

Washington State Criminal Sentencing Task Force
DRAFT Meeting Summary: October 15, 2020 | 8:45am-3:00pm
Virtual Meeting via ZOOM

Task Force Members & Alternates Attendees:

- Nick Allen
- Lydia Flora Barlow, 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
- Sonja Hallum
- Keri-Anne Jetzer (alt. for Judge Rumbaugh)
- Martina Kartman
- Rep. Brad Klippert
- Gregory Link
- Mac Pevey (alt. for Sec. Sinclair)
- Chris Poulos
- Judge Roger Rogoff
- Chief James Schrimpsheer
- Melody Simle (alt. for Suzanne Cook)
- Tarra Simmons
- Clela Steelhammer
- Nick Straley (alt. for Nick Allen)
- Jon Tunheim
- Councilmember Derek Young

Additional Participants:

- Megan Allen
- Michael Althaus
- Shani Bauer
- Damon Brown
- Vicki Christophersen
- Jeri Costa
- Carl Filler
- C. Gray
- Adam Hall
- Cynthia Hollimon
- Lauren Knoth
- Brittany Lovely
- James McMachan
- Victor Minjares
- Trisha Newport
- Sydney Oliver
- Joanne Smieja
- Matt Tremble
- David Trieweiler

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

MEETING GOALS: • Check-ins and updates from members • Complete discussion on “final offer” on potential recommendations from both Working Groups • Begin 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 that the meeting was being recorded for TVW. She noted the Task Force would review the remaining potential recommendations before starting consensus deliberations and that the meeting time had been extended until 3pm. Chris reminded the group of selected ground rules.

INTRODUCTIONS

Task Force members and alternates introduced themselves and shared organizational affiliations and the constituencies they represent on the Task Force. Chris reported a new member change: Judge Roger Rogoff is stepping down from the Superior Court Judges Association seat, with Judge Josephine Wiggs-Martin filling the

seat. Amanda and Chris reminded observers to send questions for the Task Force to the facilitation team or save them for the time reserved at the end of the meeting for questions.

CO-CHAIR UPDATES

Rep. Goodman, Lydia Flora Barlow, and Jon Tunheim expressed appreciation for the continued enthusiasm of members and alternates do this work and voiced hope for the work ahead.

FACILITATION TEAM UPDATES

Amanda reminded the Task Force that the facilitation team hopes to have the Task Force complete its consensus deliberations by the December 3rd meeting and shared a draft timeline for those deliberations and consideration of the final report.

“FINAL OFFER” OF POTENTIAL RECOMMENDATIONS and DISCUSSION

Amanda reported the Reentry & Reducing Recidivism Working Group (RWG) has some potential recommendations to discuss with the Task Force. To initiate discussion on each proposal below, the facilitation team read each recommendation before inviting comments and questions and getting a “temperature read” of Task Force member positions related to their support for each potential change.

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.

Discussion:

- Members discussed whether “require” would mean codifying in statute or not. Others expressed reluctance to micro-manage DOC policies and noted the importance of clarifying what needs to be in statute vs. policy driven.
- Members shared that DOC needs more staff to meet current and projected programming needs, asking whether other organizations could be better suited than DOC to provide rehabilitation programming. Regardless of who provides the programming, staff must still devote significant time staff inside prisons to organize the programming.

Consensus Practice: The temperature read showed 10 thumbs up, 3 thumbs sideways.

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.

Discussion:

- Members mentioned the importance of holding DOC staff accountable and suggested ideas including an enforceable code of conduct, a policy directive for accountability, and seeking accreditation as an organization.
- DOC has looked into accreditation in past years and reminded folks of the importance of having enough resources to achieve accreditation.
- Another member spoke of the importance of understanding the level of trauma that exists for those inside prisons and how it gets layered on top of previously existing trauma that people have.

- A member talked about the power control relationship and what treatment was like as a family member visiting prison. Spoke of the need to remember how many sexual assaults occur in women’s prisons and in-custody assaults that happen.
- Other members noted they thought this recommendation aligned with culture changes DOC is already pursuing, but that it will take a long time to change because of the size of the organization.

Consensus Practice: The temperature read showed 7 thumbs up, 2 thumbs sideways.

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.

Discussion:

- Members asked whether training is missing in this potential recommendation.
- Recruitment is part of this, and pay inequities make it hard to retain well qualified staff.
- Another member noted the importance and need for training related to cultural awareness and sensitivity.
- A member discussed their thoughts around the concept of punishment and a desire to move away from punishment as the reason for sending individuals to prison.
- A member noted the importance of defining the positions and understanding how they facilitate an individual’s reentry.

Consensus Practice: The temperature read showed 4 up, 11 sideways.

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

Discussion:

- DOC has opened processes up for public comment when formulating policy and while they are early on in the process, there has been a different level of engagement than before.
- A member mentioned they think the SRA should be altered to include rehabilitation and reentry, which is currently absent from it.

Consensus Practice: The temperature read showed 5 up, 9 sideways.

CONSENSUS DELIBERATIONS

Amanda congratulated the Task Force for all the work done and showed a table listing SIXTY-THREE Task Force, Working Group, and Subgroup meetings since January!

Chris explained the values of consensus decision-making, highlighting the pillars of full participation and cooperation, shared responsibility, mutual understanding, and inclusive solutions. He emphasized the goal of “Both/and” solutions, not “either/or” proposals. Keys include building trust and understanding among participants in a collaboration.

Amanda shared the “triangle of satisfaction,” in which people need to feel good about the process, the relationships, and the issues to fully buy into solutions. She reminded members that consensus is an outcome and a process. She also shared a flow chart for the consensus process. Over the past 4-5 months, the Task Force has heard presentations and held multiple discussions on each potential recommendation.

She and Chris read each recommendation and asked for consensus. If all member seats (except the Caseload Forecast Council, participating in a research and information-sharing capacity only) show thumbs up or sideways, the Task Force will have reached consensus. If any member seat (including alternates as appropriate)

show thumbs down, the Task Force will return to that recommendation (after testing for consensus on all of them) for deliberation in search of solutions that work for all.

Chris highlighted the operating procedures, related to consensus reminding members of the requirement to have 2/3 (or 14 out of 21 members) present to reach consensus. Amanda reviewed the gradients of agreement which showed how to think about what a thumbs up, sideways, and down means.

A judicial member reminded the group that the judges cannot take a position on policies that would come in front of a court, which means some abstentions on recommendations.

Potential Recommendation #2: Establish mechanism for Post-Conviction Review, with Task Force continuing to monitor parallel efforts, noting the need to deal with retroactivity.

- Amanda reminded the Task Force this recommendation was meant to serve as a policy statement and not a specific proscription.

Deliberations:

- A member mentioned work already being done by the clemency and pardons board and stated that they don't see a need to establish another process.
- Another member said they can support the "look back" legislation, but not other (related) recommendations on enhancements, specifically those on resentencing that will take additional resources/funding. Their issue is post-conviction review versus retroactive evaluation of enhancements.
- Other members agreed that retroactivity presents problems for them and proposed to remove that reference.
- A different member noted that this recommendation *suggests* there should be a look back at past mistakes but does not *require* anything. They reiterated that it is a policy statement and without the reference to retroactivity, they could not support it.
- Other members agreed that retroactivity is important, emphasizing that this is only says *consider* retroactivity.
- The clemency process looks for extraordinary circumstances while reentry looks for ordinary circumstances. Expensive burdens live with the community of those incarcerated—if the criminal justice system cannot afford to look back at past mistakes, how can leaders ask families to bear those burdens?
- A member said they now understand that it is a policy statement to the Legislature (not a specific proscription) and they could live with this recommendation.
- A member distinguished between post-conviction review of individuals who have served long sentences and individuals who have stacked (consecutive) enhancements.
- Other members said they could not live with some of the changes that have been suggested to change the recommendation from a broad statement of support for retroactivity to a broad policy statement for thinking about retroactivity.
- Another member had concerns that people might misuse it.

Did not reach consensus agreement.

Potential Recommendation #3: Provide incentives for counties to increase the use of alternatives to incarceration (potentially by establishing a statewide Justice Reinvestment Account via Treasury, for which funds saved can be allocated to counties for proven approaches), modelling such programs on proven offerings (see WSIPP [Inventory of Evidence-Based, Research-Based, and Promising Programs for Adult Corrections](#)) and considering "upstream" (pre-court) options such as education/assistance initiatives, probation, and other community-based responses.

Consensus agreement reached.

Potential Recommendation #4: Assess and consider removing SRA barriers to alternatives to incarceration, such as barriers to therapeutic courts. See [RCW 2.30.030](#) for current eligibility requirements.

Deliberations:

- A member shared they do not think substituting therapeutic courts for incarceration is appropriate in cases involving violent offenses.
- This recommendation is about providing avenues for therapeutic intervention and making it easier to access therapeutic courts.
- There are more options available in District Courts, which forces lawyers to down-file in order to access therapeutic courts; this would enable felony cases/clients to have access to therapeutic courts without having to down file.
- A member asked if language could be added to the recommendation about stopping the cycle that leads to recidivism.

Consensus reached on recommendation #4 below; language added is italicized:

- Assess and consider removing SRA barriers to alternatives to incarceration, such as barriers to therapeutic courts—*recognizing the need for accountability for severe harm*. See [RCW 2.30.030](#) for current eligibility requirements.

Potential Recommendation #5: Require an equity analysis of the impacts of proposed changes to the criminal justice system to assess the potential to exacerbate racial, socio-economic, or geographic disparities before such changes are adopted.

Consensus agreement reached.

Potential Recommendation #6: Adopt a treatment-oriented public health approach to problematic drug use, including expansion of therapeutic interventions to respond to offenses associated with drug use.

Deliberations:

- A member requested changing the word “approach” to “option.”
- Another noted concern about the broadness of this recommendation and about providing therapeutic options for more violent offenses.
- It would be better to leave out ‘violent’ or ‘non-violent’ and leave it as ‘offenses associated with drug use.’ Also: this does not prevent you from sending someone to prison.
- This recommendation creates an option and is not trying to mandate.
- Is there a way to recognize the balance between accountability and therapeutic options?
- A member suggested the word “certain” offenses instead of “violent” as it can be a triggering word for some people.
- Another member noted that the term “violent” does have a legal definition for the courts and some members had a preference to use a non-legal term.
- A member suggested changing “option” to “options” in order to think about it holistically.

Members reached consensus agreement on recommendation #6; changes are italicized below.

- Adopt treatment-oriented public health *options* to address problematic drug use, including expansion of therapeutic interventions to respond to offenses associated with drug use—*recognizing the need for accountability for severe harm*.

Potential Recommendation #7: Identify and implement public health approaches for addressing conduct that endangers public safety to which mental health or cognitive conditions or brain injuries are a factor. Two important steps among others toward realizing this goal are (1) establishing a mental health sentencing

alternative and (2) creating a new mitigating factor in [RCW 9.94A.535](#) that recognizes that mental health, cognitive conditions, or brain injuries may reduce culpability for criminal conduct.

Deliberations:

- A member said they agreed with the first part of the recommendation but not the second part.
- Another suggested changing the word “approach” to the word “option.”
- This says the court could consider this as a mitigating factor but does not obligate them to do so; creating a new mitigating factor would highlight that courts could consider factors that reduce culpability.
- Conversations in the working group also discussed individuals with developmental disabilities.
- Currently a mental health sentencing alternative does not exist. This recommendation would allow for a treatment model to be formalized into a sentencing alternative similar to what exists for Drug Offender Sentencing Alternative.
- A member suggested that this is an effort to address concerns that law enforcement officers have had in regard to being caregivers for people who should not be in the system.
- It is important to have resources at the beginning (when people first enter the system), and a way to address this for people already in the system.
- It was suggested to move the mitigating factor to a note for context on the recommendation.

Members reached consensus agreement on recommendation #7; changes are italicized below.

- Identify and implement public health *options* for addressing conduct that endangers public safety to which mental health or cognitive conditions or brain injuries are a factor. An important step toward realizing this goal would be to establish a mental health sentencing alternative.

Potential Recommendation #28: Develop and implement a formal motivational and 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. Because addressing liability concerns will be an important element of any new supervision model, parties directly affected should address this issue and keep the Task Force updated on their work.

Deliberations:

- There was a question around language that was in a previous version of the recommendation and members had no other issues with this recommendation.

Consensus agreement reached

Potential Recommendation #29: Conduct routine home and work visits in a manner conducive to successful reentry.

Consensus agreement reached

Potential Recommendation #31: 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).

Consensus agreement reached

Potential Recommendation #33: Create new, or enhance existing, notification processes to ensure timely, accessible, clear, transparent, and meaningful notifications for all named victims when someone is released into the community or transferred to work release, either via local authorities or Department of Corrections.

Specific suggestions:

- There must be an option to opt in or out of notification at any stage of the criminal justice system process;
- Written notices must be in plain language without legal jargon;
- Written notices must be professionally translated by certified interpreters into the victim/survivor's first language;
- Verbal communication must be accompanied with a certified interpreters or qualified interpreter in cases when a certified interpreter is not available;
- There must be notification options via mail, email, text or a phone call;
- When the information is available, named victims must receive notification at least 90 days prior to a transfer to a work release facility, release to the community or other jurisdiction, addresses being investigated for release of sex offenders, or escorted leave. When information is not available 90 days prior, notification will be sent to named victims at the earliest possible date to enable adequate victim safety planning. Victim notification requirements should not lead to delay in release from incarceration or supervision;
- Notification must be sent in multiple formats with references to a list of resources including local victim agencies, restorative justice opportunities, and clarity about hearings (see more below); and
- DOC victim services advocates must be included in the notification process and public disclosure exceptions should be expanded to cover them.

Consensus agreement reached

Potential Recommendation #34: Expand opportunities and accessibility to culturally relevant, community-based supports outside of Crime Victims' Compensation (CVC) for victims and their families. Programs and resources could include therapy, case management, moving costs if needed, flexible financial assistance, support creating safety plans, emotional support maps, and wellness resources.

Consensus agreement reached

Potential Recommendation #35 was held until the next meeting due to updates from a previous meeting that were not included in the version sent out.

Potential Recommendation #36: Increase clarity and purpose for victim testimony during sentencing and release decisions: Communicate clear boundaries and expectations for victim testimony and impact statements and how that information will be considered. This means:

- For notification in the case of release or potential release, named victims should be notified of opportunities to communicate their needs related to reentry conditions and receive clear information on how their testimony will be used.

Deliberations:

- A member had a question about what 'clear boundaries on victims testimonies' means.
- Another member noted that there is not a limit on what victims can share, but there are limitations on what the statement may be.
- A member suggested add "communicate clear expectations" to the recommendation.

Consensus agreement reached on recommendation #36; changes are italicized below:

Increase clarity and purpose for victim testimony during sentencing and release decisions: *Communicate clear expectations* for victim testimony and impact statements and how that information will be considered. This means:

- For notification in the case of release or potential release, named victims should be notified of opportunities to communicate their needs related to reentry conditions and receive clear information on how their testimony will be used.

Potential Recommendation #37: Create pathway for domestic violence survivors who do not have an attorney to apply for a domestic violence protection order (DVPO) while in confinement in preparation for their release.

Consensus agreement reached

Potential Recommendation #8: Provide relief to criminalized survivors preventing further victimization of individuals who have endured domestic and sexual violence or human trafficking at the hands of their abusers by creating meaningful opportunities for pre- and post-arrest diversion, resentencing, and record sealing for individuals who committed crimes due to coercion by an abuser, and against or at the behest of an abuser.

- Allow prosecuting attorneys and judges to reduce prison sentences and redirect sentencing from incarceration to community-based programs, which has proven far more effective in rehabilitating survivors;
- Permit currently incarcerated survivors to apply for resentencing and earlier release due to their prior victimization; and
- Create process for record sealing.

Deliberations:

- A member had a concern that the recommendation was too broad and would want to know if an individual's crime was associated with domestic violence or human trafficking.
- A member expressed discomfort with the phrase "criminalized survivors" and suggested it be changed to "justice-involved."
- A member suggested using the phrase "establish a mechanism for justice-involved survivors."
- Another member proposed cutting the first sentence and starting with the words "create meaningful."

Consensus agreement reached on recommendation #8, as reworded below:

Create meaningful opportunities for pre- and post-arrest diversion, resentencing, and record sealing for individuals who committed crimes due to coercion by an abuser, and against or at the behest of an abuser.

- Allow prosecuting attorneys and judges to reduce prison sentences and redirect sentencing from incarceration to community-based programs, which has proven far more effective in rehabilitating survivors;
- Permit currently incarcerated survivors to apply for resentencing and earlier release due to their prior victimization; and
- Create process for record sealing.

Potential Recommendation #12: Tested for consensus and did not have time to deliberate on the recommendation; will be addressed at the next meeting.

NEXT STEPS

The next meeting is November 5th from 8:45am-3pm.

QUESTIONS FROM OBSERVERS

Molly shared comments that were received via chat related to potential recommendations #46-49.

Q: Why do you believe lengthy incarcerations are the only way to hold people accountable? **R:** Members responded that they believe there are many ways to hold people accountable.

ADJOURN