

Incarceration Prevention and Reduction Task Force
Legal & Justice Systems Subcommittee
Meeting Summary for May 16, 2017

1. Call To Order

Committee Chair Stephen Gockley called the meeting to order at 11:35 a.m. in the Whatcom County Courthouse Conference Room 514, 311 Grand Avenue, Bellingham.

Members Present: Bill Elfo, Deborra Garrett, Stephen Gockley, Daniel Hammill, Fred Heydrich, Dave McEachran, Irene Morgan, Darlene Peterson, Peter Ruffatto

Members Absent: Angela Anderson, Jill Bernstein, Moonwater

Review December 14, 2016 and January 9, 2017 Meeting Summaries

There were no changes

2. Discussion of Drug Court and Fast Track

Gockley stated there seems to be agreement between Prosecutor Dave McEachran and Senior Deputy Public Defender Angela Anderson that these programs are operating well at this time, and there is no need to devote any more time to consider them or engage in a needs assessment for Drug Court.

McEachran stated that each program serves a purpose and they don't necessarily oppose each other. They've been able to expedite the Drug Court process. He will provide information on how quickly people are getting into Drug Court. The purpose of Fast Track is to move felonies faster through the process:

- An average felony case takes 273 days.
- An average felony Fast Track case takes 27 days.
- The program reduces pretrial and jail time.
- It's only offered when there is no question of someone's guilt.
- The Prosecutor's Office could not handle the caseload with the current staff if Fast Track were not an option.

Defendants who choose Drug Court have often been in waiting for their cases to resolve for months. Some have been waiting in jail and some have been released on personal recognizance (PR). Drug Court is an option for resolving a case. Some people are offered a drop down from felony to misdemeanor through District Court if they agree to treatment, but many don't take that offer. He is trying to come up with greater inducements to entice people to go through treatment.

The committee discussed:

- The community needs in-patient resident beds for substance use disorder (SUD) treatment.
- The Affordable Care Act and Medicaid extension allowed more people to get into treatment, because it is a required health benefit.
- The dramatic increase in heroin addiction.
- More people died from opioid overdoses than firearms in 2015.

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- The State Healthcare Authority is rolling out its health reform efforts locally through the North Sound Accountable Community of Health (ACH). It is required to come up with an opioid addiction treatment program.
- The Committee and Task Force could send a letter of support to federal legislators to recommend they not diminish coverage for substance use disorder treatment, which is a benefit to the community and would be a detriment if it no longer is required.
- The Courts want people to have treatment options that are best for them and to have sentencing options that aren't simply incarceration.
- Consider the option of a Drug Court program that takes less than two years or create a tiered program.

3. Initial groundwork for pretrial risk assessment recommendations

Gockley referenced the memo from the VERA Institute consultants and stated it is a good starting point. Bellingham City Attorney Peter Ruffatto suggests considering the concerns with liability in terms of risk assessment.

McEachran described his role as both an attorney for the County and as a State officer.

- He must consider how to reduce risk as much as possible.
- He would advise the County Council of the inherent risk to determine if the benefit is worth the risk.
- A pretrial supervision unit for felons creates a special relationship.
- The more monitoring the County does, the more risk it has.
- A judge has immunity, the probation office may have qualified immunity, but the County, as a municipal corporation, does not have immunity.
- If sued, he would argue that the County is not liable and has not violated the risk. The Court could determine if the suit would go to a jury.
- Juries often decide on the side of someone who was injured.
- In deciding negligent supervision, it doesn't matter for what the person is being monitored.
- The County Council would have to decide if the benefit of having someone outside of jail exceeds the risk.
- He would advise the County's Risk Pool of the program, and it may adjust the County's contribution to the Risk Pool.

Peter Ruffatto, Bellingham City Attorney, stated the City isn't much different from the County.

- In addition to liability, there is also a concept of a public relationship.
- A program has to be tailored according to existing case law.
- There is not as much flexibility with felons.
- Statutory provisions create gross negligence if supervised under the auspices of the Court.

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- They would need to be prepared to respond if something bad does happen. They must be able to explain that it is a reasonable public policy.
- If the State wants to encourage these types of programs, it must provide legislative authority and immunity. Don't hold the programs responsible for everything that may happen.

The committee discussed:

- Trial attorneys who block proposed legislative changes.
- Other jurisdictions that have decided benefits of pretrial supervision programs outweigh the risks.
- A complication is that Superior Court is an arm of the State, and does not respond to the County Council or Task Force. The Courts will decide on a risk assessment.
- The judges are receptive to the idea of using a risk assessment and support the Task Force to safely reduce incarceration.
- Pretrial release is different from post-trial release, because a person is innocent until proven guilty. There is a limit to the conditions that can be put on people, to just ensure they will show up to court and not hurt anyone in the meantime.
- The Prosecutor's Office, County Council, and Courts are independent of each other, although they must work cooperatively.
- A risk assessment tool and release are separate from the liability concerns of supervision.
- The Yakima pretrial supervision unit operates under the courts to reduce its liability. It monitors, not supervises. If people aren't responding according to the requirements, it's reported to the Court.
- Everyone's responsibility is less pre-trial because the defendant hasn't been and may not be convicted of anything. It's not appropriate to set conditions such as treatment during pre-trial. The function is only to ensure the defendant goes to court and the community isn't exposed to undue risk from a violent or out-of-control defendant.
- With a risk assessment tool, some defendants who would have been released may be held.
- The judges may use a risk assessment tool in making bail decisions.
- Yakima decided to not use its pretrial supervision unit program with people who are out on bail.

Peterson described the City of Bellingham's risk assessment tool and electronic monitoring programs:

- The City has always done pretrial supervision of its misdemeanants.
- The City had to remove its people from the jail due to population problems.
- The risk assessment tool is also used to determine if anyone is eligible for a bracelet.
- They looked at other risk assessment tools being used around the country, and identified the common questions asked by all or several of the tools. Each of those questions is assigned either .5 or 1 point. A defendant with more than four points is ineligible.

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- Next, they looked at the State Sentencing Reform Act that set priorities for charges not to be considered available for electronic home monitoring.
- From that information, people are disqualified from pretrial electronic home monitoring, which is in lieu of bail, if they have been convicted of certain crimes or has a pending domestic violence charge.
- A prior drug offense is no longer a disqualifying factor.
- The City also does a National Crime Information Center (NCIC) check.
- About 90 percent of the people who come to court are eligible.
- Less than half the people who are in jail qualify for a bracelet.
- Once they identified the criteria, the City attorney did a review, and the City judicial officers made the final decision on what was included.
- The City's criminal justice group meets quarterly to review and adjust the tool as necessary.
- This assessment is done before an in-custody defendant's first time in court.
- Eligibility screening is done before they leave court.
- Probation officers conduct the risk assessment screenings between 8:00 and 8:45 a.m., before the defendant sees the judge and before the Prosecutor arrives at court. It's similar to a bail study.

Peterson described the City of Bellingham's electronic monitoring programs:

- The home detention order explains the monitoring conditions.
- A jail review court date is set for a couple of weeks after being ordered to report for electronic home monitoring.
- A person has 24 hours to report to Friendship Diversion Services.
- If a person reports to Friendship Diversion Services within 24 hours, the jail review court date is automatically cancelled.
- If a person doesn't report on time, Friendship Diversion Services will send the County a notice if they arrive late or don't arrive at all.
- If a person doesn't report and also doesn't attend the jail review court date, a bench warrant will be issued.
- Friendship Diversion Services notifies the Court of any violation, as shown on the home detention order, for the Court's review, unless law enforcement is automatically called.
- The Court will review the reason for the violation and determine if any further action is necessary.
- The majority of people on bracelets are post-conviction.
- Most people on pre-trial monitoring is for alcohol use, so they are put on the SCRAM bracelet instead of the GPS bracelet. Detection of alcohol is an automatic violation.
- SCRAM pre-trial monitoring is an alternative to bail.
- Law enforcement won't respond to a SCRAM violation immediately unless a crime has gone along with the violation.
- The City pays for the SCRAM bracelet costs for pre-trial defendants since they have not been convicted.

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- The majority of people released on personal recognizance are not on a bracelet.

The committee continued to discuss risk assessment tools and pretrial supervision:

- Many risk assessment tools are static information that do not require an interview.
- The confidential scoring in the Arnold Foundation proprietary risk assessment tool.
- Whether or not there is protection from the gross negligence standard and/or judicial immunity if there isn't an immediate response to someone on a SCRAM bracelet who is reported in real time to be in violation, and who may hurt someone while out drinking.
- Whether law enforcement could get the SCRAM violation notice from the monitoring company and respond immediately.
- Whether law enforcement has the authority to arrest someone who is violating supervision, before the court has made a determination and a warrant is issued.
- The County heavily supervises kids on pretrial release right now.
- Whether the Court immunity would extend to the contracted monitoring company and municipal corporation.
- Balancing the risk to potential victims and their families against the benefits of a monitoring program. Consider the cost to the victim.
- Discouraging jurisdictions from engaging in supervision to avoid fault if something bad happens.

The committee discussed convening a work group to adopt a risk assessment tool:

- VERA Institute consultant's guidance on the composition of the multi-disciplinary work group.
- Consider whether the risk assessment must be locally validated by a data scientist to determine if there are important local factors to include. They could possibly engage a data analyst, social scientist, or statistician from Western Washington University.

Gockley stated he will create a framework from the questions and issues discussed today to see how to move forward.

4. Update on Spokane and Yakima pretrial unit programs

There is no new information.

5. Review List of Questions for VERA Consultant input (tentative)

This item was not discussed.

6. Next Steps: Ideas & Further Information

The Committee agreed to change the regular meeting schedule to the second Tuesday of every month beginning in March, from 11:30 a.m. to 1:30 p.m. in the Courthouse Conference Room 514.

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7. Other Business

Gockley stated he is interested in inviting presenters from other jurisdictions and who attended the State House Public Safety Committee on December 1.

- First get a better idea of what the program should look like and develop specific topics and questions for the presenters.
- Get information on how they went through this process.

Gockley and Heydrich stated they will contact possible presenters from Yakima and other jurisdictions.

8. Public Comment

Everett Barton stated they need guidelines to be able to interject restorative justice. They also need outreach to the community about the current rules and consequences of breaking the law. He's encouraged by this Task Force process.

9. Adjourn

The meeting adjourned at 1:35 p.m.

DRAFT

Date: March 2017
To: Whatcom County Incarceration Prevention and Reduction Task Force
Subject: Convening a Pretrial Risk Assessment Instrument Subcommittee
From: Vera Institute of Justice

Since the 1960s, there has been increasingly widespread recognition that money bail is not an effective tool for distinguishing between defendants who pose a risk to the community and those who do not. This awareness has led justice system stakeholders nationwide to reform their pretrial decision-making processes. Sound public safety policy and management of scarce local resources, such as courts and jails, demand an approach that will produce better outcomes than relying on individuals' ability to post a bond.¹ Studies show that using a validated² pretrial risk assessment instrument (PRAI) better equips judicial officers to assign conditions of release or pretrial detention in order to manage risk.³ These objective evidence-based tools are designed to provide judicial officers with impartial information to assess a defendant's danger to the community as well as risk of failure to appear (FTA); whereas historically, bail decisions have been made arbitrarily and with little information other than criminal history and current charges.

Jurisdictions across the country have developed and tested PRAIs over the course of the previous five decades to consider various factors predictive of FTA and new criminal activity. Pretrial services programs provide the initial assessment of defendants to judicial officers, recommend conditions of release, and supervise released defendants. These programs operate in partnership with a variety of other actors, including law enforcement, corrections staff, prosecutors, defense attorneys, and judicial officers. To build local capacity and prepare for adoption of evidence-based practices, each agency that is part of the pretrial process must be engaged. Implementing a PRAI impacts not only legal framework development, but also human resources and organizational and institutional development.⁴ Resources and staff at all levels should be mobilized.

By including stakeholders who will be impacted by the implementation of a PRAI in the selection or development process and subsequent training, jurisdictions avoid or minimize later resistance and misuse of the instrument. Failing to include and properly train those involved in pretrial processes can result in excessive overrides of the PRAI's results, rendering it ineffective.

¹ Cynthia A. Mamalian, Ph.D., *State of the Science of Pretrial Risk Assessment* (Washington, DC: Pretrial Justice Institute, 2011), [http://www.pretrial.org/download/risk-assessment/PJI%20State%20of%20the%20Science%20Pretrial%20Risk%20Assessment%20\(2011\).pdf](http://www.pretrial.org/download/risk-assessment/PJI%20State%20of%20the%20Science%20Pretrial%20Risk%20Assessment%20(2011).pdf).

² Validation is the process of applying a tool to data from the local population to ensure it predicts outcomes accurately.

³ Mamalian, *State of the Science of Pretrial Risk Assessment*.

⁴ Ibid.

Engagement will increase stakeholder confidence in their reliance on the evidence-based risk assessment in making pretrial release decisions and help to ensure consistent application.⁵

When developing or adopting a PRAI, most jurisdictions convene a cross-agency committee with representation from each agency that participates in pretrial processes to make decisions collaboratively and ensure buy-in and effective use of the instrument. This memo provides examples of such committees from a sample of jurisdictions. Vera can work with the Task Force to connect with any of the jurisdictions listed below, and in particular, the first three.

SPOKANE

The Risk/Needs/Responsivity (RNR) Subcommittee of the Spokane Regional Law and Justice Council was charged with initiating a plan to review models and implement an RNR system for the City and County of Spokane. Their goals in adopting a suite of assessment tools were to increase public safety and create stronger risk management for people released pretrial. The Subcommittee reviewed and recommended adoption of a tool that evaluates individuals for pretrial release, assesses amenability to probation/community supervision, and matches people to appropriate release conditions and behavioral treatment options. The Subcommittee considered adopting off-the-shelf products versus working with a data expert, Dr. Zachary Hamilton, to develop a tool specific to the Spokane region, ultimately choosing the latter. All Subcommittee meetings are open to the public.

Members of the Subcommittee include the following individuals or a designated proxy:

- The Juvenile Court Administrator, who is well-versed in RNR principles,
- Director of Pretrial Services,
- Field Administrator, WADOC,
- County Prosecutor,
- Director, District Court Probation,
- Chief Public Defender,
- Lieutenant, Detention Services,
- Judge, Municipal Court,
- Judge, Superior Court,
- Director, Mental Health Services, Detention Services,
- Sergeant, Sheriff's Department, and
- 2 Community Members.

YAKIMA

The Yakima Superior Court established a committee to select a pretrial risk assessment tool, including:

⁵ Ibid.

- Law enforcement,
- Prosecutor,
- Public defense,
- County commissioners,
- Department of Corrections, and
- Court staff.

The previous pretrial program used an assessment tool that had not been validated, and system actors paid little attention to its recommendations. The primary concern of the committee was to identify tools that had been validated and, due to lack of resources, were already in existence. The Chair presented several options, and the committee spent significant time reviewing the different tools and the cost to implement them. After speaking with other sites that had adopted the Arnold Foundation’s Public Safety Assessment (PSA), and preferring its nine risk factors—and that it does not require interviews—the committee selected the PSA. Yakima was able to imbed the PSA within its pretrial case management system, which allows for court reports and recommendations in fewer than 10 minutes.

Since the tool’s implementation, a Pretrial Policy Team—made up of judges from both District and Superior Court, the Pretrial Services Administrator, the PRAI subcommittee Chair, a data specialist, representatives from three local law enforcement agencies, representatives from the county jail, the prosecutor’s office, and the department of assigned counsel—continues to meet and improve pretrial processes. In discussing the composition of the Team, the Pretrial Services Administrator said, “We believe it is absolutely imperative to have representatives from all areas that will be impacted by the Pretrial decision-making process at the table. That is the only way to get buy-in and support for what you are trying to accomplish.” The PRAI subcommittee Chair added:

[W]hen introducing such a dramatic reform to the criminal justice system, it is imperative to have all affected parties participate in the decision-making process. Yakima County did this, but to be honest we are still, after two years of planning and implementation, reviewing the PSA local decision-making matrix and trying to make sure all parties understand the process. There is a natural tension between public defense and the prosecutors/law enforcement the committee has to continually address.

MILWAUKEE, WI

In Milwaukee, the local criminal justice system also recently adopted the PSA after using a homegrown tool called the Milwaukee County Pretrial Risk Assessment Instrument for several years. Members of the County’s “Universal Screening” work group, which has oversight of 24/7 PRAI screening and release and diversion decision-making processes, served as the PSA subcommittee. Because pretrial programs are housed within the courts, the Chief Judge makes the ultimate sign-off on major system changes, but development of policies and practices has

always been collaborative to ensure buy-in, support, and deeper systems knowledge. The work group includes:

- Courts (Administration, Judges, Commissioners, and District Court Administration),
- Pretrial Services (provided by two contracted organizations),
- Public Defender,
- District Attorney,
- Victim Witness Services, and
- Sheriff (does not attend meetings, but receives materials via email).

SANTA CLARA COUNTY, CA

In 2010, Santa Clara County’s Office of Pretrial Services assembled a team to explore use of a PRAI. The team oversaw the pilot and validation of the tool. One of the team’s goals was to convene various stakeholders in the tool-development process to foster collaborative evidence-based discussions on concurrence rates—the percentage of pretrial release decisions that match the risk level or recommendation proposed by the instrument.

The team consisted of:

- Office of Pretrial Services,
- The Superior Court,
- Office of District Attorney,
- Public Defender’s Office,
- Sheriff’s Office, and
- Pretrial Justice Institute.⁶

ALLEGHENY COUNTY, PA

The County’s Administrative Judge appointed a Pretrial Oversight Committee to develop a PRAI. The judge elected to convene a committee to ensure all parties were able to provide the resources needed to use the tool and garner understanding and support for the tool across agencies and staff affected by the change.

The Committee included:

- The Administrative Judge,
- 2 judges from the Court of Common Pleas Criminal Division,
- Pretrial Services,
- Court Administrator,
- Criminal Division Administrator, and

⁶ <https://www.sccgov.org/sites/ceo/Documents/bail-release-work-group.pdf>.

- Deputy Court Administrator.⁷

RIVERSIDE COUNTY, CA

The County created a Pretrial Steering Committee to oversee programming related to pretrial services. The Committee assessed a number of risk assessment tools and ultimately selected Virginia’s Pretrial Risk Assessment Instrument (VPRAI). Officials felt it was important to have a diverse team to select the tool to ensure buy-in across agencies.

The Committee included staff from:

- Pretrial Services Unit,
- Riverside County Probation Department,
- The courts,
- Sheriff’s Department,
- Public Defender’s Office, and
- District Attorney’s Office.

VIRGINIA

VPRAI was developed by the state’s Pretrial Advisory Committee. After the tool was created, a VPRAI Validation Advisory Committee oversaw the validation process.

The committees included staff from:

- Virginia Department of Criminal Justice Services,
- 10 pretrial services agencies, and
- Virginia Community Criminal Justice Association, a non-profit membership organization that includes local community corrections and pretrial services directors, staff, and other individuals involved with the criminal justice system.⁸

OHIO

Following the creation of the Ohio Risk Assessment System (ORAS), the state convened the ORAS Oversight Committee to guide implementation and training on the tool for staff of various agencies.

Committee members included:

- Department of Rehabilitation and Corrections,

⁷ <https://www.pretrial.org/download/pji-reports/Allegheny%20County%20Pretrial%20Risk%20Assessment%20Validation%20Study%20-%20PJI%202007.pdf>.

⁸ <https://www.dcjs.virginia.gov/sites/dcjs.virginia.gov/files/publications/corrections/virginia-pretrial-risk-assessment-report.pdf>.

- Attorney General’s Office,
- Office of the Ohio Public Defender,
- Ohio Supreme Court,
- Ohio Judicial Conference,
- Department of Youth Services,
- External community correctional agencies, and
- Community-based correctional facilities.⁹

Ohio also created a Steering Committee to oversee the development of the Ohio Youth Assessment System (OYAS). The committee met on a monthly basis during the year of developing the tool and has since met quarterly during the implementation phase.

The Committee has members from:

- Department of Youth Services,
- University of Cincinnati Center for Criminal Justice Research,
- Social worker supervisors,
- Union representatives,
- Judges,
- Chief probation officers, and
- Community-based providers.¹⁰

⁹ https://www.utoledo.edu/law/studentlife/lawreview/pdf/Trout_ORAS-Overview.pdf.

¹⁰ <http://journals.sagepub.com/doi/pdf/10.3818/JRP.15.1.2013.67>.

Membership requirements for:
 Incarceration Prevention & Reduction Task Force
 AND
 Law and Justice Council (RCW requirements AND County resolution)

Incarceration Prevention & Reduction Task Force Ordinance 2015-037 (amendable)	RCW 72.09.300 (not amendable) The county legislative authority shall determine the size and composition of the council, but must include the following (below). Officials designated may appoint representatives.	County resolution 2000-034 creating the Law and Justice Council per RCW (amendable)
Whatcom County Councilmember		
Whatcom County Executive (or designated representative)	county risk manager	The Whatcom County Executive AND Whatcom County Director of Administrative Services
Whatcom County Sheriff (or designated representative)	County sheriff	Whatcom County Sheriff
	county jail administrator AND secretary of corrections and his or her designees	Whatcom County Jail Administrator AND Secretary of the Washington State Department of Corrections or Designee
Whatcom County Prosecuting Attorney (or designated representative)	County prosecutor	Whatcom County Prosecuting Attorney
		Whatcom County Medical Examiner
Whatcom County Public Defender (or designated representative)		Whatcom County Public Defender Director
Whatcom County Superior Court or District Court Representative	a representative of the county's superior, juvenile, district, and municipal courts	Whatcom County District Court Administrator AND Whatcom County Juvenile Court Administrator AND Whatcom County District Court Probation Director AND Presiding Superior and District Court Judge
	county clerk	Whatcom County Superior Court Administrator/Clerk
Bellingham Mayor or Representative		Mayors of the Cities (Bellingham)
Bellingham City Attorney, Municipal Court, or Police		Police Chief of the City of Bellingham
	Municipal prosecutor representative	Representative of Municipal Prosecutors within the County as selected by the Cities
		Representative of the Municipal Courts within the County as selected by the Cities
Bellingham City Council Member	City legislative authority representative	Representative of the Municipal Legislative Authorities w/in the County, selected by Cities
Small Cities Caucus Representative		Mayors of the Cities (6 small cities)
	Municipal police representative	Representative of the Municipal Police Chiefs within the County
Tribal Representative		A representative of the Lummi Indian Tribe, appointed by the Chairman of the Lummi Indian Business Council AND A representative of the Nooksack Indian Tribe, appointed by the Nooksack Tribal Chairman

Health Dept., Human Services Division Representative		Five representatives of local providers of social services treatment, appointed by the Whatcom County Executive (5)
North Sound Mental Health Administration Executive Director (or designated representative):		
Whatcom Alliance for Health Advancement (WAHA)		
Peace Health St. Joseph		
Community Health Center - Federally Qualified Health Center (FQHC): Unity Care NW (formerly Interfaith)		
Emergency Medical Services (EMS)		
Community Action Agency or Provider (3)		
Consumer (2) Citizen (2)		Three citizen representatives appointed by the Whatcom County Executive AND Three citizen representatives appointed by the Mayor of the City of Bellingham AND One citizen representative appointed by the Whatcom County Council AND One citizen representative appointed by each of the legislative councils of the cities of Bellingham, Ferndale, Lynden, Blaine, Sumas, Everson, and Nooksack; the Lummi Nation; and the Nooksack Indian Tribe (17)
24 Members	10 Members	49 Members