

Washington State Criminal Sentencing Task Force

DRAFT Meeting Summary: January 9, 2020

Criminal Justice Training Center, 19010 1st Ave. S., Burien, WA

Task Force Attendees (in person unless noted):

- Judge Veronica Alicea-Galvan
- Nick Allen
- Lydia Flora Barlow
- DeVitta Briscoe
- Suzanne Cook
- Lew Cox
- Sen. Manka Dhingra
- Rep. Roger Goodman
- Sonja Hallum
- Russ Hauge
- Rep. Brad Klippert
- Gregory Link
- Sen. Mike Padden
- Rafael Padilla
- Judge Roger Rogoff
- Chief James Schrimpsner
- Tarra Simmons (video conference)
- Sec. Stephen Sinclair
- Clela Steelhammer (attending on behalf of Elaine Deschamps via video conference)
- Nick Straley (attending on behalf of Nick Allen)
- Jon Tunheim
- Councilmember Derek Young

Facilitation Team: Amanda Murphy, Chris Page, Molly Stenovec, and Hannah Kennedy (video conferencing) – William D. Ruckelshaus Center

WELCOME & INTRODUCTIONS

Facilitators Chris Page and Amanda Murphy welcomed the Criminal Sentencing Task Force (Task Force) and asked members to respond to the following questions: *What do you want to see from this Task Force in 2020? Imagining it is December 2020, what does success look like?*

Multiple members shared hopes for draft legislation toward a brand-new, reimagined sentencing system. Others would like the system to incorporate current data and research on adult sentencing. Some envision a system that will address sentencing disproportionality and issues of racial and economic justice. Members also desire a sentencing system that:

- reduces recidivism and existing population of incarcerated persons;
- uses resources more effectively;
- focus on measuring sentencing effectiveness and monitoring;
- does not create unfunded mandates;
- can respond and adapt to changing circumstances and new information;
- balances accountability, public safety, perspectives of individuals who are victims of crimes as well as those who may have committed a crime; and
- increases simplicity, yet also provides space for nuance.

Members noted the likely need for financial resources to implement system improvements and a path for transition from the current system to the new. A few members also hope the Task Force will maintain its commitment to working together and relying on each other in service of Washington state.

COMMENTS FROM FACILITATION TEAM

Amanda explained that content, process, and relationships are all critical to success in collaborative problem solving. Since the first four Task Force meetings centered on process and content, she emphasized that today's meeting would focus on relationship building.

REVIEW AGENDA, GROUNDRULES, and PREVIOUS MEETING'S SUMMARY

Action: Task Force members will send contact information and name for an alternate, if desired, to molly.stenovec@wsu.edu.

Decision: all members present accepted the Facilitation Team's recommendation to revise the day's agenda to move the Legislation Working Group update to the morning. Chris and Amanda noted the Task Force may not get through all the presentations scheduled today but that the group would continue presentations at the February Task Force meeting as needed.

Action: the Facilitation team will work with the co-chairs to develop a process for sharing video conference technology and integrating other perspectives into future meetings.

Decision: all members present accepted the December meeting summary as final.

LEGISLATION WORKING GROUP

At its November 2019 meeting, the Task Force conveyed consensus to the following policy recommendations: 1. Terms of community supervision should run concurrently, unless explicitly directed as consecutive and 2. Individuals could earn supervision compliance credits that would shorten terms of supervision. The Legislation Working Group (Co-chairs and members of the Legislature) presented draft legislation based on the recommendations. Members of the Task Force then had an opportunity to provide input on both bills.

H-3570 Concerning Community Custody: Multiple terms of community custody will run concurrently unless the court explicitly indicates that the term(s) shall run consecutively.

Questions and Comments:

- Members discussed differences between “community custody” and “community supervision.” The latter may more accurately reflect what DOC does, but statute references both.
- Some expressed concern that the exception (consecutive terms) may become the rule. To address that concern, some voiced the importance of educating judges on the rationale for terms of community supervision to run concurrently. However, others noted that separate crimes should be considered separately and that a judge would need to be clear about why terms should run consecutively.
- Others observed that discretion may lead to bias; however, the Task Force has an opportunity to think about data collection and measurements to identify and address disproportionality. Possible data points include: rate at which judges and counties direct concurrent or consecutive terms

Decision: all members present conveyed consensus to H-3570

H-3571 Supervision Compliance Credit: The representatives explained this bill allows individuals to earn shorter terms of supervision by complying with the terms of supervision.

Questions and Comments:

- Members discussed administration and process for awarding supervision compliance. Many members expressed support for administrative or third-party review.

Decision: Task Force approves H-3571

Action Item: the public hearing for H-3570 is tentatively scheduled for January 21 at 3:30 pm at the Capitol. The Facilitation Team will send confirmation when dates and times are announced for hearings on both bills.

GUIDED WALKS THROUGH THE SENTENCING SYSTEM

Law Enforcement: Chief James Schrimpscher and Chief Rafael Padilla

- Chief Schrimpscher’s department works in small, tight-knit rural communities spread over a large geographic range. Officers must communicate and work effectively with communities because the person an officer arrested last week may help an officer deescalate a situation this week.
- Police officers have an extremely tough job. They work on the front lines, making myriad quick decisions, each of which requires considering multiple factors. This requires a variety of skills: to be able to identify probable cause, take DNA, document a crime scene, deescalate situations, etc.
- According to Chief Schrimpscher, Washington state is 51st out of all states and the District of Columbia in per capita ratio of police to residents. Both Chiefs, Schrimpscher and Padilla, emphasized how difficult it is to recruit and maintain quality officers. It can also be hard to keep officers motivated. It can be frustrating for officers to, for example, arrest someone only to re-arrest the same person 12 hours later.
- Law enforcement is only one portion of the criminal justice landscape; police deal with the beginning and the end of the sentencing system.
- Chiefs Schrimpscher and Padilla also highlighted the high stakes police officers face – they have the least influence over sentencing outcomes but also serve as the public face of the system within the community, often taking the heat when things do not work well.

Comments, Questions and Responses (for Clarity and Understanding):

- **Q:** Can you explain medically-assisted addiction treatment? **R:** Individuals with substance abuse disorders receive mandated treatment while incarcerated. Upon released, individuals are connected with providers who can help continue treatment. Based on his experience, Chief Schrimpscher believes there are few things the government can do to compel an individual to seek treatment until the point of prosecution/conviction.
- Jail management: to address overcrowding and/or improve likelihood of conviction, some counties (e.g., King County) reduce charges from felony to misdemeanor. This creates lots of confusion for officers just leaving the Academy, who then need retraining on what elicits a *felony charge in practice*.
- Terminology: Several Task Force members expressed diverging perceptions of “public safety” terminology (i.e., what about the safety of persons who committed crimes? Which communities’ safety gets prioritized?).
- Officer accountability: Chief Schrimpscher addressed wider societal concerns over excessive use of force. Although it is now common for officers to wear video camera in other parts of the country, Washington jurisdictions have hesitated to adopt body-worn cameras because the sheer number of public records requests for the video footage and the resources required to fulfill them. Chief Padilla expressed gratitude that officers in Kent wear cameras, noting the repercussions for improper conduct and pointing out that officers do get held accountable for their actions when documented.
- Evolution of law enforcement philosophy: departments used to prioritize filling open positions, but now recognize the value of waiting to hire the right candidate, even when it costs more in the short term.

Prosecuting Attorneys: Jon Tunheim¹

- Prosecution represents a different lens than law enforcement. Officers must look at probable cause; however, prosecutors need to think about the evidence and consider what charges can be proven.
- The public is often not aware of prosecuting guidelines.
- Subtle language differences in the prosecuting guidelines influence how prosecutors pursue *crimes against people* versus *crimes against property*.
- Different prosecutors approach sentencing with different philosophies. It is difficult to think about uniformity across the state because Washington’s state constitution designated 39 different systems (by

¹ See <https://ruckelshauscenter.wsu.edu/meetings-and-materials-criminal-sentencing-task-force/> for pdf of presentation

giving each county the authority to design their own), each with their own local rules, cultures, and communities and constituents.

- Since prosecutors in Washington state get elected, their constituents can hold them accountable.
- Jon prefers to use “plea negotiation” instead of “plea bargain,” which has a negative connotation. Trials are expensive, so plea negotiation can be a more efficient use of resources.
- Sentencing elements include:
 - Term of confinement;
 - Alternatives to confinement;
 - Term of community custody;
 - Conditions (e.g., prohibitions); and
 - Legal financial obligations.

Comments, Questions and Responses (for Clarity and Understanding):

- Time and information management: prosecutors face incredibly tight timelines to present information. Washington citizens have a right to a speedy trial (60 days from arraignment if individual in custody, 90 if not).
- Incentives to plea: individuals who get incarcerated pre-trial have a higher incentive to negotiate. Although our constitution affords a presumption of innocence, the system does not always function that way. People who go to trial, to present more evidence, and better advocate for their case are the people who are *not* incarcerated from time of arrest to time of trial.
- Shifting discretion: Sentencing Reform Act (SRA) was passed to address sentencing disparities perceived to have arisen from discretion among judges, but primarily moved the discretion into prosecutors’ hands.
- **Q:** Why do defendants change pleas? **A:** Often an arraignment occurs before the defense attorney can gather sufficient information. Thus, most defense attorneys and their clients enter an initial plea of *not guilty*, which starts the process of discovery. The client may plead guilty later in the process, after more information comes to light.
- Addressing disparity among cases and the data: Jon described the push and pull between ensuring people get treated equally for similar conduct, while also recognizing that the motivations for individual behavior are often unique.
- Collecting data is resource intensive and there are few uniform standards of the data kept (e.g., Washington has 39 counties and 39 systems of data collection). **Possible task for group:** Identify the types of data to collect and the resources needed to collect that data.
- **Q:** How has the ethos changed from “war on drugs era”? **R:** Jon explained that as society’s understanding of addiction has changed, so has the prosecutorial approach: formerly viewed as a personal or moral failing, addiction is now understood as a disease that affects people’s behavior.
- Often, the victim and the person committing a crime know each other or come from the same community.
- Victims’ perspectives get incorporated differently across the state and among different communities.
- Some noted the challenge of protecting witnesses, in part, because of the Public Records Act and disclosure of names to the media.

Defense Attorneys: Gregory (Greg) Link²

- Greg works with clients in all 39 Washington counties, which enables him to see variations across the state and among jurisdictions.
- Defense attorneys have a reactive role in the sentencing system: the prosecution files charges, while the defense must respond.

² See <https://ruckelshauscenter.wsu.edu/meetings-and-materials-criminal-sentencing-task-force/> for pdf of presentation

- Greg used a PowerPoint presentation to discuss the offender score. The increasingly complex rules have led to a difficult system to understand—a punitive system with more disparate outcomes. In particular, Greg focused on Washington’s multipliers:
 - 15 offense-specific multipliers make current charges more serious.
 - The compounding effect of multipliers has increased over time. For instance, some juvenile offenses are now included in the offender score calculation.
 - To highlight the current system’s complexity, Greg offered a case study: “How to deal with out-of-state convictions?” The rules direct officials to look at comparable Washington state statutes, but it can be difficult and time-consuming to make such comparisons. For example, motor vehicle theft, depending on how the out of state conviction is interpreted, can result in a sentencing difference of 18 months and may get treated differently by different counties.
 - Greg suggested one possible way to reduce disparity, at least between appeal cases: to have one entity, such as the Attorney General’s office, handle appeal cases.

Comments, Questions and Answers for Clarity and Understanding:

- **Q:** How did the offender score come into being? **A:** The system is based on the assumption that past behavior is somewhat indicative of future/current behavior.

Counties/Local Government: Councilmember Derek Young

- Councilmember Young spoke about the burden Washington counties face to administer felony cases with inadequate and restricted resources. This tension has grown since the Great Recession: Pierce County has grown by 100,000 people since 2008, but now has fewer County employees.
- Counties rely on revenue generated by sales and property taxes; however, state law limits property tax increases to one percent annual growth, which does not keep pace with inflation.
- Washington’s local taxation system, which results in over-reliance on local revenue to administer justice, creates large economic differences among counties: Pierce County has roughly the same number of cases per capita as King County but has nearly half the staff and resources.
- Councilmember Young acknowledged local government’s desire for a more just criminal justice system but cautioned the Task Force to avoid additional unfunded mandates. The current strain of limited resources makes many local officials wary of new, additional responsibilities for judges and prosecutors.

Comments, Questions and Answers for Clarity and Understanding:

- Suggestions to reducing the funding disparity among counties included:
 - State management of public defense or other big dollar expenses;
 - Create a process for state to reimburse counties; and
 - Adopt a McCleary-type approach to create a mix of state and local funding.
- Unintended consequences of the SRA: Currently counties pay the bulk of the cost of Washington’s criminal justice system. Prior to SRA, counties primarily confined individuals convicted of misdemeanors, but now county jails are mostly comprised of individuals with felony convictions.
- Unfunded mandates: State law restricting public defenders’ caseloads has increased counties’ criminal justice expenses since that requires hiring additional public defenders to preserve citizens’ right to a speedy trial (while ensuring individual defenders’ caseloads are below the legislatively-mandated cap).
- Innovation at the county level: Counties can be laboratories for democracy because
 - Officials and citizens are often better positioned to work together towards mutually agreeable solutions.
 - Counties sometimes have desperate and need for a different process (i.e., drug court alternative) and opt for collaboration. (Regarding the latter, some members shared examples of partnerships across jurisdictions to reduce areas of duplication.)

- **Q:** Given that any new “asks” of counties should come with funding, is it possible that the appetite for certain types of justice is something a county is just unwilling to afford? **R:** Councilmember Young does not believe that his county has resources that could be redirected but is unwilling to do so; most county funds are restricted and allocated to other duties required by the state (e.g., elections).
- Councilmember Young highlighted the cost-savings of reforming the system, particularly with a “justice reinvestment model.”

Department of Corrections: Secretary Stephen Sinclair

- Secretary Sinclair explained the Department of Corrections (DOC) has a dual purpose of justice and liberty—administering justice by holding persons accountable in confinement and creating pathways for individuals to achieve and maintain their liberty (i.e., reducing recidivism). To achieve this, DOC needs to be able to support individuals during and after confinement.
- He noted that DOC gets held responsible for Washington’s complex sentencing system. For example, the individuals in the State’s supervision system have about five hours of contact a month, but DOC (and ultimately taxpayers) are liable for individuals who commit another crime while on supervision. Secretary Sinclair aspires to be able to implement a supervision program similar to Arizona (i.e., would like the flexibility to invest more in individuals who need more resources and support).
- He shared a video about Arizona’s efforts to transform the state’s supervision program to focus more on behavioral change in place of the traditional purely punitive approach. Video can be seen via: <https://www.pbs.org/newshour/show/a-personalized-approach-to-probation-saved-arizona-461-million>

Comments, Questions and Answers for Clarity and Understanding:

- Individuals at DOC have had follow-up conversations with some peers in Arizona.
- Is effective supervision about the quantity or quality of hours of supervision? Is there a threshold for the number of hours that are appropriate?
 - DOC funded a 2004 caseload study. As a result, the agency prioritized contact time based on level of need. Other research has demonstrated that every dollar invested in such an individualized supervision program would likely have a return of \$16.

Statewide Family Council (Incarcerated Persons): Suzanne Cook

- For the past 15 years, Suzanne has experienced the system as the wife of an incarcerated person. Her husband is now serving a second sentence for an earlier crime, to which he “allegedly” confessed while serving his first term of confinement. He will die in prison. 28 years in prison has negatively affected his health and well-being. Poor health hinders his ability to work. Suzanne described the prison’s medical care as frighteningly limited.
- Suzanne sees the sentencing system through the lens of what happened in 1992—how that affects the lives of incarcerated persons and their friends and family, and how that contrasts with current knowledge. She believes her husband would receive a different sentencing outcome if he entered the system today.
- Sentencing is not just about the length of confinement—it’s about what happens in that period and what programs and activities an individual can access during that time.
- Suzanne described the burden placed on family members of incarcerated individuals: family members literally bear the costs—paying for phone calls, visits, and supplemental food. For every dollar she gives to his account, her husband only gets 55 cents, with the difference applied to his legal financial obligations (LFO), with a 12% interest rate. His LFO debt (originally \$3,500 in 1992) has not yet been fully paid, despite more than \$7,000 in payments to date.
- Suzanne works two jobs, yet her life revolves around providing for someone in the care of the State.
- Suzanne encouraged the Task Force to consider ways to reduce the number of individuals incarcerated, such as revisit old sentences, parole, or medical release. Reducing the number of individuals incarcerated, she believes, would allow more resources to be allocated to those still incarcerated.

Comments, Questions and Answers for Clarity and Understanding:

- Task Force members expressed their interest in further discussion of LFOs; would like to reduce the number of rules that pass costs on to families.
- A member asked that as the Task Force discusses how to reform and refine the system, the group looks to use resources more judiciously, while considering the voices of families who have lost loved ones.
 - Suzanne acknowledged victims' right to justice, but also asked the group to consider what we mean by justice. Historically many people were given longer sentences. Now, though we know that it doesn't necessarily take 25 years to change someone's behavior, we still haven't seen the current system adjusted accordingly.
 - She shared the important and positive role families can play in helping incarcerated individuals reach their potential. Yet, under the current system, family members often feel like an extension of the incarcerated, which is difficult emotionally and financially. Family members want to support each other, but it is hard and complicated to do.
 - Suzanne also spoke to the societal costs. Most incarcerated people will be released from prison; the public is less safe if those coming out of incarceration have not had family/community engagement while in confinement. If prison is not a restorative place, then we are just perpetuating the system.

REFLECTIONS

The Facilitation Team asked Task Force members to share one thing they learned. Responses included:

- The immense scale of the system; even individuals who have been immersed in the field for years still have more to learn.
- A member indicated they haven't often thought of the time spent in incarceration.
- Another member shared they had a family member die in prison; this meeting brought up things they had not thought about in a long time.
- Some of the dysfunction and confusion might be because we are trying to control things at the local level, but we don't have a unified local court system.
- One member said they learned more about the tension between ideas and cost of implementing those ideas.
- Another found the history of the offender score enlightening.
- Questioning society's understanding of time served; what does it mean to come back to a community that continues to ostracize you?
- A Task Force member was horrified by the financial burden Suzanne's family and others face.
- Another member was surprised by the number and variety of perspectives Task Force members had on the system; they can now better appreciate the complexity.

Action item: Chris and Keri-Ann to explore what parts of the SGC report should go in front of the reducing recidivism group. **Complete:** Pages 22-27.