

Washington State Criminal Sentencing Task Force
Meeting Summary: August 6, 2020 | 8:45am-12:45pm
 Virtual Meeting via ZOOM

Task Force Member & Alternates Attendees:

- Judge Veronica Alicea-Galvan
- Nick Allen
- Lydia Flora Barlow, Co-Chair
- DeVitta Briscoe (alt. for Martina Kartman)
- Russ Brown (alt. for Jon Tunheim)
- Suzanne Cook
- Lew Cox
- Sen. Manka Dhingra
- Rep. Roger Goodman, Co-Chair
- Keri-Anne Jetzer
- Martina Kartman
- Gregory Link
- Mac Pevey (alt. for Sec. Sinclair)
- Christopher Poulos (alt. for Lydia Flora Barlow)
- Secretary Sinclair
- Angee Schrader (alt. for Tarra Simmons)
- Chief James Schrimpsheer
- Melody Simle (alt. for Suzanne Cook)
- Tarra Simmons
- Nick Straley (alt. for Nick Allen)
- Clela Steelhammer (alt. for Elaine Deschamps)
- Councilmember Derek Young

Additional Participants:

- Michael Althausen
- Christopher Bonnington
- Kelsey-Anne Fung
- Bruce G.
- Joanne Glant
- Adam Hall
- Jaime Hawk
- Anna Johnson
- Davina Kerrelola
- Lauren Knoth
- Sen. Patty Kuderer
- Brittany Lovely
- Rep. John Lovick
- James McMahan
- Trisha Newport
- Sydney Oliver
- Peggy Papsdorf
- Dan Satterberg
- Joanne Smieja
- Andrea T.
- Lauren Taylor
- David Trieweiler
- Matt Tremble
- Kehaulani Walker
- Sen. Claire Wilson

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

MEETING GOALS: • Check-ins and updates from members • Present and discuss “second offer” of findings and potential recommendations from Sentencing Effectiveness Working Group • Review upcoming Task Force meetings and overall work plan

WELCOME, REVIEW AGENDA and GROUNDRULES

Amanda welcomed Task Force members, alternates, and guests and reminded participants that the meeting was being recorded for posting on TVW. Chris reminded the group of its ground rules and asked members and alternates to focus on solutions that work for all the parties when providing feedback for the potential recommendations. Amanda reviewed the agenda: the meeting would focus on a “second offer” of potential recommendations from the Sentencing Effectiveness Working Group (SEWG) with members and alternates practicing using virtual meeting tools for consensus decision making.

INTRODUCTIONS

Chris shared Task Force roster changes that occurred since the July meeting:

- Chief Padilla had to resign from the Task Force due to time constraints. Chris shared a letter from the Chief that noted his support for the commitment of Task Force members and for the work being done.
- Judge Rumbaugh is the new acting vice-chair of the Sentencing Guidelines Commission (SGC) and is filling Russ Hauge's spot on the Task Force; Keri-Anne Jetzer will continue as the Task Force alternate for the SGC.

Task Force members and alternates introduced themselves and shared organizational affiliations and constituency they represent on the Task Force. Amanda and Chris reminded observers they can send questions to the facilitation team through chat or save them for the time reserved at the end of the meeting for a few questions.

CO-CHAIR UPDATES

Rep. Goodman noted the tremendous amount of progress the Task Force has made so far and noted the frequency of the working group meetings.

FACILITATION TEAM UPDATES

Chris noted that the Task Force will start to meet twice a month starting in September. The meeting on 9/10 will focus on a "third offer" of potential recommendations from the Reentry and Reducing Recidivism Working Group (RWG) and the meeting on 9/17 will center on a "third" offer from the SEWG, including the work of the Grid Subgroup. He also noted the Legislative Working Group has reconvened and plans to meet monthly starting in September.

MID-POINT ASSESSMENT THEMES

Amanda and Chris shared themes from the facilitation team's midpoint assessment interviews with Task Force members and alternates. These themes included:

- Support for continuing the Task Force beyond December
- Overall positive responses
- Differences in goals for members, e.g., clear consensus, address racial and socio-economic inequities, grid changes
- Areas of concern: timeline and amount of work, limited participation of some members, desire to hear more from the perspective of victims, lack of in-person meetings.

GRID SUBGROUP UPDATE

Amanda shared a brief update on the work of the grid subgroup. She noted Lauren Knoth (Washington State Institute for Public Policy, or WSIPP) has drafted a research proposal to help the group gauge potential impacts of various potential changes to the sentencing grid. The subgroup will review it and suggest priorities before presenting it to the Task Force in September or October.

SENTENCING EFFECTIVENESS WORKING GROUP "SECOND OFFER" OF POTENTIAL RECOMMENDATIONS

Amanda reviewed the working group's efforts to date and walked Task Force members through the protocol for "taking the temperature" of the group's level of support for a given potential recommendation using thumbs-up, thumbs-down, and hand clap (for thumb sideways) onscreen symbols. One member abstained from all such "temperature reads."

POST CONVICTION REVIEW – Presented by Greg Link

Potential Recommendation #1:

Establish mechanism for Post-Conviction Review, with the Task Force continuing to monitor parallel efforts, noting the need to deal with retroactivity.

- Greg acknowledged that past efforts have not treated people fairly and thus produced disparate outcomes. He noted the importance of providing new avenues for people and that this recommendation recognizes a need for mechanisms to allow people to come back to the community.

Questions/Comments/Responses:

- **Q:** To what extent have conversations around post-conviction review focused on details of implementation, for example, how to include victims' voices? **R:** There is no consensus on what the mechanisms are best to achieve post-conviction review; this recommendation is broad and seeks to offer Task Force support for ongoing parallel efforts.
- **C:** A member noted support for the concept of post-conviction review, rather than a specific mechanism.
- **C:** Early-on we weren't sure if post-conviction review was part of our Task Force's scope. I'm glad to see we've included it. I do want to recognize that there is huge community division about how post-conviction review reform is achieved.
- **C:** I want to underscore the need for retroactivity.
- **C:** I am in strong support of a post-conviction review. Would like to see it as individualized as possible.
- **C:** A member echoed previous comments and said they would like to make sure that "members of the community" are involved in the process.

Consensus Practice: The "temperature read" had 12 thumbs up.

DIVERSION AND ALTERNATIVE TO INCARCERATION – *Presented by Rep. Roger Goodman, Nick Straley, Sen. Manka Dhingra*

Potential Recommendation #2:

Provide incentives for counties to increase the use of alternatives to incarceration (potentially by establishing a statewide Justice Reinvestment Account via Treasury, for which funds saved can be allocated to counties for proven approaches), modelling such programs on proven offerings (see WSIPP [Inventory of Evidence-Based, Research-Based, and Promising Programs for Adult Corrections](#)) and considering "upstream" (pre-court) options such as education/assistance initiatives, probation, and other community-based responses.

- Rep. Goodman shared this potential recommendation and noted that it could potentially be supported via a justice reinvestment account.

Questions/Comments/Responses:

- **C:** A member noted that he and his constituency support this and emphasized that putting resources back into local communities to support this work is key.
- **C:** There are times resources from counties, state government, or federal agencies are available to individuals and they overlap. Such redundancies merit consideration in supervision of some individuals.
- **C:** A member said they are always in favor of additional options for judges beyond incarceration
- **C:** This potential recommendation goes hand in hand with potential changes to the grid related to more judicial discretion.
- **C:** A member said they liked the direction of this potential recommendation and noted the need for buy-in from local governments.
- **Q:** Is there a plan to build accountability into these programs? **R:** Yes, the recommendation says only certain evidence-based programs would be implemented.

Consensus Practice: The "temperature read" to gauge the level of Task Force support had 11 thumbs up and none sideways or down.

Potential Recommendation #4:

Require an equity analysis of the impacts of proposed changes to the criminal justice system to assess the potential to exacerbate racial, socio-economic, or geographic disparities before such changes are adopted.

- Nick Straley shared this potential recommendation, noting the importance of calling out issues related to disparities in order to address them and move us forward.

Questions/Comments/Responses:

Q: Is this in addition to proposals in the Legislature? **R:** This would call out criminal justice and Lauren is going to look at this in relation to the grid.

Consensus Practice: The “temperature read” had 12 thumbs up (none down or sideways).

Potential Recommendation #5:

Adopt a treatment-oriented public health approach to problematic drug use, including expansion of therapeutic interventions to respond to offenses associated with drug use.

- Rep. Goodman shared this potential recommendation and noted this is a general statement of support for this direction.

Questions/Comments/Responses:

- **Q:** In previous discussions we’ve talked about the different treatment given to those using drugs at a bus stop vs. in a private home; does this recommendation try to address this? **R:** We definitely would like to address this, but this specific recommendation is more thematic.
- **C:** The concept is great. For considering a statewide approach, I think we need to check-in with attorneys and prosecutors about where the disparities are, the differences between counties. I would like to see us get to a point that, as a state, we will divert drug-related (non-violent) crime. We might need to change the grid to do this.
- **C:** This would present a sheer need for capacity to support the expansion of this approach at the county level. **R:** This is just specific to treating problematic drug use.
- **C:** I want to make sure this philosophy is applied to those on community supervision as well.
- **C:** Sometimes individuals don’t have access to services because of timeframes. We also need to acknowledge that we have created barriers.
- **Q:** How would you address drug use that reduces someone’s culpability in crimes? **R:** We have discussed it a bit, but still trying to work it out in the working group.

Consensus Practice: The “temperature read” had 12 thumbs up (none down or sideways).

Potential Recommendation #6:

Identify and implement public health approaches for addressing conduct that endangers public safety to which mental health or cognitive conditions or brain injuries are a factor. Two important steps among others toward realizing this goal are (1) establishing a mental health sentencing alternative and (2) creating a new mitigating factor in RCW 9.94A.535 that recognizes that mental health, cognitive conditions, or brain injuries may reduce culpability for criminal conduct.

- Nick Straley shared this potential recommendation and noted a member’s desire that mental health concerns and treatment be addressed at the front end, rather than starting with a punitive approach. He pointed out that the recommendation doesn’t provide alternatives available at the front end.
- He also mentioned that “diminished capacity defense” reform came up in working group discussion, but deemed too complex to address since it is common law rather than legislation.

Questions/Comments/Responses:

- **C:** A member noted that courts of limited jurisdiction are out in front of this and that it would be good for superior courts to catch up.
- **C:** Another member expressed concerns about the second half of the potential recommendation.
- **Q:** Does the point that a judge can order a PSI (Pre-Sentence Investigation) in cases where mental health is a concern help improve this for you? **R:** I think that mental health court could be a better place to address this, instead of at sentencing.

- **C:** I could see this working with the infrastructure of mental health courts.
- **Q:** This is an attempt to allow a judge to consider it at sentencing, correct? **R:** Yes.

Consensus Practice: The “temperature read” had 10 thumbs up and 1 sideways.

REVIEWING & CONSOLIDATING STATUTES & SYSTEMS – Presented by Rep. Roger Goodman & Greg Link

Potential Recommendation #7:

Request the SGC to develop a proposal to move all statutes associated with felony criminal penalties from Chapter 69.50 RCW to Chapter 9.94A RCW. At a minimum, this proposal should also include:

- a review of drug sentences and recommendations to reduce reliance on punitive sanctions and restructure outcomes to prioritize a therapeutic model for associated drug offenses.
- a review of reforms to reduce or eliminate criminal penalties for problematic drug use, particularly felony possession.

Rep. Goodman presented this potential recommendation.

Questions/Comments/Responses:

- **C:** This aligns with some of the other recommendations and seems like a natural direction.
- **C:** As a judicial officer, I think this would be some helpful cleanup for the legislature.

Consensus Practice: The “temperature read” had 9 thumbs up and 1 sideways.

Potential Recommendation #8:

Encourage court systems that coordinate or are compatible to adopt a unified filing system.

- Greg Link shared this potential recommendation and noted that there are 39 different filing systems based in each county, and still different systems in the courts. It would improve effectiveness and simplicity and be more easily accessible by end users.

Questions/Comments/Responses:

- **C:** A member noted worry about words like “encourage” as an option, since it could lead to less useful data. The member does see this as a cornerstone to effective sentencing policies.
- **C:** This is a major barrier to criminal justice reform. I’m worried it might not be realistic, without substantial money and buy-in across the state.
- **C:** People get stuck in silos about what works best for them. I’ve always worried whether I am receiving all the information that I need to make an informed decision. The lack of a centralized system to give us all the information presents a public safety issue. It also impacts people who want to access justice.
- **C:** Importance of a unified system to provide good data and timely responses. It can provide time issues to WSIPP as well, when accessing data and providing information to the legislature.
- **C:** I think this is an opportunity to dream big, and I understand the difficulty of resources at local governments. I get concern about words like “encourage” that would allow counties to opt out. Having more consistency across the state would serve us all.
- **C:** I concur that having many unique court filing systems across the state is a threat to public safety. What if we recommended a repository at the state level instead of a unified filing system?
- **C:** I echo all the reasons why everyone said this needs to be a priority. We believe that about a million people are entitled to have a vacated record. If we invested in a unified court system, it would help with transparency and help people get out of the system. I think we should absolutely prioritize this and continue to talk about it.
- **C:** A member noted there is a centralized system at the Administrative Office of the Courts (AOC), but data from the different county systems must be integrated into that system. Not having a unified system is not cost-free. If more courts create their own system, then AOC will have to allocate additional time to integrate the data from additional types of systems.

Consensus Practice: The “temperature read” had 4 thumbs up and 6 sideways.

PRE-SENTENCE INVESTIGATIONS – Presented by Keri-Anne Jetzer, Gregory Link & Lauren Knoth

Potential Recommendation #9:

Increase the occasions when a PSI can be requested.

- Keri-Anne presented this potential recommendation and noted that the idea behind this is to not make PSI’s mandatory but to increase the occasions when PSI’s would be available. She also noted that currently, sex offenses get a PSI as do individuals who may be mentally ill, and that a risk assessment report can be requested when a crime is not eligible for a PSI.

Questions/Comments/Responses:

- **Q:** Were judges ordering PSI’s? What degree are courts already required to have PSI’s? **R:** We did see a liberal use of PSI’s before statute changed. Some counties utilized it frequently. It is greatly limited these days. I can get some data of the number of PSI’s we do in a year and how many get processed.
- **C:** I support increasing the use of PSI’s, because the more information we have the better decisions we can make.
- **C:** Years ago it was required in homicide cases, for which I think it should be mandatory. I’m in favor of it.
- **C:** I don’t think I could get behind consensus on this because I believe DOC (Department of Corrections) is biased through their own lens when conducting PSI’s. In my eyes, PSI are not currently conducted by a truly neutral third party.
- **C:** I would be curious to hear more about the perceived bias, because this is a specialized area.
- **C:** I believe that for a long time, DOC was doing them as a courtesy for judges.
- **C:** I was going to point out potential recommendation #11. I appreciate the comments about who does them. I think they need to be culturally competent. I want to make sure that we are informed of who’s doing them and the differences among those doing them. I’m wondering if combining some of them would be helpful.

The Task Force decided to go through the rest of the potential recommendations related to PSI’s before asking more questions and providing comments in order to see to it would be useful to combine some of the potential recommendations.

Potential Recommendation #10:

Make PSIs available earlier in the court process.

Potential Recommendation #11:

Relocate the duty to complete PSIs requested by superior court judges to the superior court and have superior courts work with all parties (including DOC and AOC) to reduce differences across forms and make forms as applicable as possible to all who use them.

- Keri-Anne noted that there is information they (superior court judges) want but are not able to request. It would help if that information is provided sooner in the process. This goes back to recommendation 8 about the unified filing system; having a unit in superior court do this would allow access to information.

Potential Recommendation #12:

Increase cultural competency of those conducting PSIs to reduce disproportionality.

- Keri-Anne shared this potential recommendation and noted that it will help guard against the risk of bias and help allow individualized outcomes. The information presented in PSI’s is subjective in nature, and language that has been used has indicated that there may be a bias. The SGC also thought that social workers might be a good group to do this.

Potential Recommendation #13: Exclude sentencing recommendations from PSIs.

- Greg presented this potential recommendation. There are issues that arise when/if Community Corrections Officers (CCO's) or probation officer make a specific sentencing recommendation after a sentence has already been agreed upon.

Potential Recommendation #14:

Review risk-assessment tools and approaches to recommend ways to address potential bias and/or disparities in sentencing recommendation from PSIs and to make the information available as uniform and accurate as possible and to make the risk assessments consistently predictive.

- Lauren shared this potential recommendation. This is similar to work WSIPP has used in the past with DOC. There are ways that research can look at the risk assessment tools currently used. This recommendation is presented with the suggestion that this be data driven.

Questions/Comments/Responses:

- **Q:** Are we talking about PSI's occurring early in the process? I am assuming post guilty plea? **R:** It wasn't specified. Just early in the process. **R:** I want to clarify that this is a post guilty plea. Also, superior courts are different than municipal courts. One of the recommendations would require the superior court to create a new unit. I want to make sure we don't make counties do things that would cost resources they don't have. Right now, that's why we go to DOC, but it doesn't have to be them. I want to be careful about unfunded recommendations. **R:** The SGC recommendation has it as getting done via state funding, but the working group hasn't discussed this.
- **C:** I'm concerned about DOC's participation in this and would like to see the money moved to a more court-based system. Regarding risk assessment tools, we like to think that it is a measurable tool, but it's not. We end up with outcomes from risk assessment tools coming out of DOC that are not fact-based.
- **C:** I'm treating these potential recommendations as if they come with funding. Counties would be behind this but at the same time if it has no funding attached, we will be opposed. I am fearful that there will be temptation to push an unfunded mandate.
- **C:** There is a lot to support here, especially increasing cultural competency. It's helpful to have an awareness of resources. There are a number of other stakeholders (treatment providers, law enforcement) that rely on the information from PSI's. I think it would be useful to establish consistency with them.
- **C:** A member noted they heard someone say that it is a specialized unit at DOC that does PSI's and shared that their CCO conducted their own PSI and said they wanted to clarify the educational backgrounds (of those conducting the PSI's). **R:** Currently the CCO's are doing PSI's and the minimum requirement is a four-year degree. **R:** We don't know the backgrounds of those doing these PSI's. To me, it is akin to police officers being mental health providers. I really think it should be social workers who are an outside party. I won't be able to support at least one of these as written.
- **C:** I do think the potential PSI recommendations are connected and if they are combined, we may get more thumbs up. I do think all the potential PSI recommendations should be a collective package.

Consensus Practice: The "temperature read" based on combining all the potential PSI recommendations had 5 thumbs up and 5 sideways.

Potential Recommendation #3 – DIVERSION AND ALTERNATIVES TO INCARCERATION

Assess and consider removing SRA barriers to alternatives to incarceration, such as barriers to therapeutic courts.

- Sen. Dhingra presented this recommendation and noted it would allow superior court more access to alternatives, allows for more different cases and sentencing options, and makes appropriate sentencing options widely available.

Questions/Comments/Responses:

- **C:** I love this and think it's really important. Particularly as a way to not overly criminalize survivors of violence.
- **C:** I've been convening groups of survivors and advocates and they supported this recommendation.
- **C:** I agree with this but would want to see this tied into the potential recommendation on data collection (#4) to ensure racial disproportionality is not perpetuated or exacerbated.
- **C:** I'm in favor of this and giving judges more alternative sentencing options.

Consensus Practice: The "temperature read" had 10 thumbs up.

Amanda thanked members of the SEWG for all the work they have done and explained that all the input and guidance from members and alternates will go to the working group to refine the potential recommendations.

WORKPLAN, REFLECTIONS, ACTION ITEMS, & NEXT STEPS

Amanda reminded the Task Force that twice monthly meetings will start in September and the Reentry Working Group will present a "third" offer of potential recommendations at the first September meeting (9/10/20).

QUESTIONS FROM OBSERVERS

Molly shared comments from observers that echoed concerns from Task Force members and alternates about the PSI recommendations. Chris noted the questions will be brought back to the working group.

Q: An observer asked a question about details pertaining to a specific recommendation. **R:** The question is related to specific details and the Task Force is currently operating more at the "30,000-foot" level and I don't know if we will get into those details.

R: I don't know if we should make artificial distinctions and look at individuals. I'd be in favor of avoiding specific distinctions.

Q: I'm a little bit concerned about what was talked about today. Who makes the final decision on these recommendations? **R:** The Task Force makes the final decision (through a consensus process) on what gets forwarded to the legislature.

ADJOURN