproportionality, utilize trauma-informed care, and provide space for the individual to have a say in the authorship of that report.

**Decision: all members present conveyed consensus to include pre-sentence investigations in their 2020 work plan, and for the consideration of the Sentencing Effectiveness Working Group.**

Information needs identified by the group: common understanding of information collected and documents which currently exist which could be integrated into a pre-sentence investigation.

## 2020 Work Plan

Amanda introduced a draft Task Force 2020 work plan the Facilitation Team developed. The work plan considered Task Force work to date, input from interviews with Task Force members, and requirements of the budget proviso. The full 2020 work plan is posted online and will be included with the Task Force’s 2019 report. The Facilitation Team recommends that the Task Force create two working groups to identify the research and information needed, and to develop and present preliminary recommendations for the full group to consider.

Questions/comments:

- Suggestion to switch February and March topics, so legislators could participate in the conversation on disproportionality.
- Request to hold meetings in Olympia during the legislative session, to allow legislators and others beholden to the legislative calendar to attend.
- Suggestion that the “Sentencing Accuracy Working Group” be renamed “Sentencing Effectiveness Working Group.”
- Others suggested clarifying the role and timeline for the Legislation Working Group.
- **Q:** Would it be possible to engage subject matter experts or individuals from relevant Legislative committees? **A:** Yes – the operating procedures provide guidance for engaging other perspectives. The Task Force could direct the Legislation Working Group to work with additional committees and/or individuals. The Working Group will meet by phone/video conference, so can easily have subject matter experts join for a presentation or discussion.

- **Q:** How will working groups be assigned? **A:** After some discussion, the group decided each Task Force member should select the working groups (s) of interest.
- The Center will share meeting dates for all working group meetings with the entire Task Force.

**Decision: all members present conveyed consensus to the work plan and overall approach for three working groups: Legislation, Reentry and Reducing Recidivism, and Sentencing Effectiveness.**

Working Groups:

*Legislation Working Groups:* Lydia Flora Barlow, Senator Manka Dhingra, Representative Roger Goodman, Representative Brad Klippert, Senator Mike Padden, Jon Tunheim.

*Sentencing Effectiveness Working Groups:* Diane Ashlock, Senator Manka Dhingra, Judge Veronica Galvan, Representative Roger Goodman, Russ Hauge, Gregory Link, Judge Roger Rogoff, Tarra Simmons, Clela Steelhammer, Jon Tunheim.

*Reentry and Reducing Recidivism Working Groups:* Nick Allen, DeVitta Briscoe, Suzanne Cook, Sonja Hallum, Representative Brad Klippert, Secretary Stephen Sinclair, Clela Steelhammer, Jon Tunheim.

## **DECISIONS, SCHEDULE, NEXT STEPS, REFLECTION**

*See table below for a summary of decisions and action items.*

Members shared the following responses to the reflection questions: *What are you taking away from your work this year? How do you feel going into 2020?*

Many members expressed gratitude—for the opportunity to participate, for people’s candor, for the extent that the group has a shared purpose of improving the criminal sentencing system. Looking forward, many members expressed motivation and optimism for the work ahead.

**RECAP OF DECISION and ACTION ITEMS**

**Task Force Decisions:**

- The Task Force accepted the November 18th meeting summary as final (available on website).
- Members agreed to the overall approach to the initial report with the following modification: that all references to positive achievement time be switched to “compliance credit.”
- Members recommend the following topics to be further discussed in 2020:
  - Tolling of community supervision terms;
  - Swift and certain count;
  - Judgement and sentencing forms; and
  - Pre-sentence investigations.
- Members agreed to the draft work plan and overall approach for three working groups: Legislation, Reentry and Reducing Recidivism, and Sentencing Effectiveness Working Groups.

<b>Task Force Action Items</b> (items emerging from Dec. 6 <sup>th</sup> meeting are in italics):	Due date/Status:
<i>If absent at December meeting, please email <a href="mailto:molly.stenovec@wsu.edu">molly.stenovec@wsu.edu</a> to communicate which, if any, working groups you would like to join.</i>	
Members will discuss draft legislation on tolling, concurrent supervision, swift & certain response to supervision violations, and compliance credit with their constituents	Ongoing

<b>Facilitation Team Action Items</b> (items emerging from Dec 6 <sup>th</sup> meeting are in italics):	Due date/Status
<i>Convene Legislation Working Group.</i>	Completed (first call)
<i>Begin to schedule Sentencing Effectiveness and Reentry and Reducing Recidivism Working Groups.</i>	
Post the Guiding Principles in the “Key Documents” section of the meetings and materials website.	Posted.
Forward documents and links to relevant reports from DOC on individuals on supervision.	Posted.
<i>Forward supervision behavior accountability grid used by DOC.</i>	
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.	Available for Dec. 6 <sup>th</sup> meeting.

<p>Share report mentioned by Senator Dhingra: <i>Reducing Recidivism with Technology: State of Arkansas and SAP Co-Invention 2019</i>  <a href="https://www.sap.com/documents/2019/06/84ce1713-557d-0010-87a3-c30de2ffd8ff.html">https://www.sap.com/documents/2019/06/84ce1713-557d-0010-87a3-c30de2ffd8ff.html</a></p>	
<p>Develop 2020 meeting schedule which follows pattern of first Thursdays but also considers holidays.</p>	<p>Sent by email on 11/1 and posted on website.</p>
<p>Follow up with members unable to attend October meeting.</p>	<p>Left voicemails /messages with all individuals 10/28</p>

<p><b>Task Force Parking Lot</b> (items emerging from Nov. 18<sup>th</sup> meeting are in italics):</p>	<p>Due date/Status</p>
<ul style="list-style-type: none"> <li>- would like to revisit practice of showing up to jobs with full armor,</li> <li>- lack of access to legal support while in supervision</li> <li>- monitoring/evaluation and data collection – what other parts of the system should we be evaluating?</li> <li>- Sentencing worksheet</li> <li>- Pre-Sentencing Investigations</li> </ul>	