

Washington State Criminal Sentencing Task Force
Meeting Summary: November 19th, 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:

- Damon Brown
- Carl Filler
- Kelsely-anne Fung
- Bruce G.
- Omeara Harrington
- Jaime Hawk
- Lauren Knoth
- Joanne Smieja
- David Triewailer

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

WELCOME, AGENDA REVIEW and GROUNDRULES

Amanda welcomed Task Force members, alternates, and guests and reminded participants of recording the meeting for TVW. She noted the Task Force will be having consensus deliberations on recommendations and that the meeting time had been extended until 3pm. Chris reminded the group of selected ground rules, encouraging members to focus on solutions and make their points briefly to give everyone a chance to speak.

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

Lydia Flora Barlow thanked members and alternates for their time and efforts. She shared that she is impressed with conversations taking place in the Legislative Working Group meetings about bills for the upcoming session.

FACILITATION TEAM UPDATES

Amanda reminded the Task Force that the workplan shows the Task Force completing consensus deliberations by the December 3rd meeting and that the draft report will be available by 11/30. The facilitation team hopes to have it finalized by 12/17.

CONSENSUS DELIBERATIONS

Amanda and Chris read each recommendation and how it meets the goals of the Task Force. Members and 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. The Facilitation Team tested for consensus on all the recommendations on the agenda, before returning to discuss the ones that had thumbs down from members.

Potential Recommendation #20: 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.

Deliberations:

- A member said they don't necessarily agree that state agencies are not victims. Suggested language "the change would only be effective if/when the state general fund provides money for the underlying services."
- Another member asked, "If an individual cannot initially pay, does that close the door to payment in the future?" **R:** If a court found that an individual could not pay, the obligation would go away, but the recommendation is broad and gives the court the discretion to waive part of the legal financial obligation (LFO) or reduce the LFO. This would not impact the court's ability to impose restitution at imposition, it would occur later if an individual lacks the ability to pay restitution owed to non-individual victims.
- Another member said they were uncomfortable with agencies not being victims and gave an example of counties absorbing costs, noting they do view insurance companies differently than agencies.
- To note some nuance, the language could be "who are not persons or owed to entities that have not directly suffered a loss."
- Members agreed there was consensus on the concept, but not the language.

Members agreed to have a small group of people work on the language of the recommendation and bring it back to the full Task Force at the 12/3 meeting.

Potential Recommendation #21: Automatically waive existing non-restitution interest.

Consensus agreement reached.

Potential Recommendation #22: Expand eligibility of individuals able to seek relief from LFOs to include persons who are incarcerated. Incarcerated individuals requesting relief would still be subject to the same criteria as those in the community (i.e., the court has discretion to determine whether individuals or family members are experiencing hardship). Additionally, the court could consider pausing the accumulation of interest during period of incarceration.

Consensus agreement reached.

Potential Recommendation #23: Create statutory authority for courts to review and adjust or waive fines.

Consensus agreement reached.

Potential Recommendation #24: Consider developing and implementing guidance for local jurisdictions to follow governing the transfer of LFOs to collection agencies.

Consensus agreement reached.

Potential Recommendation #25: 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:

- A member struggled with the fact that restitution is a unique type of LFO, compensating someone for a loss that has a monetary value (which changes over time), so that is why we have interest.
- Can the first sub bullet point be changed to include criteria to determine interest?
- Another member suggested allowing discretion for insurance companies and government entities.
- Another member said they would be thumbs down on the first sub bullet point because for domestic violence victims and survivors the financial impacts are very important.
- Can a small group work on the first sub bullet point to revise it where members could live with it?
- Other members noted the burden of interest on families and communities.

A small group of members will work on the recommendation and bring it back to the Task Force on 12/3.

Potential Recommendation #26: Address the courts statute of limitations to enforce collection of LFOs.

- Reduce available time for which the court has jurisdiction to collect LFOs.
- Give court discretion to retain jurisdiction where restitution is owed and there is a willful failure to pay.

Deliberations:

- A member thinks there should be no statute of limitations on judges' orders and asked what the current statute of limitations is.
- Another responded that there is currently no statute of limitations. This recommendation would revert to the law in place prior to the early 2000s when there was a 10-year term to collect.
- A member noted that prior conversations included debate about distinguishing between those who *can't* pay and those who *don't* pay. suggested the verbiage 'jurisdiction will be retained' instead of 'give court discretion to retain.'

Consensus agreement reached. New language in italics below.

Address the courts statute of limitations to enforce collection of LFOs.

- Reduce available time for which the court has jurisdiction to collect LFOs.
- *Jurisdiction will be retained* where restitution is owed and there is a willful failure to pay.

Potential Recommendation #27: 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 shared that the retroactivity component is difficult for them to get behind and they are hesitant to take anything away from victims.
- Another member shared that victims' services programs in prosecutors' offices rely on these funds. While they agree philosophically that not having those in the system pay for the system makes sense, we would need another source of funding.
- A member noted that the victim penalty assessment is charged to everyone, that it is not restitution and that it funds victims' services.
- Another member would not support the recommendation without the reference to retroactivity.

- A member asked whether data is available related to the VPA.
- Another member had concern about funding.
- A member agrees that having defendants/individuals in the criminal justice system pay for it is ineffective, commenting that this recommendation talks about people not currently paying but is revenue neutral. They believe that eliminating retroactivity would increase complexity.
- This recommendation does not require courts to waive the VPA, it allows them to look at it and decide based on all the information.
- A member appreciated all the comments, mentioning that with retroactivity it is hard to get a waiver or reduction to LFOs. A person would need to file a remittance motion, provide financial information, and meet the standard under the statute of manifest hardship; the court still has discretion and the state always can object.
- Can the Task Force could propose a study?
- Dr. Alexis Harris (University of Washington) is a leading expert on this and wrote a recent book on it.
- The Task Force agreed to have a small group of members work on this recommendation and bring it back to the 12/3 meeting.

Potential Recommendation #30: Provide early access to reentry services for all individuals being released from confinement associated with felony convictions.

Deliberations:

- A member asked if reentry services include transitional housing. **R:** It depends on funding.
- Another mentioned not wanting early access to reentry services impact early release.
- Others shared that this recommendation supports what DOC is already trying to do and previous conversations were about abilities for individuals to make connections prior to release and to add capacity.
- A member expressed desire that the group make sure not to overload transitional housing. Suggested adding ‘prior to release.’
- Another member abstained due to fiscal concerns, stating that services should be available before and after release.

Consensus agreement reached. New language in italics below.

Provide early access to reentry services for all individuals *prior to* being released from confinement associated with felony convictions.

Potential Recommendation #32: Simplify tolling of supervision terms to provide clarity and transparency regarding end dates for supervision and access to reentry services. Terms of supervision 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 and during any period for which a Bench Warrant has been issued as specified by the court or a Secretary’s Warrant has been issued;
- 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).

Deliberations:

- A member expressed concern about existing draft legislation related to this that their constituency opposes.
- Another responded that there is currently no legislation or bill drafted and that the Task Force’s conversations are important to influence any bill that comes forward.
- What exists today drives a DOC records function with administrative costs that comprises a consistent source of risk for the agency and this recommendation gets to the core of reducing errors in sentencing.

- The opposing member said then that they could live with it but noted that their constituency's policy folks may have a different view in the future.

Consensus agreement reached.

Potential Recommendation #46: Require DOC to develop and implement formal processes to prioritize rehabilitation, including:

- Staff training that prioritizes supporting successful rehabilitation and reentry.
- Each facility working with relevant organizations to provide input in decision-making around incarcerated students' learning and/or access to programming.
- A formal review process to review requests and decisions that impact incarcerated students and/or the organizations that support programming.

Deliberations:

- A member asked what DOC currently prioritizes. **R:** A member responded that DOC has interest in reentry but based on limited service resources they often prioritize access based on release date.
- A member had an issue with the word 'require.'
- Another suggested using the language 'support DOC efforts' instead of 'require DOC'

Consensus agreement reached. New language in italics below.

Support DOC efforts to develop and implement formal processes to prioritize rehabilitation, including:

- Staff training that prioritizes supporting successful rehabilitation and reentry.
- Each facility working with relevant organizations to provide input in decision-making around incarcerated students' learning and/or access to programming.
- A formal review process to review requests and decisions that impact incarcerated students and/or the organizations that support programming.

Potential Recommendation #47: Require DOC to establish (or revise existing) clear and enforceable code of conduct for officer behavior that emphasizes respectful, equitable, and fair treatment of all individuals under DOC jurisdiction.

Deliberations:

- A member abstained due to lack of context and another member abstained due to confusing language is subpoint c in the explanation.

Consensus agreement reached.

Potential Recommendation #48: Until custody staff have sufficient preparation and incentive to support and prepare individuals for release, there should be greater eligibility requirements for DOC commanding officers (COs), Sergeants, Lieutenants etc., seeking to become Counselors and/or Correctional Program Managers.

Deliberations:

- A member wondered if this asks DOC to go outside of normal channels for hiring and expressed concern for the constituency they represent (if that were true).
- DOC has begun implementing new values and building the values into their hiring and promotion practices.
- Some members expressed confusion over what this recommendation tries to achieve.
- A member explained that this recommendation focuses on the culture shift at DOC and what the various roles require and would not take jobs away from employees.
- Members expressed appreciation for codifying this because leadership will not always stay the same.
- A member suggested saying "support DOC efforts."

Consensus agreement reached. New language is in italics below.

Support DOC efforts to provide sufficient preparation and incentive for custody staff to support and prepare individuals for release and greater eligibility requirements for DOC *Correctional Officers (COs), Sergeants, Lieutenants etc.*, seeking to become Counselors and/or Correctional Program Managers.

Two members volunteered to fill out the explanation section of how this recommendation meets the policy goals.

Potential Recommendation #49: DOC should reevaluate policy through a process that accords equal weight and measurement to rehabilitation goals as it does to security goals.

Deliberations:

- This work is part of the new agency values DOC created and relates to how they evaluate their staff.
- Members expressed confusion about what this recommendation meant.
- A member stated that this would show broad support for the changes that DOC has begun implementing.
- Previous conversations talked about codifying it in law assisting in future DOC leadership changes.
- A member asked about the public safety point in the explanation section. The facilitation team changed the word ‘valorize’ to ‘promote’ in response.

Consensus agreement reached (italics removed from the recommendation).

NEXT STEPS

The next meeting is December 3rd from 8:45am-3pm. The Facilitation Team asked members to review the draft report, once it is sent out and provide feedback.

There are 5 recommendations coming back for discussion at the next meeting.

QUESTIONS FROM OBSERVERS

Resources on LFOs were sent to the facilitation team who will send them out to the Task Force.

Q: About LFO recommendations #25 and #27. For those who are opposed, why do you believe there will be a loss of services to victims? **R:** The role of a system-based advocate is to help victims understand what is happening and be a liaison between deputy prosecutors. Nobody knows for sure whether the revenue would drop or not. We don’t know how often judges would use discretion. My focus is basically not having to lay off victims advocates because resources are not available. I am in favor of have more sustainable funding for advocates.

R: Victims’ advocates are highly specialized and very needed. I don’t think people understand how invaluable they are in a county or prosecutors’ officers. Loss of funding would be detrimental to the public as a whole.

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