

Washington State Criminal Sentencing Task Force
DRAFT Meeting Summary: April 16, 2020
Virtual Meeting via ZOOM

Task Force Attendees:

- Judge Veronica Alicea-Galvan
- Lydia Flora Barlow
- DeVitta Briscoe
- Suzanne Cook
- Lew Cox
- Elaine Deschamps
- Rep. Roger Goodman
- Russ Hauge
- Rep. Brad Klippert
- Gregory Link
- Rafael Padilla
- Mac Pevey (attended in the afternoon on behalf of Sec. Sinclair)
- Judge Roger Rogoff
- Chief James Schrimpsner
- Tarra Simmons
- Clela Steelhammer
- Jon Tunheim
- Councilmember Derek Young

Presenting Attendees: Lauren Knoth, Clela Steelhammer

Facilitation Team: Amanda Murphy, Chris Page, Molly Stenovec, Hannah Kennedy, Maggie Counihan – William D. Ruckelshaus Center

WELCOME, INTRODUCTIONS, REVIEW AGENDA and GROUNDRULES

Facilitators Chris Page and Amanda Murphy welcomed the Criminal Sentencing Task Force (Task Force), briefly reviewed the agenda, and suggested virtual meeting best practices. Chris reviewed the Task Force's agreed-upon ground rules and asked folks to join with video when possible to maximize engagement and quality.

TASK FORCE MEMBER UPDATES

Amanda called roll to identify all participants and asked each Task Force member (or alternates) to give a brief update on how they are doing personally and to share any pertinent information or news with the Task Force. The following summarizes the information and updates shared with the group:

- Governor Inslee issued [Proclamation 2050](#) on 4/15 with his administration's strategy to reduce the spread of Coronavirus among incarcerated individuals. The plan aims to reduce the DOC prison population by up to 950 people by releasing individuals convicted of nonviolent offenses and those already due to be released within 75 days. Sonja Hallum (Governor's Office representative) invited follow-up questions via email.
- Several Task Force members expressed concern for individuals currently incarcerated in Washington state, citing crowded conditions at some facilities that limit the ability to properly social distance.
- Some members also voiced concern for the disproportionate impact of the current pandemic on communities of color.
- A Task Force member expressed concern about a possible increase in crime rates during the Covid-19 pandemic.
- Legislative members provided an update on the most recent Legislative session including the passage of three bills related to recommendations developed and discussed by the Task Force. Of the bills discussed, the Task Force developed consensus support for:
 - HB 2394 concerning community custody (concurrent terms of supervision)
 - HB 2393 earning credit for complying with community custody conditions

The Task Force also discussed recommending swift and certain counts, but did not reach consensus recommending the following legislation:

- HB 2417 concerning individuals serving community custody terms (swift and certain count)

- In an effort to reduce re-incarceration for minor sanction violations during the Coronavirus pandemic, the Governor put the Swift & Certain bill into immediate effect.
- Several members discussed current efforts to safely release incarcerated people during the ongoing public health crisis. These include funding and resources to ensure no individuals gets released into homelessness and providing cell phones and/or additional financial support upon exit. There is a new coalition of service providers in Kitsap County working to reduce the local jail population and coordinating housing and other resources for individuals returning to the community from incarceration.
- Other members described recent changes and adaptations to court systems that aim to strike a balance between protecting individuals' constitutional rights and complying with current public health directives and social distancing orders.
- Many members highlighted the current and future economic challenges posed by Coronavirus. Given projected revenue shortfalls, it appears that law enforcements, counties, correctional facilities, and other parties in the criminal justice system will have fewer resources when quarantine and social distancing orders are lifted.

Members said they appreciated hearing different perspectives and experiences feeling that doing so has helped to strengthen the group, helping members identify where there is common ground and build trust.

FACILITATION TEAM and CO-CHAIR UPDATES

The Facilitation Team provided a few updates on the Task Force process:

- The Team's efforts to improve the accessibility of Task Force materials, working with DOC to distribute meeting materials in prison libraries and resource centers.
- Postponing the prison tour to a future date TBD.
- The Team's plan to conduct mid-project check-in interviews, similar to the initial assessment process.

Sentencing Effectiveness Working Group (SEWG) Update

Amanda and Chris provided a brief update on the SEWG process.

- The Group has met twice since the last full Task Force meeting in February, focusing on reviewing various grid options and considerations after agreeing upon a list of desired outcomes to serve as criteria when analyzing potential grid options.
- The Working Group created a small sub-group to review potential grid options. The sub-group met and asked Lauren Knoth (Washington State Institute for Public Policy, or WSIPP) to design a decision tree to help guide the discussion and evaluation of potential grid options.
- The Working Group is scheduled to report back to the full Task Force in June or July.

Reentry and Reducing Recidivism Working Group Update

Molly briefly described the Reentry Working Group's progress. The Legislature addressed several priorities discussed by this Working Group during the most recent session. The Working Group also identified subject matter experts to begin populating the Working Group's summary table. The Group will report back to the full Task Force in May or June.

All materials of the working groups including meeting notes are being provided to all members and are publicly available on the Task Force's webpage on the Ruckelshaus Center's website.

DISPROPORTIONALITY IN SENTENCING PRESENTATIONS

Lauren Knoth, WSIPP

Lauren presented an overview of disproportionality, racial disparity, and how judicial discretion and sentencing guidelines relate in the U.S. She clarified the difference between racial disproportionality as a state of being versus racial disparity as a question of equality of treatment. Lauren noted the multiple decision points within

the criminal justice system, all comprising areas of discretion, any one or more of which can combine to produce disproportionate outcomes. She discussed how federal sentencing has changed over time and several studies examining disparity following changes in judicial discretion. To review her presentation in full, please see Appendix A.

Clela Steelhammer, Caseload Forecast Council (CFC)

Clela gave an overview of disproportionality in Washington state. She reviewed the FY 2019 General Disproportionality Report prepared by CFC at the direction of the state Legislature. Clela explained the Adult Sentencing Disproportionality Ratio and its calculation ($\% \text{ racial group in sentencing} / \% \text{ racial group in Washington state population}$). She then summarized the data, which show Caucasians are sentenced at proportional rates, while African Americans and Native Americans are sentenced at disproportionately higher rates, and Asians/Native Hawaiian and Other Pacific Islanders and Hispanics¹ have Sentencing Disproportionality Ratios less than 1. To review her presentation in full, please see Appendix B.

After the presentations, Task Force members provided questions and comments:

Comment: The Nordic Model focuses on a humane response to incarceration. To ensure people succeed, we need to address the underlying trauma and other factors impacting individuals in the system. If we want someone to succeed upon reentry, we need to prepare them for success before release.

Comment: What government chooses to criminalize may also introduce bias into the system. For example, the difference in sentencing for crack versus powder cocaine.

Response: Lauren agreed the Legislature is an important point of discretion not discussed in the presentation.

Question: The presentations underscore the need for research when laws change to evaluate the impact. Could the Legislature be more proactive in supporting such research?

Response: Yes. And WISPP was created to help provide studies based on data and research to the Legislature in a non-partisan way.

Comment: Disparities exist at every step of the process. It is important to have implicit bias training. Language in pre-sentence investigations could cause bias.

Response: To decrease disparity based on pre-sentence investigations (PSIs) the PSI guidance could be crafted specifically to limit discretion. The [criminal justice dashboard](#) in Oregon has interactive data for every county and shows the value of that type of data transparency.

Question: There is a high rate of interaction between various systems (e.g., low educational outcomes and criminal justice interaction). What literature studies such cross-sector interactions?

Response: Lauren referred to the life course criminology field and also offered to send several Washington-specific reports to the Facilitation Team to share with the Task Force and wider listserv.

Comment: Support an equity lens to be applied to all criminal justice legislation. HB 1783 created the Washington State Office of Equity.

Comment: Concerned about the practical implications of limiting the information included in PSIs; restricting the information law enforcement can provide may impact public safety and lead to dangerous individuals falling through the cracks. For example, if police officers can only select from a drop-down menu when providing input on sentencing, they may be frustrated by the narrow options and not participate at all.

¹ Note Hispanic is categorized as a race in CFC data, not as an ethnicity as elsewhere.

Response: It is less about reducing information than about ensuring uniformity in the presentation of information, to avoid linguistic bias that might lead to different interpretations of the same information. There is a need for practitioner input on system designs and feedback after implementation. Based on the limited drop-down menu example, perhaps an appeals process be added to allow officers to submit additional information when deemed necessary.

REFLECTION/FEEDBACK and NEXT STEPS

Members shared reflections and feedback on the virtual meeting format. The following summarizes key notes:

- Many members were glad to not have to commute to meetings.
- While some observed that it is not possible to replace every aspect of in-person interactions (e.g., hallway conversations, body language), most felt Zoom worked well and agreed it was the best way to move the Task Force's work forward while unable to meet in person.
- A few members suggested amending the Task Force schedule to meet via Zoom more frequently but for shorter periods of time.

The Facilitation Team then addressed a few housing keeping items:

- Chris and Amanda emphasized that if participants would like to disseminate information to the full Task Force, it would be best to send it to the Facilitators for distribution to the full group.
- To comply with new Zoom and WSU security policies, the Facilitation Team asked folks to contact them directly if they or others would like to join future Zoom meetings.

OPEN TIME FOR MEMBERS TO SHARE UPDATES/INFO & ENGAGE WITH PUBLIC IN ATTENDANCE

- **Q:** An interested member of the public asked Lauren if studies have shown where disparities occur upstream in the process. **R:** Lauren responded noting that in academia, it is difficult to access criminal history records. With barriers to getting information from all organizations involved, studies looking at all the steps are rare.
- Other members of the public also expressed their general support for the Task Force's efforts and were glad to be able to track the Task Force's important work.

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