

Washington State Criminal Sentencing Task Force

DRAFT Meeting Summary: February 6th, 2020

WA State Liquor and Cannabis Board, 1025 Union Ave SE, Olympia, WA

Task Force Attendees (in person unless noted):

- Judge Veronica Alicea-Galvan
- Nick Allen
- Lydia Flora Barlow
- DeVitta Briscoe
- Suzanne Cook
- Lew Cox
- Rep. Roger Goodman
- Russ Hauge
- Rep. Brad Klippert
- Gregory Link
- Rafael Padilla
- Mac Pevey (attended in the afternoon on behalf of Sec. Sinclair)
- Judge Roger Rogoff
- Chief James Schrimpsker
- Tarra Simmons
- Sec. Stephen Sinclair
- Clela Steelhammer (attending on behalf of Elaine Deschamps)
- Jon Tunheim
- Councilmember Derek Young

Facilitation Team: Amanda Murphy, Chris Page, Molly Stenovec, Hannah Kennedy – 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 question: *What is one thing you learned from Task Force member presentations last month?*

Members said they appreciated hearing different perspectives on and experiences with the criminal justice system. Some felt it strengthened the group, helping members find common ground and build trust.

REVIEW AGENDA and GROUND RULES

The Facilitation Team reviewed the meeting agenda. Chris and Amanda reminded members of their shared ground rules and asked them to remain engaged during each presentation.

Decision: all members present accepted the Facilitators' recommendation to revise the agenda, reordering presentations and postponing a review of the January meeting summary until more members had arrived.

GUIDED WALKS THROUGH THE SENTENCING SYSTEM

Crime Victims Perspective: Lew Cox

The founder and Director of Violent Crimes Victim Services (VCVS), Lew Cox, described his organization and the sentencing process from the perspective of families grieving the violent loss of a loved one. Founded after the murder of Lew's daughter, VCVS provides crisis intervention for people across South King County and Pierce County, with additional chapters serving other communities across the state. VCVS's role is not to defend the criminal justice system, but to help victims' families understand and navigate it. Lew and VCVS have worked with more than 1,200 families. The following provides an overview of the VCVS process:

- Victims' families usually connect with VCVS through detectives or chaplains. VCVS spends several hours with families, ensuring they understand what to expect throughout the court and sentencing process. VCVS may accompany family members to court, or to meetings with law enforcement and prosecutors.
- VCVS helps families navigate media inquiries.
- VCVS supports victim families through the sentencing process and helps them set-up long-term plans.

- VCVS encourages family members to talk about the loss of loved ones; this communication is an integral part of the grieving and healing process.
- VCVS facilitates monthly support groups for those who have had loved ones murdered. New members are asked to commit to attend at least three meetings. The meetings are emotional and highly charged. These groups help family members process their grief, grow, and heal; people can stay as long as they need.

The following bullets summarize clarifying questions and responses among Task Force members:

- **Q:** What are victim families' primary interests in the criminal justice system? **R:** First and foremost, families want justice. The first question families usually ask is *how much time are they going to get? Or will they get the death penalty?* The majority of people only know what they see on TV, so VCVS usually has to explain various aspects of the system. For example, many families don't understand why a defendant who has confessed would enter a not-guilty plea. It can be difficult and frustrating for families to understand.
- **Q:** Victims and victimizers often come from the same community or neighborhood. This may lead to family members asking for mercy. Do you and VCVS see this in your work? **R:** Victim family appeals for mercy are rare, but they do happen. When a loved one is murdered, people hurt beyond conception. However, with hard work and as time goes on, some people start to heal and as the healing process drives out the pain, they may become more compassionate towards the victimizer. When genuine remorse is expressed, it really means a lot to the family.

Judges: Judge Veronica Alicea-Galvan and Judge Roger Rogoff

Judge Alicea-Galvan and Judge Rogoff talked about the current sentencing system from a judicial perspective. Judge Rogoff began by walking the Task Force through Washington's current sentencing grid and criminal history grid. The sentencing calculations consider felony class (i.e., A, B, or C) and seriousness level, as well as criminal history (i.e., "offender scores"). The resulting sentencing range often leaves a judge little choice.

According to Judge Rogoff, the quality of sentencing is often determined by the quality of information judges receive. It is difficult for judges to go outside the sentencing range. To sentence above the range, a judge needs agreement from both parties (i.e., prosecution and defense) and the jury. Sentencing below the range requires a judge to issue judicial findings, which in turn have a significant evidentiary burden.

Homicide cases are rare and usually present judges with more information; they are also the cases with the most judicial discretion. The Drug Offender Sentencing Alternative (DOSA), the Family and Offender Sentencing Alternative (FOSA), and Sex Offender Sentencing Alternative (SOSA) also allow for more individualized sentencing in some cases. In addition to finding ways to increase judicial discretion, Judge Rogoff also asked the Task Force to rethink supervision as helping rehabilitate individuals, instead of as a strictly punitive measure.

Judge Alicea-Galvan explained the judicial perspective and process after charges have been filed and/or a plea agreement presented. Court rooms get emotional. Some cases are quite difficult; some bring significant pain and trauma to court rooms, with families on both sides in crisis mode. It is important to acknowledge that judges are sentencing a family when sentencing an individual.

Judge Alicea-Galvan also emphasized the importance of information to help judges make better decisions. She urged the group to think of justice more broadly, to consider what we want to see in the community as well as the fact that each case carries underlying issues, nuances, and context.

Judges are presented with various combinations of the following:

- Scoring sheet (determines how the "offender score" got calculated);
- Defendant Sentencing sheet (if a plea agreement reached); and
- Impact statements from defendant and/or victim.

Higher-level crimes tend to give judges less pause about their decisions. Judge Alicea-Galvan would like to see pre-sentencing reports on lower-level cases (the cases judges see the most and can have the greatest impact on). Both judges emphasized the constraints they face in sentencing and felt with more discretion (i.e., judicial choice), particularly in lower level cases, they could better account for the context of each case when sentencing.

The following bullets summarize the dialog and clarifying questions and responses among Task Force members:

- **Q:** Since increasing judicial choice may risk shifting bias from one part of the system to another, what should the Task Force consider when trying to reduce racial bias in the sentencing system? **R:** Racial bias is a systemic issue and there is no magic bullet; each decision-making point prior to sentencing can introduce and compound bias. However, Judge Rogoff did recommend the following:
 - Any proposal the Task Force considers should include ways to improve demographic data collection.
 - Discretion should follow public accountability (i.e., because judges are elected and their decisions are public record, their use of discretion may be more readily checked by society compared to prosecutorial discretion).

This led to a wider Task Force discussion on whether and how sentencing can address past bias in the system. Some members expressed concern that judicial discretion can increase or compound bias, while others saw such discretion as a tool to reverse or mitigate bias from other points in the system.

- **Q:** Why do pre-sentencing reports for homicides no longer include interviews with families (as in the 1990s)? **R:** The reduction in information provided and the number of pre-sentencing reports compiled was primarily a budgeting decision. In the mid and late-1990s there was no limit to which cases could request a pre-sentencing investigation. The number and quality varied by county, and they became too costly to maintain.
- **Q:** Do you usually make a judgement before or after hearing from victim and defendant family members? **R:** Such decision points vary, though they are constrained by the sentencing range or plea-bargain for each case. Judge Alicea-Galvan emphasized the importance of listening to everyone in the courtroom, including the defendant, before sentencing. Judge Rogoff acknowledge the stress and challenge of speaking in a courtroom; not everyone can emotionally move a room when their life and/or families' healing is at stake.
- **Q:** How do judges get criminal history records, particularly when prosecutors' offices strongly discourage law enforcement from sharing criminal records? **R:** Criminal trials require a higher burden of proof than law enforcement recommendations (i.e., beyond a reasonable doubt vs. probable cause); prosecutors often don't want previous crimes to inform their case. When criminal history is pertinent to a case judges usually get just the name and year of the crime without any descriptive or contextual information.

Crime Victims Perspective: DeVitta Briscoe

DeVitta Briscoe, Survivor Network Coordinator with Collective Justice, described her work in restorative justice. She shared her story: she felt her rights as a victim were violated when the young person that shot her son got the maximum sentence. She considered this overly punitive given the facts of the case and asked the prosecutor not to sentence him without her present, but the court date got rescheduled and she was not informed. DeVitta explained that this did not feel like justice and that her perspective and needs were ignored in the sentencing process. DeVitta now works with Collective Justice to address mass incarceration and interpersonal violence through restorative justice initiatives. The following summarizes DeVitta's explanation of restorative justice and the question and response discussion that followed:

- There are many models of justice. The current sentencing system views justice as punishment. *What laws were broken? Who did it? What punishment do they deserve?* This does not always meet victims' needs.
- A restorative justice model asks: *Who has been harmed? What needs and obligations arise as a result of this harm? How can, and who, must meet these needs and obligations?*
- Victims have many different perspectives and ideas about justice. Many victims are marginalized. The communities that experience the most violence often get left out of the policy-making process.

- Survivor-led programs may best address the needs of survivors, yet community-based responses are often de-legitimized. Frontline approaches to harm (i.e., enforcement) receive more funding than community-centered approaches.
- Restorative justice is often misunderstood. DeVitta explained it by emphasizing what it is not:
 - Restorative justice is not *new*. Justice has been administered and managed within communities for centuries.
 - Restorative justice is not *primarily about forgiveness and reconciliation*. Although restorative justice sometimes provides a context for forgiveness to be possible, it is not necessarily the objective.
 - Restorative justice is not *mediation*. Mediation assumes shared blame, whereas restorative justice is about meeting the needs of victims and ensuring victimizers accept responsibility for harm they have caused.
 - Restorative justice is not *primarily intended for minor offenses or first-time victimizers*. Restorative justice initiatives actually appear to be most successful in addressing serious crimes and harm.
 - Restorative justice is not *a panacea*. Restorative justice is not going to replace the criminal justice system, but it can be a tool to better support the needs of victims.
- DeVitta explained the importance of restorative justice programs being voluntary. Court-based restorative justice programs may be coercive. No one enters violence for the first time committing it. Victims and perpetrators are not always distinct. Some communities experience both state and interpersonal violence.

Questions and Responses:

- **Q:** How can we address the tension that occurs when community-based solutions get folded into the criminal justice system? For example, a judge may make a community mentor part of a formal sentence, but in doing so the mentor then becomes part of the “system.” **R:** Lack of funding can constrain restorative justice work; however, law enforcement could partner more with community-based programs to provide a “carrot and stick” approach to violence reduction. Often, we apply only one approach at a time (i.e., carrot OR stick, not both). Instead, by creating enforcement and community partnerships, we could balance prevention with consequences while improving relationships between law enforcement and communities.
- **Q:** What does community mean? **R:** community could be shared racial or ethnic identities. Collective Justice defines community as those impacted by state or interpersonal harm.
- **Q:** How does/can restorative justice fit into the current system? **R:** Restorative justice is about being able to hold all the complexities. It acknowledges the lived experiences of all sides of the criminal justice system and can offer a seat at the policy table to communities that often don’t have a voice.
- A Task Force member suggested increasing funding for restorative justice programs.

Incarcerated Persons Perspective, Nick Allen

Nick Allen provided an overview of his organization and shared some of the experience his clients (or constituency) have had with the sentencing system. Nick is a staff attorney with Columbia Legal Services, which provides statewide civil legal aid. Columbia Legal Services does advocacy and operates an intake line and provides case-specific referrals. Although Columbia Legal Services does not typically take individual cases, the intake line helps them identify systemic issues. Ending mass incarceration is one of Columbia Legal Services’ priority areas.

Nick talked about how his work includes regular engagement with people and groups within prisons (e.g., the Black Prisoner Caucus) to ensure the perspectives of those most affected get considered in discussions about changes to the sentencing system. Nick then shared stories and experiences from incarcerated people.

Takeaways include:

- The sentencing system is complex and often not well understood by the individuals arrested and incarcerated. Many individuals don’t have access to resources such as legal advice as they seek waivers or reductions of interest on their Legal Financial Obligations (LFOs).

- Recommendations from incarcerated persons' perspective include provisions for retroactive review to provide opportunities to address historic bias and injustice. Nick emphasized the importance of not just reducing the number of individuals incarcerated, but also confronting disproportionality.

Nick shared examples of programs that have improved the sentencing system:

- Early review of juvenile sentences, which provide an opportunity to review sentences after a certain period of time; and
- Alternative sentencing systems, such as the Drug Offender Sentencing System.

The following bullets summarize the discussion and questions for clarity and understanding among the Task Force members.

- LFOs are a significant burden not just for the incarcerated individuals, but also for the families. Interest accrues (at a rate of 12%) during incarceration and individuals cannot seek financial relief until release.
- **Q:** In looking at disproportionality, is there an especially problematic point in the system? **R:** Bias occurs at every decision point, so addressing disproportionality doesn't have a single solution. The recommendations the Task Force put forth are both good proposals; however, they could be improved by adding steps, including data collection, to ensure that bias is not perpetuated or exacerbated.
- **Q:** What percentage of disproportionality stems from things built into the system (such as the differences between possession of crack vs. cocaine)? Who has that information? **R:** Aside from the example already mentioned, the group was not sure of other examples.
- **Q:** Regarding post-conviction reviews, are there best practices or examples from other states? **R:** There is general agreement that post-conviction review is a good thing, but no consensus on the best way to implement. Missouri has some lessons learned from developing a more therapeutic approach to the juvenile justice system.
- *Comment:* victims of crimes want to be made whole and to know that individuals are held accountable for their actions—regardless of an individual's racial or ethnic background. Others shared that addressing bias and disproportionality doesn't mean individuals should be punished more leniently, but that individuals should not be punished more harshly.

Note: During this portion of the meeting, a member of the Task Force used the term "colored person." Another member questioned this use of the term and explained how it is considered derogatory. Some members indicated they were offended by the term. The Task Force engaged in a discussion about the appropriateness of the term "person of color" and the inappropriateness of the term "colored person".

REVIEW DRAFT MEETING SUMMARY

During lunch, the members of the Task Force reviewed the draft January meeting summary. Suzanne Cook provided corrections regarding some of the numbers mentioned during her presentation.

Decision: all members present conveyed consensus and accepted the January meeting summary as final, with revisions.

GUIDED WALKS THROUGH THE SENTENCING SYSTEM:

Incarcerated Persons Perspective, Tarra Simmons

Tarra Simmons shared her personal experience with the sentencing system. She explained that she doesn't see a unified perspective or experience for all individuals but does see common threads among incarcerated persons: poverty, over-policed communities, victims of abuse, histories of violence and addiction, and limited education. Tarra described the burden that bail puts on people with low incomes and the low quality of medical and mental healthcare available.

Tarra also described how her record continues to affect her day-to-day life. Having a past felony conviction can prevent a person from volunteering to help children at local school districts.

She managed to get the help she needed to break out of addiction, at the root of her problems. She has since completed a law degree and is now running for public office. She explained that most people just need one break to go their way to “break the cycle” and change the trajectory of their life.

The following bullets summarize the discussion and questions for clarity and understanding among the Task Force members.

- Several thanked Tarra for sharing her story.
- Others acknowledged the trauma and vicarious trauma throughout the system, including members of juries, attorneys, and caseworkers, which can lead to dehumanizing and “othering” language as a coping mechanism. They encouraged the Task Force to consider how recommendations could lessen trauma for all.

Statewide Reentry Council Perspective, Lydia Flora Barlow & Christopher Poulos

Lydia Barlow serves on the board of the Statewide Reentry Council. She described watching a family member struggle through incarceration and reentry. She highlighted the challenges that individuals, families, and communities face. She then invited Chris Poulos, Executive Director of the Reentry Council, to share more about the Council and the issues facing formerly incarcerated persons upon release.

Chris shared personal experiences of incarceration and reentry then described the work of the Reentry Council.¹ The following bullets summarize the Reentry Council’s work:

- Seeks to apply a race and equity lens to the work;
- Advocacy work, including drafting and supporting legislation;
- Other accomplishments include the issue of state identification to individuals upon release from DOC custody.

After describing the current reentry system, Chris explored ways to improve the system. There is general societal agreement that we want people to be successful upon reentry. However, nearly a third of people released from incarceration in WA will be back in Department of Corrections (DOC) custody within three years (DOC custody does not include jail). Chris asked the group to consider what society’s response would be if one-third of cars crashed. He then offered some examples of positive change inspired by Norway’s criminal justice system. The following summarizes the discussion of the Nordic Model, questions and responses:

- The Nordic Model focuses on a humane response to incarceration. To ensure people succeed, we need to address the underlying trauma and factors individuals in the system face. If we want someone to succeed upon reentry, we need to prepare them for success before release.
- Aspects of the Nordic Model have already been implemented in Oregon, Alaska, and North Dakota and have led to better outcomes for incarcerated persons and correctional staff.
- **Q:** What challenges has the Reentry Council faced in adopting aspects of the Nordic Model? **R:** The biggest challenges are shifting staff culture and instituting organizational change. There may also be some labor considerations too.
- **Q:** How did Norway arrive at this system? **R:** The Nordic Model operates within a communitarian state and succeeds, at least in part, due to the wider social welfare state (as noted, aspects of the Model have been successfully adopted in the U.S.
- Several Task Force members expressed enthusiasm at the prospect of implementing aspects of the Nordic System in Washington state, particularly within the supervision system. For example, how a community

¹ See: <https://www.commerce.wa.gov/about-us/boards-and-commissions/statewide-reentry-council/>

correctional officer shows-up (i.e., in plain clothes vs. tactical gear) can have a profound psychological effect on the supervisee. DOC staff acknowledged they want to improve the supervision program.

- Another member pointed out the potential cost-saving benefits of adopting the Nordic Model and better preparing incarcerated people to succeed upon release. The member suggested the Legislature explore impact bond funding mechanisms (i.e., pay-for-success model) to make the necessary investments up front.
- A member asked the group to consider reentry and supervision through a racial equity lens. In Washington, prisons mostly sit in rural areas with staff from different communities than the populations they oversee. Many young people go to prison far from their communities. It is important to consider race and geography when trying to prepare incarcerated persons for success upon release. This led to a wider discussion about how to improve mentorship programs. Key points:
 - “Credible messenger” mentors are important;
 - The Task Force should consider ways to provide “credible messenger” mentoring opportunities and networks (e.g., beginning mentorship relationships 18 months prior to release and continuing after reentry and compensating mentors for their time and travel expenses);
 - Credible messengers are not necessarily social workers, but community members that have shared lived experience; and
 - Task Force members and/or DOC should consider ways to allow mentors to continue seeing mentees outside of prison. Currently, mentors need to report contact within 24 hours and some Task Force members are concerned this limits the success of mentorship programs.
- Other members commented on the role of prisons in rural economies. For some communities, the local prison may be the primary employer, keeping multiple generations of families employed. The economic importance of prisons in rural communities can exert pressure on their elected officials.

WORKING GROUPS

The Task Force did not have time for working groups, but the Facilitation Team shared updates:

- Both Working Groups met by phone since the January Task Force meeting. Meetings were process oriented.
- The Facilitation Team has developed a summary table for both groups to develop recommendations and apply criteria in a similar way. These tables will convey work to the full Task Force, and ultimately become the framework for a final Task Force report.
- Task Force members are not required to participate in a working group. The working groups are intended to do work between meetings and help the Task Force meet its December 2020 deadline.
- Amanda and Hannah will connect with the Sentencing Effectiveness Working Group to schedule their next call; and Molly and Chris will do the same for the Reentry Working Group.

Decision: all members present conveyed consensus to provide opportunities for interested persons to attend and observe working group meetings.

OPEN TIME FOR MEMBERS TO SHARE UPDATES/INFO & ENGAGE WITH PUBLIC IN ATTENDANCE

Members shared the following news and information that may be of interest:

- HB 2393, the "Compliance Credit" bill, and HB 2394, the "Concurrent Community Custody" bill, both passed out of committee (and as of February 21, 2020 both have passed the House). Current information can be found by visiting <https://apps.leg.wa.gov/billinfo/> and entering the bill number.

NEXT STEPS

The Co-Chairs recommend the Task Force visit the men's prison in Shelton. Molly will work with Lydia Barlow and others to schedule.

REFLECTION

Members shared the following reflections and experiences from the past two meetings:

- Feelings ranged from exhausted to excited and grateful to heartbroken;

- Appreciation to see the sentencing grid juxtaposed with the people and families affected by it, as well as the interconnectedness among communities and institutions;
- Gratitude to hear from so many perspectives and such personal stories, and that the group is taking time to acknowledge difficult topics and emotions;
- Appreciation for the personal commitment and passion everyone brings to the room; and
- Realization that there are strengths and weaknesses in all systems—and that this Task Force has an opportunity to address some of the gaps.

ADJOURN

DRAFT