

Washington State Criminal Sentencing Task Force
Meeting Summary: July 9, 2020 | 8:45am-12:45pm
Virtual Meeting via ZOOM

Task Force Member & Alternates Attendees:

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

Additional Participants:

Michael Althaus; Anthony Blankenship; Kelsey-Anne Fung; Bruce G.; Adam Hall; Omeara Harrington; Cynthia Hollimon; Anna Johnson; Davina Kerrelola; Lauren Knoth; Kelly Leonard; Brittany Lovely; Rep. John Lovick; Professor Karin Martin; James McMahan; Sydney Oliver; David Trieweiler; Matt Tremble; Shannon Turner; Kehaulani Walker

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 Reentry & Reducing Recidivism working group • Review upcoming Task Force meetings and overall work plan

WELCOME, REVIEW AGENDA and GROUND RULES

Amanda welcomed Task Force members, alternates, and guests and reminded participants that the meeting was being recorded for posting on TVW. Chris gave an overview of the ground rules and highlighted a few related to decision making and moving toward consensus. Amanda reviewed the agenda: the meeting would focus on a “second offer” of potential recommendations from the Reentry & Reducing Recidivism working group (RWG) with members and alternates practicing using virtual meeting tools for consensus decision making.

INTRODUCTIONS

Chris shared roster changes that occurred since the June meeting:

- Russ Hauge stepped down as Chair of the Sentencing Guidelines Commission (SGC) and Keri-Anne Jetzer is serving as interim SGC Task Force representative until the SGC has a new Chair.
- DeVitta Briscoe had to step down from the Task Force due to a shift in job responsibilities and Martina Kartman will fill DeVitta’s former role of victims’ advocate. DeVitta will serve as Martina’s alternate.

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

FACILITATION TEAM UPDATES

Amanda thanked working group members for all the hard work they are doing. Each group meets every other week and the grid subgroup meets weekly. The working groups need more time to discuss potential policy changes, leading to a “third offer” of potential recommendations. To allow for sufficient time for the Task Force to understand and consider the potential recommendations, starting in September the Task Force will meet twice monthly.

Chris noted that the facilitation team is aware of the furloughs affecting many of the members and will do its best to accommodate the schedule changes. He asked legislative and other Task Force members representing constituencies to be open about what legislation they plan to push for in the next session. Such transparency is important to the collaborative process and can help the Task Force prioritize their time on areas that need consensus.

CO-CHAIR UPDATES

Rep. Goodman noted the immense amount of work the Task Force and its working groups are doing and mentioned a potential Task Force timeline extension. He also noted that the sentencing grid work will not be ready for the 2021 session. Jon Tunheim shared gratitude for the continued commitment and energy of the Task Force.

REENTRY & REDUCING RECIDIVISM WORKING GROUP

Amanda reviewed the working group’s efforts to date and walked Task Force members through the protocol for “taking the temperature” of the group using thumbs-up, thumbs-down, and hand-clap (for thumb sideways) onscreen symbols. One member abstained from all temperature reads.

“SECOND OFFER” OF POTENTIAL RECOMMENDATIONS ON LEGAL FINANCIAL OBLIGATIONS – Nick Allen

Potential Recommendation #1: Authorize courts to relieve restitution payments in part or full to any insurance provider for individuals who lack the means to make payments.

- This recommendation would allow individuals to go back to the courts and ask for a waiver of restitution, similar to the way it is done with costs. Nick said this could apply beyond insurance providers to include other organizations like state agencies (but not applicable to restitution to individual victims).

Consensus Practice: The “temperature read” showed 10 members with thumbs up and two with thumb sideways.

Potential Recommendation #2: Allow for automatic waiver of existing non-restitution interest.

- This recommendation would waive existing non-restitution requiring the individual to file a motion in court. Nick reminded the Task Force of a previous question related to the constitutional prohibition of ‘gifting’. Members indicated legislative staff could look into this. The facilitation team will follow up with staff.

Questions/Comments/Responses:

C: A member pointed out that the notes (explaining how this potential recommendation would address Task Force goals) say it increases the cost of incarceration to the state. Is it supposed to say it reduces the cost? **R:** Yes, that is a typo.

Consensus Practice: Members had 13 thumbs up.

Potential Recommendation #3: Allow for relief of interest on restitution.

- This recommendation would eliminate the 12% interest rate on restitution. Nick noted it is related to the first recommendation and the group can consider how they go together.

Questions/Comments/Responses:

- **C:** A member shared a story about the interest they had to pay off and the hardship that such payments create for families of incarcerated individuals.
- **Q:** Is this an automatic elimination of interest? **R:** Yes, I believe it would be automatic.
- **C:** Another member said they support this recommendation, but this is a way the court system is paid for and noted the gap would need to be filled.
- **C:** A member requested the working group have more conversation on this recommendation, citing concern about restitution paid over time to a direct victim.
- **C:** I'm generally supportive of this notion. I like the idea of interest being automatically suspended if someone is incarcerated and then judicial discretion thereafter.

Consensus Practice: The temperature read showed 5 thumbs up, 3 thumbs sideways, and 2 down.

Potential Recommendation #4: Allow individuals to address LFOs while still incarcerated – provide relief options while people are incarcerated.

- This would allow incarcerated individuals and those who have left confinement to petition for relief options. The court would have discretion to waive LFOs.

Questions/Comments/Responses:

- **Q:** Would this also lift costs and fees? **R:** It would not apply to any principle on restitution, with one potential exception: if the Task Force went along with potential recommendation #1 to apply for a waiver.
- **C:** A member said they like the idea of allowing individuals to address this while incarcerated.
- **C:** A member expressed general support for getting rid of costs and fees and asked how this would apply in court. **R:** Nick mentioned a previous court case (*State v. Schertz*) that addressed lack of money prohibiting access to programs.
- **Q:** What about a bill that suspends interest while individuals are incarcerated and decides if it should be waived once they get out? **R:** From a judicial perspective, that decision would be much easier (than having to decide it up front).
- **C:** A member asked about the reference to someone with outstanding LFOs prohibiting them from programs. **R:** Yes, that was what was alleged in *State v. Schertz*. **R:** I support where this is going, just trying to figure out if it is policy or statute driven.
- **C:** I also support where this is going. It is a huge financial burden and knowing that families are paying and that it may be waived once they get out.

Nick noted that he thinks the intent is to allow access to the same functions as everyone else in the community (e.g., waiver of appellate or hardship cost)

Consensus Practice: 8 thumbs up and 5 sideways.

Potential Recommendation #5: Have statute of limitations on collection of LFOS.

This recommendation revisits whether there should be a time limit to a court's jurisdiction on collection of LFOs. Currently the court has jurisdiction to collect LFOs until paid in full. Does it help with successful reentry if the court still has jurisdiction over individuals?

Questions/Comments/Responses:

C: A member had reservations about the breadth of the recommendation, not wanting to jeopardize restitution to victims. They were more supportive of this recommendation regarding restitution owed on insured losses.

C: A member noted that there was a limit on LFOs and restitution and the only thing the cap does is give the court the power to imprison someone if they do not pay. In other words, the limit was on when the court could jail someone.

C: Another member mentioned a bill that mirrored the juvenile statute that a legislator plans to put forward again next session. This bill is related to potential recommendation #1.

Consensus Practice: 8 thumbs up and 3 thumbs sideways, and 1 down.

Potential Recommendation #6: Create statutory authority for courts to review and adjust or waive fines.

The purpose of this recommendation is to create a statute consistent with the statute related to cost, since there is no current statute for an individual to petition the court for a waiver of fines. Currently the person has to be pulled into court for failure to pay. This recommendation would allow an individual to file a motion without having to wait for the court to act.

Questions/Comments/Responses: No questions from members.

Consensus Practice: 12 thumbs up and 1 sideways.

Potential Recommendation #7: Consider developing and implementing guidance for local jurisdictions to follow governing the transfer of LFOS to collection agencies.

This recommendation formerly would have limited or prohibited LFOs from getting transferred to collection agencies. The working group modified it to suggest the state Legislature provide guidance around this, but still allow local jurisdictions to make their own policies addressing how accounts are turned over to collections, what additional costs are imposed when in collections, and what the payment schedule looks like.

Questions/Comments/Responses:

- **C:** A member shared a personal story about the hardship of having \$30K in LFOs turned over to collection agencies, who only allowed the member to pay \$300 per month
- **C:** A member noted that debt collectors are notorious for poor record keeping and that this area is ripe for reform.
- **C:** Another member mentioned they don't want to see this lead to unfair costs at the local level. They don't see the recommendation causing significant fiscal issues, but they would ask for a replacement of the funds.

Consensus Practice: 13 thumbs up

General Task Force Input on Potential LFO Recommendations

Amanda opened the discussion up for the Task Force to provide guidance to the Reentry working group. Chris asked members and alternates if anything is missing or things the group should work on that hadn't been mentioned yet.

- **C:** A member asked for more specifics on how supervision could be changed and what legislative proposals can be put forward. **R:** Amanda reminded the Task Force that a review of the community supervision potential recommendations will happen after the break.
- **Q:** Can I get more clarification on potential recommendation #1? My understanding is that it would be broadened to agencies, hospitals, but if it was an individual victim, that would be an exception?
- **Q:** Was the information from the minority consortium reviewed for these recommendations? **R:** I was on the consortium and a lot of the information was from a survey.
- **C:** On potential recommendation #1, I put my thumb sideways because I was not sure if we reached agreement on expansion in the working group. I have thought about entities that would be affected and most of them are insured. I am only thumb sideways because I am still thinking about it. **C:** I would agree with that. When we were dealing with the mirrored juvenile one, we dealt with the question of if the state is an insurer.

Amanda thanked Nick for presenting the potential recommendations and the entire RWG for all their hard work.

BREAK

PRESENTATION ON CURRENT SUPERVISION APPROACH – MAC PEVEY

Mac presented on the Department of Corrections (DOC) current community supervision approach. Slides from the presentation can be viewed [here](#).

- **Q:** A member asked how the percentage of individuals receiving family and offender sentencing alternatives can be increased. **R:** Mac noted that there is a second half of the (sentencing alternatives) program not

included in the number listed on the slide, adding that this is an area where education is continually provided.

“SECOND OFFER” OF POTENTIAL RECOMMENDATIONS ON COMMUNITY SUPERVISION – Mac Pevey

Potential Recommendation #1: Develop and implement a formal motivational & coaching focused supervision model, which includes trauma informed care and core correctional practices and allows for a more responsive and individualized case management approach to facilitate successful transitions and reentry to the community. This supervision model should consider staffing needs, caseload, and program/service delivery, including how community corrections officers dress during routine home and work checks.

- Mac noted that this recommendation is about how DOC approaches supervision in the future.

Questions/Comments/Responses:

- **C:** A member said they strongly support this recommendation and the direction DOC is taking, noting that some individuals cycle through county jails without getting any supervision or reentry services.
- **C:** A member thanked the working group for considering research when looking at this recommendation. They want to be conscientious of the disproportionality that could increase with widening the eligibility for supervision.
- **C:** A member said they do not necessarily want to expand supervision but asked if the only people who get support are those on supervision, or if a larger group could benefit. **R:** There are opportunities in prisons to provide reentry plans to those not supervised. **R:** This may be a place where more investment is needed to provide more services.
- **C:** A member commented that they strongly support this recommendation and that idea of justice reinvestment.

Consensus Practice: 7 thumbs ups, 4 sideways

Potential Recommendation #2: Conduct routine home and work visits in a manner conducive to successful reentry.

- Mac noted the intent is to implement a more consistent appearance for DOC staff in uniform that appropriately fits the given situation. This may require additional funding to outfit staff in “soft uniform”.

Questions/Comments/Responses:

- **C:** There is a police department that sends detectives in plain clothes for check-ins with sex offenders.
- **C:** A member said they visited an organization in Oregon where everyone was dressed in plain clothes because it positively affects interactions with people. They supported this recommendation outside of places where officers’ safety is at risk.

Consensus Practice: 13 thumbs up

Potential Recommendation #3: Early access to reentry services for all individuals being released from confinement associated with felony convictions.

- Mac mentioned this recommendation speaks to a resource issue.

Questions/Comments/Responses:

- **Q:** What is the tension here between resources and access to services? In the past I’ve heard that access to reentry services early on is not appropriate, since there are not enough resources. Some places don’t have access to all the programming. **R:** My understanding is that we are talking more holistically, tending to be programming focused but reentry services applies to anything. There would be a benefit to providing services early on. Also, the jail populations are not getting access to resources where it would benefit them.
- **Q:** Are you asking to front load supervision services to fill gaps for those who come out of jail without access to these services? **R:** For example, the housing voucher was expanded to women transitioning out of jails

who previously didn't have access. Also, chemical dependency treatment is critical for a lot of individuals and often there is a waitlist for that service.

- **C:** I think we have provided the WSU study on the second chance grant that showed that early access to reentry services increased successful outcomes.

Consensus Practice: 11 thumbs up.

Potential Recommendation #4: Simplify tolling of supervision terms: terms of confinement shall be tolled for any period of time when an individual has absented themselves from supervision without the prior approval of the entity in whose custody the individual has been placed, during which a Secretary's Warrant has been issued; a period of time for which a Bench Warrant has been issued as specified by the court; while an individual is serving confinement time as part of the original sentence; and any period of time in confinement for a subsequent felony conviction (including pre-sentence confinement as confirmed by the detaining facility, a return per RCE 9.94A.633, or reclassification per RCW 9.94A.660/664).

- Mac noted this recommendation is for a change in statute.

Questions/Comments/Responses:

- **Q:** Is it pre-sentence confinement? **R:** It would be to toll time only on a felony conviction.
- **C:** This is a significant opportunity for justice reinvestment. Resources used here could be better used in supervision. **R:** Mac noted DOC has about 40 FTEs focused on tolling.
- **Q:** Can you explain a situation when a bench warrant would be issued that relates to an underlying conviction? **R:** It is for an underlying conviction where they are on supervision. The secretary's warrant is when the court still retains jurisdiction (e.g., Sex Offender Sentencing Alternative, Drug Offender Sentencing Alternative).

Consensus Practice: 10 thumbs up, 1 sideways, and 1 down.

Members shared thoughts on what they might need before voting on the recommendation.

- **C:** I see this as a way to save resources, and not as a best practice. **R:** I don't want there to be negative consequences if there was a minor misdemeanor. I feel like we may be removing a tool or resource that could be used to reduce criminal history scores, or a way to reduce reentry barriers. As presented, I do have concerns as to whether this is a best practice. **R:** This is trying to add a little truth in sentencing. It hard for people to plan a life because tolling is on and off again. Maintaining a level of accountability and access to reentry services. Having a goal and end date for supervision. **R:** It also is a risk issue for the department and record keeping. It's the amount of movements, the 1-2 days stays that become difficult to track because data resides with the county jails. **R:** I agree with you, a couple of days here or there makes no sense.
- **C:** I hear your concerns and have similar ones. I'm thinking about unintended consequences, so will be "thumbs sideways" on this.
- Mac has a draft revised statute he can share with the Task Force.

Potential Recommendation #5: Supervision (including eligibility, duration, and sequencing and intensity of requirements/programs) should be based on an individual's Risk Needs Responsivity (RNR) and research and evidence-based practices and not solely on their conviction(s).

- This recommendation is related to Risk Needs Assessment (RNR) and would be more of a guiding principle than a specific statutory change.

Questions/Comments/Responses:

- **Q:** How does race and equity fit into this recommendation? To what extent can this recommendation be implemented in a way that makes sure disproportionality doesn't increase? **R:** Lauren Knoth (Washington Institute for Public Policy aka WSIPP) noted that WSIPP is currently conducting a study but it does not include race and equity. The study looks at the two risk assessments, with a report due at the end of October.

- **C:** I'm generally supportive of this recommendation and the RNR approach. I believe in having a more individualized approach. I do not want to see someone who has low risk and high needs to be screened out.
- **C:** I agree, it needs to focus on how we set people up for success and meet their needs. To address racial impact, the process that goes into place needs to have a dynamic factor: as they get their needs met, they should become lower and lower risk. I am in support of moving in this direction.
- **C:** This was an SGC (Sentencing Guidelines Commission) recommendation, to base supervision on RNR instead of an offense. **Q:** Would the assessment be done prior to sentencing or release? If prior to release it could dovetail into the PSI (pre-sentencing investigation) conversation. **R:** Once they enter the system is when an assessment is done. **Q:** Does that only apply to people admitting to prison and not jail? **R:** Correct.
- **C:** I wanted to comment on racial disproportionality and static vs. dynamic risk assessment. I would caution against making decisions based on Washington ONE (a risk assessment tool) without a racial disproportionality impact study.
- **C:** Needs assessment might be more important. I strongly support that the response to someone who violates the law should be based on each individual. I think there needs to be legislation around this and am looking forward to specific legislative proposals.

Consensus Practice: 6 thumbs up and 4 sideways.

Amanda noted that potential recommendation #6, listed below, is language the facilitation team put together from conversations at the last RWG meeting.

Potential Recommendation #6: Addressing liability concerns (previously referred to as tort reform) will be an important element of any new supervision model. The creation of a small group with key interests represented should address this issue outside the Task Force.

Questions/Comments/Responses:

- **Q:** Is it a parallel process or is it something happening on a separate timeline, as a way to get around the Task Force process? **R:** I'm not certain about sequencing and if this is scope creep. But it is related to all the recommendations we talked about. There is risk of liability that goes into decisions made by DOC staff.
- **C:** I do think this is a critically important issue to set up the department with a new model and fundamentally changing the culture. I appreciated how the facilitation team worded it. I think we should be focused on liability related to the work we are doing.
- **C:** I believe it should be within the Task Force, whether it a working group or the entire Task Force.

Amanda said the RWG will have more conversations about the potential recommendation and discuss what the process would look like. Chris reminded the Task Force that the facilitation team will share themes from the mid-point check-ins at the next meeting, and that the [facilitation team's slide deck](#) in meeting materials on the Task Force website includes some bullets summarizing the mid-pint check-in findings.

QUESTIONS FROM OBSERVERS

Q: Will LFOs be retroactive? And if you change the duties of the CCOs would there be no liability? **R:** Difference between negligence vs. gross negligence. **R:** It is related to cases filed against DOC and it is not always negligence and we settle so it does not become a fiscal piece.

C: I have resources I can share about LFOs and the costs of collections.

Q: Are meetings open to the public? **R:** Yes, they are open to the public and materials can be shared.

ADJOURN