

***Incarceration Prevention and Reduction Task Force
Meeting Summary for July 11, 2016***

1. Call to Order

Task Force Chair Jill Bernstein called the meeting to order at 9:00 a.m.

Present: Angela Anderson, Jill Bernstein, Jeff Brubaker, Anne Deacon, Bill Elfo, Stephen Gockley, Daniel Hammill, Fred Heydrich, Jack Hovenier, Betsy Kruse, Kelli Linville, Byron Manering, Ken Mann, Dave McEachran, Moonwater, Irene Morgan, Darlene Peterson, Randy Polidan, Tyler Schroeder

Also Present: Leslie Finch (Proxy for Chris Phillips), Ralph Long (Proxy for Julie Finkbonner)

Absent: Julie Finkbonner, Susan Gribbin, Mike Knapp, Chris Phillips, Greg Winter

Review June 6, 2016 Meeting Summary

There were no changes

2. Committee Updates

Steering Committee

Mann updated the Task Force on the status of the facilitator and technical assistant consultant contracts. Bids have arrived, and staff are in the process of scoring the responses.

Triage Facility Committee

Schroeder updated the Task Force on the Health Department proposal for a triage facility and the Department of Commerce grant. They are preparing the application.

Deacon described the grant, which allows for up to \$2 million for capital expenditures for treatment facilities for mental health hospital diversion beds.

Mann moved to send a letter from the Task Force in support of the grant application. The motion was seconded.

The motion carried 20-0, with Morgan abstaining.

Schroeder stated he will work with Anne Deacon to write the letter and then get approval from Task Force Co-Chairs Bernstein and Hovenier, so it can be submitted with the application, due this Thursday. He continued the Triage Facility Committee report regarding the regional Behavioral Health Organization (BHO) process and plans for a local triage facility.

- The local process has a role in providing guidance to the BHO
- The County has participated in regional facility planning

Deacon stated a hospital being constructed in Smokey Point is a mental health psychiatric hospital. They will take people on a voluntary status. Medicaid dollars won't pay for it, because it is a hospital. It provides more beds for the region, but the project has used dollars that are typically invested in local projects.

The Task Force discussed BHO regional plans:

- The Smokey Point hospital is not a regional, BHO facility
- Keep the Task Force updated on the discussions between the BHO and the Smokey Point hospital developers, and allow the Task Force to provide input into those discussion

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- Whatcom County submitted its own Behavioral Health Facility Planning Report to the BHO, which can be supported by Medicaid and State-only dollars for mental health and substance use disorders. The Behavioral Health Committee will continue to discuss the local facility plans in the context of the regional BHO plans and continue to report to the Task Force
- Approval of a private, for-profit psychiatric hospital that doesn't require BHO approval
- Whether the Smokey Point mental health hospital will serve local indigent clients
- Get an update from the BHO on how to replace the recent loss of mental health and substance use disorder bed space
 - At the Pioneer Center, the regional BHO purchases only 50 out of the 141 beds that are used statewide.
 - The BHO is considering creating multiple facilities that include both beds and services
 - The final plans for those facilities aren't yet finalized

Legal & Justice Systems Committee

Heydrich updated the Task Force on the Committee's work with District Court Probation Administrator Bruce Van Glubt. They are working on:

- Draft recommendations for District Court Probation
- A possible needs assessment regarding Drug Court
- Review of the Fast Track program
- Jail alternatives, including upgraded technology for electronic home monitoring by the Sheriff's Office
- Law enforcement assisted diversion (LEAD) and crisis prevention and intervention team (CPIT) programs
- Yakima County Pre-Trial Supervision program
- Upcoming discussion about Mental Health Court

The Task Force discussed the pre-approval and approval process for Drug Court:

- The difference between pre-approval status and the people who actually ask for Drug Court
- People who may be pre-approved as qualifying for Drug Court, but who don't want to participate in the Drug Court process

3. Update on Medicaid Rules

Deacon stated Medicaid will not pay healthcare for anyone in a correctional facility. However, Medicaid recently began to allow expenses for an inmate who was transferred to a hospital facility for services for more than 24 hours. There is also direction from the federal Center for Medicaid and Medicare Services that people can stay in and have paid for a substance use disorder treatment facility that has more than 16 beds for up to 14 days per bed. Treatment facility length of stay generally ranges from 30 to 90 days.

The Committee discussed the new rules whether the 14-day limit is per episode or a lifetime limit per person.

4. Update on County Jail Contracts with Cities

Schroeder stated all the Cities and the County have new jail use agreements, which is similar to the past facility use agreements. Updates include:

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- Two-year agreement, with up to three additional two-year terms
- The Cities elect options for inmate services
- The jail per diem was put into the Unified Fee Schedule
- The jail booking fee was increased from \$55 to \$100 to alleviate budget impact from reduced jail use from 2016.
- All seven cities have signed the agreement

Elfo continued the update on the details of the agreements:

- The goal is to keep occupancy at a safer and more manageable level, given the failing infrastructure
- The contracts provide jail space for City and Tribe misdemeanor and gross misdemeanor offenders on a space available basis
- Felons are prioritized
- Bellingham choose the option to hold people longer on a pre-trial basis
- The small Cities chose the option to ensure they can always book people, but get them out of the jail system quicker and transfer them to other facilities
- The small Cities and Bellingham have contracts with the SCORE facility in Des Moines
- The target jail population is 212, which will fluctuate depending on several factors
- The Cities and courts make arrangements for inmates to meet with their lawyers
- The agreements with Lummi Nation and Nooksack are pending

The Task Force discussed

- The City of Bellingham does not incarcerate people for things like sitting in line. If people don't show up to court, a warrant is issued. The City is looking of different ways to handle it.
- People are rarely arrested for driving while license suspended (DWLS) in the 3rd degree, but warrants are issued if they don't go to court.

5. Appointment of Task Force Member to new Jail Stakeholder Workgroup

Mann reported on the County Council's newly-created Jail Stakeholder Workgroup, which will working on funding, financing, and agreements among the stakeholders on how to build or remodel and operate the jail. One member of the new workgroup is a representative of this Task Force.

Bernstein moved to appoint Task Force Co-Chair Jack Hovenier, who has a knowledge of financing issues. The motion was seconded.

Mann stated he supports the motion and having a citizen representative, not another government representative, on the committee.

Hovenier described his business expertise and experience with public financing.

The motion carried 20-0, with Moonwater abstaining.

Mann stated this new workgroup will not address jail use reduction and prevention, jail size, or jail location. It's about the financial agreements among the different jail stakeholders. The County Council appreciates all the work this Task Force is doing, which is a long-term strategy for the future.

(The Task Force continued discussion of this item later in the meeting.)

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6. Update by Jurisdictions on Jail Diversion Programs

Elfo updated the Task Force for the Sheriff's Office:

- Electronic home monitoring (EHM) technology
 - He is talking with Friendship Diversion Services and another vendor
 - A question is how it will work in remote areas of the county
 - The program will be for sentenced inmates
 - No one is excluded from jail alternative programs due to cost
 - District Court judges have indicated they will not use EHM for people on a pre-trial basis

Long updated the Task Force for the Lummi Nation:

- The EHM program:
 - Generally there are 1-3 people in the program at one time
 - There have been no negative impacts
- A new residential reentry house program:
 - They are in the process of developing the program's policies and services
 - Last five months of a sentence
 - Intensive wrap-around services
 - May eventually house up to 20 people

Peterson updated the Task Force for the City of Bellingham. She submitted and read through the June 2016 Home Monitoring Summary Report (*on file*) and:

- Yakima Jail Use
 - 55 people have served time since January 15
 - 47 of those people have completed their time
 - At this time, 1,883 days have been sentenced in Yakima
 - They are working on the ability to do pre-trial hearings and public defender meetings using technology

The Task Force discussed Bellingham EHM:

- There are both statutory limits and strict screening tools that prevent pre-trial defendants at this time
- The difference types of monitoring bracelets that monitor location or alcohol use

5. Appointment of Task Force Member to new Jail Stakeholder Workgroup

The Task Force discussed how Jack Hovenier will represent the Task Force on the Workgroup:

- Hovenier will represent the opinion of the Task Force on the Workgroup, not his own opinion
- Hovenier will ask the Task Force for direction before making decisions on behalf of the Task Force
- He will provide updates on the Workgroup to the Task Force at each Task Force meeting

7. Continued Discussion on Intersection of Criminal Justice and Behavioral Health

Dan Gibson, Whatcom County Chief Civil Deputy Prosecutor, submitted and read through a handout on civil commitments and their frequent interface with the criminal justice system (*on file*) and presented a report:

- Mental illness and criminality are different, but they may intersect
- The M'Naghten Rule is the legal standard in Washington State for determining whether a person is criminally sane

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- Many people who suffer from mental illness do not meet the standard for civil commitment
- Some people with a severe mental health crisis are deemed unable to make a voluntary self-commitment
- During the 72-hour hold, hospital staff will determine whether a further detention is needed.
- After the 72-hour hold, there is a hearing with a Commissioner, Public Defender, and Civil Prosecutor to establish the basis for a hold up to 14 days on the person.
 - The standard of proof for a court-ordered commitment is that there is a preponderance of evidence that the person is at imminent risk to self or other or is gravely disabled with a diagnosed mental condition
 - They are typically successful in obtaining the 14-day court-ordered commitment
- Hospital staff often release people during that 14-day commitment period, after determining the person is capable of going back into the community and functioning without serious risk to self or others
- After a 14-day commitment, there can be a commitment to a 90- or 180-day court-ordered commitment, with a higher standard of proof for commitment
- People may be released during the 90- or 180-day commitment with a series of conditions

The Task Force discussed the presentation:

- The gap between those who are mentally ill, but not enough for civil commitment
- The standard for determining competency to stand trial
- The process if a defendant can't achieve competency to stand trial
- The cycle of charging a defendant with a crime, failing to achieve competency and having to drop the charges, transfer from criminal to civil commitment, eventual release, and re-charging the defendant with the crime
- There are questions about why the mental health system has not diverted certain individuals from the criminal justice system. According to Mr. Gibson and Mr. McEachran, there are legal limits to what the mental health system can do, including:
 - Civic commitment, which has a legal standard and time limits.
 - Competency has a legal standard
 - Sanity has a legal standard
- These examples also illustrate the limits to this Task Force, in that some people with serious mental health problems will still find themselves in the jail
- The legal standard for determining if someone is gravely disabled by their mental illness, which is an inability to take care of basic human needs, such as eating, sleeping, or refusal to take necessary medication
- The law enforcement perspective that people are often turned loose from their 72-hour commitment
- The Prosecutor's Office is currently dealing with five or six individuals who fall between the gap between not being competent enough for trial and are also not sick enough to be committed
- The false assumption that mental health treatment will resolve incarceration issues.
- Only about 2 percent of case filings involve people who have competency

8. Whatcom Transportation Authority (WTA) Routes

This item was not discussed.

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9. Next Steps and Other Business

Mann stated folks have mentioned the need a representative on the Task Force from the educational perspective and the school district. He will propose to the County Council an amendment to the membership that would include an educational representative.

Moonwater suggested someone like Steve Morris from the Bellingham School District.

Gockley stated the person should be involved in educational policy, who is familiar with what they are doing.

Heydrich stated an education person mostly deals with minors, which doesn't involve the jail.

10. Public Comment

Unidentified speaker asked that Betsy Kruse or Anne Deacon describe the current inability to do in-custody substance use disorder evaluations.

Deacon stated that issue is scheduled on the next Behavioral Health Committee agenda.

11. Adjourn

The Task Force adjourned at 11:05 a.m.