

Washington State Criminal Sentencing Task Force
Meeting Summary: December 3rd 2020 | 8:45am-3:00pm
Virtual Meeting via ZOOM

Task Force Members & Alternates Attendees:

- Nick Allen
- Lydia Flora Brown, Co-Chair
- DeVitta Briscoe (alt. for Martina Kartman)
- Russ Brown (alt. for Jon Tunheim)
- Chief Gregory Cobb
- Sarai Cook (alt. for Tarra Simmons)
- Suzanne Cook
- Lew Cox
- Sen. Manka Dhingra
- Judge Veronica Galvan
- Rep. Roger Goodman, Co-Chair
- Keri-Anne Jetzer (alt. for Judge Rumbaugh)
- Martina Kartman
- Gregory Link
- Mac Pevey (alt. for Sec. Sinclair)
- Chris Poulos
- Sec. Stephen Sinclair
- Melody Simle (alt. for Suzanne Cook)
- Tarra Simmons
- Clela Steelhammer
- Jon Tunheim, Co-Chair
- Judge Josephine Wiggs-Martin
- Councilmember Derek Young

Additional Participants:

- Megan Allen
- Damon Brown
- Amanda DeLay
- Kelsey-anne Fung
- Bruce Glant
- Adam Hall
- Omeara Harrington
- Jaime Hawk
- Carla Lee
- Kelly Leonard
- Noreen May Light
- Lauren Knoth
- James McMahan
- Joel Strom
- David Trieweiler
- Waldo Waldron-Ramsey
- Davina
- Kathleen Hambrick

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

MEETING GOALS: • Check-ins and updates from members • Continue consensus deliberations on recommendations for inclusion in 2020 Report • Review of draft 2020 Report

WELCOME, AGENDA REVIEW and GROUND RULES

Amanda welcomed Task Force members, alternates, and guests and reminded participants that the meeting is recorded for TVW. She noted the Task Force will be having consensus deliberations on 4 potential recommendations that had been revised based on feedback at previous meetings. Chris reminded the group of selected ground rules. Amanda noted that the Task Force has reached consensus on 43 recommendations so far.

INTRODUCTIONS

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

CO-CHAIR UPDATES

Rep. Goodman, Lydia Flora Barlow, and Jon Tunheim thanked members and alternates for their hard work and commitment during and between all the meetings.

FACILITATION TEAM UPDATES

Amanda reminded the Task Force that the last meeting of this year is on 12/17. She reminded members that the Task Force will go back to meeting once a month between January and June 2021. The Facilitation Team is planning to share a final draft of the report on 12/17 and asked members to send comments or edits on any factual inaccuracies as soon as possible.

CONSENSUS DELIBRATIONS

Amanda and Chris reminded members and alternates of prior conversations on the potential recommendations and read each one before testing for consensus. Members (or alternates if their member were not present), were asked to indicate if they support, can live with it, or cannot live with each recommendation up for consensus.

Potential Recommendation #20: Revised proposal- Authorize courts to relieve, either in part or full, restitution payments owed to entities by individuals who a court determines lack the means to make payments now or in the realistic future.

Original proposal- Authorize courts to relieve, either in part or full, restitution payments owed to entities who are not victims (i.e., insurance companies, state agencies) by individuals who lack the means to make payments. Chris noted that at the 11/19 Task Force meeting, members had consensus on the concept of the recommendation.

Deliberations:

- The small group that worked on the language of the revised proposal, recognizing Task Force agreement on the spirit of the recommendation, worked to refine the recommendation to provide more guidelines on when the court has discretion.
- A member shared that based on the collaborative work, they thought the new language clarified the court's role.
- Another member expressed interest in making sure restitution is protected, while someone else asked if a way exists to track how much restitution gets paid.

Consensus agreement reached.

Potential Recommendation #13: Revised Proposal- The Legislature should review earned early release time and consider increasing the percentage and doing so in a way that provides greater simplicity and consistency in earned early release calculations.

Original Proposal: Increase earned early release time to a minimum of 33% for all crimes and enhancements and increase earned early release time 50% for some crimes and apply changes retroactively.

Deliberations:

- Members of the grid subgroup reported disagreeing on the appropriate amount of earned early release time, but agreement that some increase is acceptable.
- A member requested more detail in the last sentence, suggesting "should allow DOC to apply a uniform earned early release time."
- Another member explained the calculation of times under the current statute.
- A DOC representative could not take a position without knowing what the Governor's office supports.
- For DOC calculating earned time under the current system gets highly complex; having one number would help simplicity.

- Pre-SRA, the state had a rehabilitative philosophy, then shifted to a punitive philosophy (via the SRA) and has now begun moving back toward a more rehabilitative philosophy.
- Suggestion: the language could say “that the legislature entertain a uniform release time.”
- A member wondered how many individuals receive earned early release time and suggested bringing down the ranges of the grid while getting rid of earned early release time. Another expressed opposition to doing away with earned early release time because DOC uses it as a behavioral management tool.
- Members discussed different percentage amounts for increasing earned early release time and, as in earlier deliberations, could not agree on a specific number so opted to leave the recommendation general.
- Some expressed support for addressing earned time in the sentencing grid because they believe it is tied closely to the grid.
- Members acknowledged the logic in leaving the recommendation vague, because the language means different things to different people.
- There have been success stories with individuals reentering the community who were convicted for serious crimes, even as earned time has decreased. The member said a mechanism to “look back’ at the sentences of incarcerated people is important (rather than having any changes to earned time apply only to sentences issued after the date of those changes).

Consensus agreement reached.

The consensus recommendation is below, with a Task Force input section that members requested be included.

The Legislature should review earned early release time and consider increasing the percentage for certain crimes and doing so in a way that provides greater simplicity and consistency in earned early release calculations.

Task Force Input during Consensus Deliberations:

- Multiple members suggested the Legislature establish (allow DOC to apply) a uniform earned early release time.
- Some members opposed increasing earned early release time to 50% for all crimes or for increasing earned early release time for serious violent crimes to 33%.
- Others expressed support for increasing earned early release time to 50% for all crimes.
- Members expressed support for applying changes retroactively.
- Members opposed further reducing earned early release time.

Potential Recommendation #25: Revised Proposal- Change current law to give judges the discretion to waive or suspend interest on restitution, rather than it being mandatory, based on a finding of current or likely future ability to pay.

(Note: This is a sub-bullet of Recommendation #25; be Task reached consensus on the second and third bullet points at the 11/19 meeting. A small work group met to revise the first bullet point, listed above.)

Original Proposal- Address interest on restitution:

- *Change current law to give judges the discretion to impose interest on restitution, rather than it being mandatory.*
- *Where imposed, allow accrual of interest to begin following release from the term of total confinement.*
- *Lower the current 12% interest rate.*

Deliberations:

- The small group shared their thinking when reworking the first bullet point.
- There were no questions by members or alternates.

Consensus agreement reached.

Potential Recommendation #27: Revised Proposal-

- **Victim Penalty Assessment:**
 - The legislature should fully fund victim services and eliminate the Victim Penalty Assessment (VPA)
 - Upon motion by the defendant, the court should be given the discretion to reduce or waive the VPA upon a finding by the court that the defendant is indigent and lacks the ability to pay.
 - Stacking of multiple VPAs should be eliminated
- **DNA Collection Fee and Criminal Filing Fee:**
 - Upon motion by the defendant, the court should be given the discretion to waive all but one previously imposed DNA collection fee.
 - Upon motion by the defendant, the court should be given the discretion to waive any criminal filing fee(s) imposed at sentencing upon a finding by the court that the defendant is indigent and lacks the ability to pay.

Original Proposal- Eliminate mandatory nature of the Victim Penalty Assessment (VPA) such that:
 1) the court be given discretion to impose the VPA at sentencing based on a person's ability to pay, and
 2) the court be given the discretion to waive the VPA post sentencing if an individual later lacks the ability to pay. This waiver opportunity should apply retroactively to previously imposed VPAs and other mandatory LFOs that were prospectively amended in 2018. Certain LFOs are mandatory. For these LFOs, the Legislature has divested the sentencing court of any ability to consider a defendant's ability to pay, thus these LFO must be imposed.

Deliberations:

- A member explained the small groups effort between meetings to create the revised language.
- Another member shared constituent input about wanting to ensure victims services are continually and better funded. They do not think the funding should come from the low income and people of color communities overrepresented in the criminal justice system.
- A member expressed concern about using the word 'indigent' because it has a specific legal definition and proposed changing it to 'individuals that lack the present and future ability to pay.'
- A member worried that if the Legislature does not fully fund victim services, the rest of the recommendation would result in decreasing victim services.
- Another observed that due to the budget deficit, it is not likely the state would fully fund victim services.
- The recommendation does not say the court has to eliminate the VPA, just consider it. They also noted that the VPA differs from the Crime Victims' Compensation fund. The second bullet point recognizes that some people have not been and will never be able to pay, which has an impact on their lives.
- If 90% of individuals are indigent, then this is a misguided way to get money from a defendant. This member noted the widespread economic injustice and called for a larger conversation about the cost imposed on families and communities when an individual is incarcerated.
- A member suggested to use the language 'consider modification of' on the first bullet point.
- Some members shared that how difficult this conversation was for them due to their personal experience. They reminded fellow Task Force members of the negative impact these issues can have on families.
- Another member noted that once an individual serves their sentence, their reentry process benefits if receive forgiveness.
- That the deductions of pay in prisons can be as high as 90% and families are paying to care for their family members in prison.
- A member asked where the funding for victim services goes. It goes primarily to prosecutor's offices or system-based victim services.
- A member could not "live with" the first bullet point because they did not support eliminating the VPA.
- Members discussed the issue of how the VPA gets funded and whether the legislature could identify an alternative means of funding other than defendant-funded services.

The Facilitation team tested for consensus on each bullet point of the recommendation, adding the language in italics based on members' suggestions.

Victim Penalty Assessment:

- The legislature should *identify alternate and sustainable means of funding for victim services and eliminate defendant-funded moneys such as the Victim Penalty Assessment (VPA).*

Not in consensus. Two members could not support the above bullet.

For the second VPA bullet:

- A member asked to change "should" to "could" because it would not pressure the courts to reduce or waive.
- Another member suggested the language "the court be given".

Consensus agreement reached on the following wording for second bullet:

- *The court be given the discretion to eliminate stacking of multiple VPAs (multiple VPAs imposed at same time)-based on a finding that the defendant lacks the present and future ability to pay.*
- A member asked for a note that clarifies that stacking refers to multiple VPAs at one time.
- A member asked to add the language "present or future ability to pay".

For the top bullet under DNA Collection Fee and Criminal Filing Fee: "Upon motion by the defendant, the court should be given the discretion to waive all but one previously imposed DNA collection fee."

- A member said this would impose a costly and time-consuming task on courts.
- Another said the language "upon motion by the defendant" can be a barrier for defendants due to lack of access to justice.

Consensus agreement reached

For the second bullet under DNA Collection Fee and Criminal Filing Fee: "Upon motion by the defendant, the court should be given the discretion to waive any criminal filing fee(s) imposed at sentencing upon a finding by the court that the defendant is indigent and lacks the ability to pay."

- A member noted that they think it is odd to call someone a defendant after they have already served their time.
- Another explained they would be considered a defendant for legal purposes.

Consensus agreement reached

Task Force members requested inclusion of the comments below in the verbiage accompanying recommendation:

Task Force Input during Consensus Deliberations:

- Differing perspectives:
 - Some members of the Task Force support the elimination of the VPA and reliance on defendant-funded moneys for victim services.
 - Others objected to taxpayers fully funding victim services.
- First bullet under DNA Collection Fee would apply retroactively but could violate state prohibition against gifting (verbiage from bill 1783 could address this concern).

The Facilitation Team congratulated the Task Force on reaching the end of consensus deliberations!

REVIEW OF DRAFT 2020 REPORT

Amanda reviewed the layout and structure of the draft report. Anything on which the Task Force reached partial consensus came under the consensus section with context explaining the rationale for those not in consensus.

The report lists the non-consensus recommendations a separate section. The facilitation team asked members and alternates to look for factual inaccuracies and provide those to the facilitation team.

NEXT STEPS

The next meeting (final meeting of 2020) occurs December 17th from 8:45am-1pm. The Facilitation Team asked members to review the draft report and provide feedback.

QUESTIONS FROM OBSERVERS

- **Q:** A recent article noted that Democrats were asked to limit the number of bills they propose; how would that affect Task Force recommendations? **R:** Rep. Goodman noted that due to the logistical challenges of virtual sessions, Representatives are limiting themselves. He stated, "In my own quota of bills, I have reserved two spots for Task Force related bills."
- The facilitation team mentioned a couple questions submitted (via the "chat" function of Zoom) about what charges would be eligible for earned early release at 33% and how that might affect racial disparities in the system.
- **Q:** Do incarcerated victims benefit from the VPA fund? **R:** If they have a case going through the system, being incarcerated would not preclude them from system-based services.
- **Q.** What do other states do about fees and interest? **R.** Keri-Anne shared that she had sent a resource that lists what other states do.

Wrap-Up

A member shared a personal story about their time in prison: they got sentenced to 36 months and released after one year. The member explained that the longer you spend behind bars, the harder it gets to turn your life around. They shared that the job they had in prison gave them hope for the future and expressed a desire to see studies on trauma and the effects of long sentences.

Another member expressed appreciation for the stories shared and questions asked by guests. They noted that trauma extends beyond the individuals incarcerated to their families and communities. It can be hard for others to fully understand the impacts if you are not immersed in it daily.

A guest shared a story about their family member having made one mistake as a young person and said we need changes in sentencing including moving towards education, counseling, rehabilitation, and reentry in the system.

Another guest shared about a townhall meeting they are hosting related to COVID-19 and the incarcerated.

A guest said that victimless crimes need to be classified in a different way and hopes the Legislature will look at treating them differently.

CO-CHAIRS' CLOSING THOUGHTS

The Task Force co-chairs expressed gratitude for the work the Task Force has done, noting the great responsibility members had accepted by committing to consider the impact of the system on lives in WA state. They thanked members for the intention, care, and thoughtfulness of the members and alternates. They acknowledged the toll that this work takes on members and noted that the conversations can feel antiseptic and removed from the lived experiences. They expressed hope that when reviewing the report at the final meeting, that members and alternates will feel the work has been worth it and commit to stay engaged next year.

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