

**Incarceration Prevention and Reduction Task Force**  
**Legal & Justice Systems Subcommittee**  
**Draft Meeting Summary for January 9, 2017**

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**1. Call To Order**

Committee Chair Stephen Gockley called the meeting to order at 9:15 a.m. in the Bellingham Municipal Court Fireplace Room, 625 Halleck Street, Bellingham.

Members Present: Angela Anderson, Jill Bernstein, Bill Elfo, Stephen Gockley, Fred Heydrich, Irene Morgan, Darlene Peterson

Members Absent: Dave McEachran, Moonwater

Also Present: Mark Gardner, Forrest Longman, Peter Ruffatto

Review November 14, 2016 Meeting Summary

Bernstein moved to approve the November 14, 2016 meeting summary as presented. The motion was seconded.

The motion carried unanimously.

**2. FasTrack, Drug Court, and the availability of community services**

Anderson submitted a handout of her presentation (*on file*):

- Drug Court participation has remained consistent for the past 18 months.
- According to the Drug Court coordinator, the participants struggle with finding housing options, particularly clean and sober recovery housing
- Housing is needed, particularly for participants who are legally prescribed Suboxone
- About half the Drug Court participants are in a recovery house
- Suboxone treatment is difficult to get legally because it's difficult to get in to see a doctor
- Inpatient treatment changes due to the Affordable Care Act and other factors that have resulted in faster turnover of patients, which makes it difficult for patients to set up outpatient housing
- The in-custody assessments have been very successful
- The Drug Court is generally operating very well as it is
- Lifting the ban on Drug Court to drug dealers, because most users deal to some extent

The Committee discussed:

- The legal and illegal use of Suboxone and other treatments for drug and alcohol abuse
- The need for a subsidized recovery house
- Whether the Health Department can have a program to administer Suboxone specifically to Drug Court participants, possibly based on the Lummi Nation Suboxone program model
- The Housing and Emergency Needs (HEN) Program, which is vulnerable to losing funding from the State legislature

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- The closure of Pioneer Center North in 2018 and the need to send patients to a facility farther away
- Other jurisdictions that participate with their law enforcement to transport drug court patients
- The need for additional funding for the Sheriff's transportation network
- The strain of the requirements to transport mentally ill defendants on the Sheriff's regional transport network
- The email from Judge Charles Snyder on September 30, 2016 that recommends a needs assessment of Drug Court and services available in the community to Drug Court participants
- A recovery wing built into the jails in Washington and Multnomah Counties in Oregon

Anderson stated she would talk to the Drug Court administrator about Judge Snyder's suggestion of doing a needs assessment of Drug Court.

The Committee discussed the possibility of using the consultants at VERA Institute to weigh in on whether it merits the use of resources to do a needs assessment of Drug Court, as recommended by Judge Snyder. The questions to be answered include collecting the data on the true need in the community and how Drug Court can meet that community need.

Anderson stated the motive of a needs assessment should be to get an assessment of the program, not to convince Prosecutor McEachran to change the drug court program. She continued her presentation on the Fast Track program:

- Nearly two-thirds of the cases selected for Fast Track were resolved, which totals two attorney caseloads.
- Few felonies have chosen a drop down offer to misdemeanor.

The committee discussed the importance of collecting data on whether or not the Fast Track program results in actual jail use in the long term, whether VERA consultants can provide insight into that question, the intention of the Fast Track program to clear caseloads more than to reduce jail use, and collecting data on recidivism rates of regular and Fast Track defendants compared to Drug Court participants.

Forrest Longman, County Council Legislative Analyst, stated he will talk to the VERA Institute consultants about collecting the data they need on recidivism rates of the various programs and of regular cases.

Heydrich stated he would like a future agenda item to allow time for Prosecutor McEachran and Kathy Walker to respond to the discussion and the Committee's questions.

### **3. Whiteboard List of Questions for VERA Institute**

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Forrest Longman, County Council Legislative Analyst, stated the VERA Institute consultants will teleconference with the full Task Force at its next meeting on the following items:

- A general update
- Concerns about liability of a pretrial supervision unit
- Best practices for pretrial supervision

Some questions may be outside the scope of the VERA contract, including those regarding program costs, which are mostly staffing costs that are location specific. The consultants may be able to provide information on best practices for staffing levels, which will inform the question of cost.

The Committee discussed:

- The law review article by Rob McKenna distributed after the last meeting. Ruffatto stated there are three points he gets from the article:
  - Washington is different and more friendly to plaintiffs, so local jurisdictions are more at risk than others
  - Structure programs to minimize liability based on the case law cited in the article and other case law since, such as putting programs in the jurisdiction in the court
  - The State legislature could create satisfactory checks and balances for negligence without creating quite as much risk
- Whether the topic of liability of pretrial supervision should be addressed in this Committee or the full Task Force
- Making sure they include the Prosecutor in any discussion before conclusions are made about a pretrial supervision program
- Lobbying the legislators to create the ability for local jurisdictions to be able to do these things
- Inviting the Prosecutor to present his specific concerns in light of the law review article and other legal research to either the full Task Force or this committee.

Heydrich stated there needs to be a new State statute to directly address or limit liability of pretrial supervision.

Ruffatto stated that having a gross negligent standard would be helpful.

The Committee continued to discussed the best way to lobby the legislature to create a statute.

Ruffatto stated he will work with Prosecutor McEachran on providing a summary of cases and concepts in lay terms about the issue of pretrial supervision.

#### **4. Next Steps: Ideas & Further Information**

Gockley stated three future topics include:

1. Giving the Prosecutor an opportunity to respond to the information in Ms. Anderson's report,

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2. The question of the risk assessment and liability, and
3. The development of a pretrial supervision unit, which requires Mr. McEachran's participation

The Committee discussed the possibility of changing the meeting day or time to be more accommodating to Mr. McEachran's schedule. His presence and active participation are critical to their progress.

Heydrich stated he will schedule a visit to Spokane County to gather information about their pretrial supervision unit programs.

The Committee continued to discuss whether certain advice from legal counsel may need to be done in executive session when assessing the liability of a course of action and putting it in writing, legal exposure from the interaction between the defendant and supervising individual, the court has to be the entity that chooses the risk assessment tool, the need for a pretrial risk assessment tool in conjunction with a pretrial supervision unit, the status of the Sheriff's Office implementation of monitoring through Friendship Diversion Services, when judicial immunity comes into play,

Morgan stated she would like an agenda item and discussion on the true social costs of incarceration.

The Committee discussed keeping the Committee focused on the programs they've already identified rather than expanding into other areas. Focus on solutions that forward the goal of reducing incarceration.

**5. Other Business**

Forrest Longman, County Council Legislative Analyst, reminded Committee members to connect with the VERA contractors if they haven't already.

**6. Public Comment**

Mark Gardner stated he will continue to attend the meetings on behalf of Council Member Dan Hammill, who is now a member of the Behavioral Health Subcommittee.

**7. Adjourn**

The meeting adjourned at 11:05 a.m.