

Incarceration Prevention and Reduction Task Force
Legal & Justice Systems Subcommittee
Meeting Summary for February 28, 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 standard 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 and enrolls, 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.