

**Incarceration Prevention Reduction Task Force  
Legal & Justice System Committee Meeting**

May 8, 2018, 11:30 a.m. - 1:30 p.m.

Whatcom County Courthouse Conference Room 514, 311 Grand Avenue, Bellingham WA

**AGENDA**

Topic	Requested Action	Packet Page(s)
<b>1. Call to Order</b>	<ul style="list-style-type: none"> <li>▪ Review and amend as needed March 13, 2018 Meeting Summary Review</li> </ul>	1 - 4
<b>2. Annual Report</b>	<ul style="list-style-type: none"> <li>▪ Review draft content</li> <li>▪ Define 1-3 metric(s) to measure the success of each topic</li> </ul>	To Be Distributed
<b>3. Draft Priorities and Work Plan</b>	<ul style="list-style-type: none"> <li>▪ Develop timeline</li> <li>▪ Identify basic tasks</li> <li>▪ Identify possible indicators and measures</li> </ul>	5 - 7
<b>4. Identify the ideal data needs of the committee for the INDEX Committee</b>	<ul style="list-style-type: none"> <li>▪ Create 3-5 outcomes the Committee would like to measure</li> <li>▪ Identify concrete interoperability issues</li> <li>▪ Define no more than 6 trends to track in each committee's domain that would measure how to reduce and prevent incarceration</li> </ul>	8 - 9
<b>5. Update on Pretrial Processes Workgroup</b>	Update	N/A
<b>6. Next Steps: Ideas &amp; Further Information</b>		
<ul style="list-style-type: none"> <li>• Next meeting topics</li> <li>• Review assigned tasks</li> </ul>		
<b>7. Other Business</b>		
<b>8. Public Comment</b>		
<b>9. Adjourn</b>		

**UPCOMING MEETINGS:**

IPR TASK FORCE various Mondays 9-11 a.m. Courthouse Conf. Rm 513/514 311 Grand Ave., Bellingham	COMMITTEES			
	BEHAVIORAL HEALTH various Mondays 2:30-3:30 (except where noted) Health Department Creekside Conf. Room 509 Girard, B'ham	LEGAL & JUSTICE SYS. 2 <sup>nd</sup> Tuesday 11:30 am-1:30 pm Courthouse Conf. Rm 514 311 Grand Ave., Bham	TRIAGE FACILITY 3 <sup>rd</sup> Thursday 9:30-11:00 a.m. <del>Health Dept.</del> MOVED TO Courthouse 5 <sup>th</sup> Floor 513 or 514, 311 Grand Avenue, B'ham	STEERING As needed Courthouse Conference Room 514 Courthouse Suite 105 311 Grand Ave., Bham
May 14	May 14	May 8	May 17 in Room 513	May 31: 9:30 a.m. September 6: 9:30 a.m.
June 11	June 11	June 12	June 21 in Room 514	
July 16	July 16	July 10	July 19 in Room 514	
August 6	August 6	(no august)	August 9 * in Room 513	
September 17	September 17	September 11	September 20: location TBD	
October 15	October 15	October 9	October 18 in Room 514	
November 26	November 26	November 13	November 15 in Room 513	
December 17	December 17	December 11	December 20 in Room 514	

**Incarceration Prevention and Reduction Task Force**  
**Legal & Justice Systems Subcommittee**  
**DRAFT Meeting Summary for March 13, 2018**

---

**1. Call To Order**

Committee Chair Stephen Gockley called the meeting to order at 11:30 a.m. in the Whatcom County Courthouse Conference Room 514, 311 Grand Avenue, Bellingham.

Present: Angela Anderson, Jill Bernstein, Bill Elfo, Deborra Garrett, Stephen Gockley, Raylene King, Dave McEachran, Lisa McShane, Darlene Peterson

Absent: Deborah Hawley, Moonwater

Review February 13, 2018 Meeting Summary

There were no changes.

**2. Discussion of committee work plan and ideal data needs**

Work Plan

The committee members discussed each item on the merged project list as presented in the meeting packet.

- Items 1 and 2 in process: Pretrial programming is still the committee's top priority.
- Item 3 in process: The Sheriff updated and the committee discussed expanded book and release procedures. Some committee members would like to continue to discuss and encourage book and release.
- One additional task may be to get updated statistics, since they have changed since 2016.
- Items 4 and 5 in process: Committee members would like to continue to discuss these items. Start with conversations from the City of Bellingham and the small Cities about their practices. The term "parole" is antiquated. Committee members discussed a drug court consequence of spending time in jail or on work crew and how the work crew program works.
- Item 6 in process: The Committee may like to keep this on the work plan for review from time to time, but for now there are plenty of adequate opportunities, so it would be a low priority. The small cities are already working to help people pay off violations as much as possible. In the County, people are allowed to work off their fines through work crew. The City of Bellingham judge and commissioner will work with people to get their fines paid off if requested.
- Items 7 and 8 in process: Keep these items on the work plan as the committee is already working on them.
- Item 9 in process: This item can be done through the process of validating a risk assessment. It can also be done by the proposed Information Needs and Data

**Incarceration Prevention and Reduction Task Force**  
**Legal & Justice Systems Subcommittee**  
**DRAFT Meeting Summary for March 13, 2018**

---

Exchange (INDEX) Committee. Refer this item to the Pretrial Processes Workgroup and the INDEX Committee.

- Item 10 in process: This is not a work item for the Committee, but Domestic Violence & Sexual Assault Service (DVSAS) would like support for an offender treatment program.
- Item 11 in process: Amend, “Further **consideration** implementation of restorative practices and their role in reducing and preventing incarceration.”
- Item 12 in process: This is the mission on a permanent basis, not a work item. Note that they all support the efforts of the jail. Exclude it from the work plan.
- Item 13 in process: Refer to the Pretrial Processes Workgroup. Judge Garrett to talk with Prosecutor McEachran.
- Item 14 in process: Refer to the full Task Force and invite Christopher Poulos, Executive Director, Washington Statewide Reentry Council. The Committee may consider any ideas Mr. Poulos presents.
- Items 15 and 16 in process: Committee members would like to continue to discuss these items.
- Items that have been discussed, but no action was taken:
  - This is a component of another item that is in process. Put transportation and other resources in a kiosk at the courthouse. The committee discussed the difficulty of people getting to jail alternatives at Division Street, and:
    - Whether it’s feasible for a non-commissioned jail alternative staff person to interview applicants at the courthouse, initially for one day per week, immediately after a plea
    - The possibility of having the defense counsel help defendants who plea to jail alternatives complete their jail alternatives paperwork
    - Supporting the Sheriff’s request for additional staff in the upcoming budget cycle to do this work.
- Items that have not been discussed:
  - Refer to the Behavioral Health Subcommittee the need for on-demand out of custody drug and alcohol evaluations.
  - Refer to the INDEX Committee the review of bail standards and amounts in terms of analyzing what is keeping people in custody. It’s not up to the committee to change bail standards and amounts.
  - Combine a review of portability court and community court with a review of the Spokane Mental Health Alliance (SMHA) justice program.

Gockley stated the work plan can be amended as needed. He will amend the draft work plan as discussed.

Data Needs

Data needs were not discussed.

**3. Update from Judge Garrett and Stephen Gockley on the Pretrial Processes Workgroup**

**Incarceration Prevention and Reduction Task Force**  
**Legal & Justice Systems Subcommittee**  
**DRAFT Meeting Summary for March 13, 2018**

---

Garrett reported for the Pretrial Processes Workgroup. The group would like to contract with Jacqueline van Wormer to help move the group to the next step of making a recommendation to the County Council. She would do that by consulting with the group and answering their questions about a process they need to follow. It's important that the decision on a risk assessment has buy-in from those who will use it. It's also necessary to have an associated pretrial monitoring program. The goal is that the workgroup will bring specific recommendations about the risk assessment tool and a pretrial monitoring unit.

The committee members discussed data that measures how long it takes from case filed to disposition and shows how many people are on pretrial status currently. The Prosecutor's Office has that data. It includes the time a case is out on warrant. That information will be necessary when asking the County Council for money. The County administration and County Council expressed a concern during Steering Committee that the work is targeted to Superior Court and that District Court is already working with a risk assessment system. They do not want to fund different risk assessments for different courts.

**4. Committee sub-report for the IPRTF Annual Report to the County Council**

Mark Gardner, City of Bellingham, updated the Committee on the format and the due dates for completing the upcoming Task Force annual report.

Gockley stated he will write the first draft for Committee review at its April meeting, with final Committee review in May.

**5. Update on Drug Court Improvements from Stephen Gockley**

Gockley stated there is nothing new to report at this time.

**6. Other Business**

There was no other business.

**7. Next Steps: Ideas & Further Information**

The following items will be scheduled on the next agenda:

- Gockley will provide an update of the Pretrial Processes Workgroup.
- Continue discussion of the data needs.
- Review the draft annual report.

**8. Public Comment**

***Incarceration Prevention and Reduction Task Force***  
***Legal & Justice Systems Subcommittee***  
**DRAFT Meeting Summary for March 13, 2018**

---

Joy Gilfilen, Restorative Community Coalition, stated she would like to report to the committee on what happens to the clients who are going through the criminal justice system.

Irene Morgan spoke about what other states have done to change cash bail systems and prison programs and about the barriers in the criminal justice system that are traumatic and prevent people from successfully navigating through the system.

**9. Adjourn**

The meeting adjourned at 1:35 p.m.

DRAFT







**DATA OUTCOMES, TRENDS, AND ISSUES: Legal and Justice Systems Committee:**

Outcomes to Measure:		
	1	
	2	
	3	
Trends to Track:		
	1	
	2	
	3	
	4	
	5	
	6	
1-3 Metrics to measure from each Annual Report topic:		
Pretrial	1	Reduce the 60 percent of jail inmates that are held pretrial
	2	Minimize failures to appear (FTAs)
	3	
Interoperability Issues:		

**From Committee on February 13:**

Suggestions regarding specific **data points** to collect:

- Collect and distinguish between booking, court, and jail information/data
- How many people have concurrent warrants in multiple jurisdictions?
  - Does this person have active warrants from another jurisdiction?
  - If Yes, which jurisdictions?
- How many warrants are for someone who also has active warrants in another jurisdiction
  - Does this person listed in this warrant have active warrants in another jurisdiction? Booked offense(s) (*felony*)
- Final charge(s) (from the Prosecutor) (*felony*)
- Booked citation charge(s) (*gross misdemeanor*)
- Bond amount by prosecutorial charge
- Does the defendant have a history with one of the special courts?
- Recidivism: how long after jail or court release until the person was booked on a new crime?

Suggestions regarding data **collection system**:

- The ability to collect, sort, and report data by person
- The ability to collect, sort, and report data by warrant

- The ability to collect, sort, and report data by booked offense and final charge (felony) and by booked citation charge (gross misdemeanor)
- The ability to run a report on the number of people booked (probable cause) under each booked offense
- The ability to run a report on the number of people charged (prosecutorial) under each final charge

Suggestions regarding **data interpretation and processes**:

- Consider a combined multi-jurisdictional court dates for people with concurrent warrants in more than one jurisdiction.
- Enhanced data sharing: The systems of all jurisdictions must communicate. Provide access for each jurisdiction to easily access data from other jurisdictions.
- Create baseline information and benchmarks that can be monitored to track success of programs and processes.
- Distinguish between the data points/categories and the algorithms of the report to produce correct interpretations of the data
- Create accurate and consistent definitions
- People entering data need to be adequately trained to enter consistent information correctly
- Algorithms must be accurate
- Take advantage of new technology for efficiency in data entering and reporting.

[Outline B.b.iii.]

## **Pre-Arrest Diversion/BH Coordination Improvements**

### New BH staff in Public Defenders office:

#### **GOAL:**

Knowledgeable and coordinated support for defendants with behavioral health and/or substance use treatment needs, provided during their legal proceedings and any term of incarceration, will promote an effective transition to the community and reduce the likelihood of subsequent criminal behavior.

#### **CONTEXT:**

In March 2017, the Whatcom County Public Defender (WCPD) hired a Behavioral Health Specialist to support some of its most challenging clients. The Behavioral Health Specialist has established working relationships with community mental health and treatment providers to assist clients who might be eligible for providers' services. The specialist facilitated arrangements with state Health Care Authority/ Developmental Disability Administration evaluators and with Lake Whatcom Center staff for access to the jail to perform assessments and evaluations for WCPD clients while in custody. This coordination has resulted in clients having service plans in place that provided access to housing and appropriate services immediately upon release from incarceration.

#### **PROGRESS:**

During 2017, the Behavioral Health Specialist provided direct assistance for a caseload of 40 unduplicated individuals. During the first quarter of 2018, the specialist has worked with 11 more unduplicated clients referred to her for formal support. In addition, she informally consults about treatment considerations with attorneys for other WCPD clients who were not formally referred to her caseload, and periodically interacts as well with clients while they participate in drug court or mental health court.

#### **ISSUES/BARRIERS:**

Addressing individual needs despite existing funding and institutional silos.  
Optimal coordination with jail-based behavioral health and re-entry services.  
Post-release care/services coordination.  
Timely access to supportive interventions.

Stephen Gockley draft 4/30/18

**GOAL:**

Avoid physical incarceration in the county jail of some persons newly charged or who have outstanding failure to appear warrants with for minor offenses and who are considered low risks for remaining in the community while their charges are pending initial review by a judicial officer.

**CONTEXT:**

Law enforcement officers in the field often engage persons suspected of committing minor criminal offenses or against whom warrants have been issued by a court for officers to enforce. In cases where there is no imminent threat to public safety, arrest is not mandated by statute or policy (generally domestic violence and DUI related arrests) and there is not an accompanying felony charge, the Sheriff and police chiefs have adopted policies authorizing officers to either issue a citation or refer the matter to the prosecutor for consideration of issuing a summons without effectuating a physical arrest and booking the person into jail. The vast majority of misdemeanor/gross misdemeanor cases are handled in this manner.

~~Law enforcement officers often encounter persons who are wanted on warrants for failure to appear at a prior hearing on a misdemeanor or gross misdemeanor charge. These warrants are issued by a judicial officer and “command” the officer to take the person into custody. Officers have little or no discretion in these matters. Many times, these encounters involve at a hearing for these low-level and/or victimless offenses, or warrants issued by a judicial officer due to a defendant’s failure to appear (a separate charge commonly referred to as an “FTA”) for a prior hearing. Ordinary practice in such instances has been for an officer to take the person into custody, escort him or her to the jail for “booking” on a charge the warrant, and have the The person be is then held in the jail until a first hearing on the charge can be held before a judicial officer. First hearings must be and are conducted with little delay, but the cumulative effect of all such brief incarcerations on the total daily jail population can be significant and, as the Task Force’s Vera Institute consultants pointed out, any period of incarceration has disruptive and potentially destabilizing consequences for defendants.~~

**PROGRESS:**

On its own initiative, the Whatcom County Sheriff’s Office took several steps to address the kinds of field encounters described above through what were termed “book and release” practices. ~~The Sheriff’s Office authorized its officers to issue written citations for certain minor offenses that identify the criminal charge and inform the person of a specific date set for his or her court appearance, and then allow the person to remain in the community pending the hearing without processing the offense at the jail.~~ The Sheriff’s Office also met with judicial officers from each of the local courts of limited jurisdiction (District and municipal courts) which handle most minor crimes and low-risk defendants and encouraged the judicial officers to

adopt the practice of indicating on warrants the court's authorization for law enforcement to "book and release" the subject of the warrant. This practice is currently followed in some courts of limited jurisdiction in King County. The Sheriff's Office also highlighted another practice that is followed in King County that authorizes the clerk of the court to administratively "quash" warrants at the time a quash hearing is requested. This avoids defendants being incarcerated on failure to appear warrants between the time a good-faith effort is made to request a "quash hearing" and the time a hearing is held.

Similarly, the Bellingham Municipal Court has authorized Bellingham Police officers enforcing an FTA warrant for a lower level offense to re-issue the citation to the person and set a new court date for the his or her hearing. Bellingham Police officers in the field also have discretion when dealing with an incident involving certain criminal offenses simply to cite the offender and set a court date, rather than booking the offender into jail.

#### **ISSUES/BARRIERS:**

Despite these attempts to prevent and reduce incarceration through "book and release" practices, the Sheriff's Office reports ~~its officers in the field and at the jail have not seen evidence that these practices are being implemented to the extent that was expected.~~ it has not yet encountered any "book and release" warrants. It should be requested that court of limited jurisdiction give further consideration to adopting the practice of issuing book and release warrants. ~~Further coordination between the Sheriff's Office, the BPD, and the courts of limited jurisdiction will be necessary to clarify this situation.~~

Stephen Gockley draft 5/6/18 Sheriff Elfo draft 5/7/2018

[Outline B.d.]                      **Electronic Home Monitoring**

#### **GOAL:**

Monitor pretrial defendants in the community for compliance with conditions of release imposed by judicial officers, as an alternative to detaining them in the jail.

#### **CONTEXT:**

Judicial officers may, and in many cases must, release defendants awaiting trial when they pose low risks of failing to appear for later proceedings or of committing new crimes (see state court criminal rule CrR 3.2 (Superior Court) and CrRLJ 3.2 (District and Municipal Courts)). At the same time, judicial officers can impose conditions on such releases to further protect public safety or promote the administration of justice, although a 2017 state Supreme Court decision limited the kinds of conditions that are permissible. Jurisdictions across the nation are

increasingly using commercial electronic home monitoring (EHM) technology to note information on the activities of out-of-custody court-involved individuals.

EHM devices are fitted ankle bracelets that can be used to allow offenders to serve their sentences in the community rather than in jail. EHM devices utilize one of two distinct technologies. A GPS bracelet reports the location of the wearer at all times to a central monitoring station. These devices can help ensure that an individual is attending required activities such as work or treatment, and they can also record when an individual enters a prohibited location such as the neighborhood of someone with a protection order against the individual. A SCRAM bracelet detects recent consumption of alcohol by means of transdermal sensors; it too operates continuously in the same way. Any violation of release conditions prompts a report from the EHM vendor staff, which can then be followed up on by law enforcement or the court that ordered the individual's release. Neither EHM technology allows for immediate responses, so EHM devices are only monitoring measures, and do not serve prevention or real-time intervention purposes.

The Whatcom County District Court Probation Office employs EHM devices with some persons released from jail on probation. The Sheriff's Office uses EHM devices with some offenders in its jail alternatives program (see separate section of this report).

Prompted by booking restrictions imposed in 2016 due to jail overcrowding, Bellingham Municipal Court began issuing Home Detention Orders releasing many persons convicted on misdemeanor charges using EHM devices provided through a non-profit vendor at cost of \$14.50 per day; this cost is far less than the County's EHM contractor charges and multiple times less than the City's per-day cost to incarcerate an individual. The municipal court uses City of Bellingham funds to pay some or all of the daily EHM fee when an offender cannot afford the cost personally.

**PROGRESS:**

Bellingham Municipal Court has achieved impressive reductions in its overall expenditure of public funds by avoiding incarceration of defendants convicted of low-level offenses through the court's adoption of EHM devices as alternative sentencing. Besides the savings of public resources, the use of EHM devices allowed those defendants to remain in their homes during their sentences and participate in work, school, essential child care, treatment, counseling, medical/dental appointments, attorney appointments, probation, and scheduled court hearings, with verification and oversight by the municipal court's program manager.

In 2016, 212 defendants completed their municipal court sentences using EHM devices. The sentences served by those individuals amounted to a total of 3,090 days and the aggregate costs to the City for those individuals was \$14,757.21. Serving those same sentences in Whatcom County Jail would have cost the City \$303,016.00.

In 2017, 332 municipal court defendants completed their sentences on electronic home monitoring, serving more than 8,900 days. The City of Bellingham paid \$89,285.64 in EHM costs for these defendants. Incarcerating these defendants in the Whatcom County Jail instead would have entailed a total cost of \$967,446.

For the first four months of 2018, Bellingham Municipal Court recently reported that 79 defendants completed their sentences in the community with EHM devices. The total of those sentences was 3,318 days. For those 79 defendants, the City of Bellingham bore a total cost of \$40,276.41, instead of the \$384,888 it would have expended for their incarceration in the jail. \$384,888.

Increased use of EHM devices led to dramatic decreases in the number of warrants issued for failure to appear in court or violation of release conditions. For 2016 and 2017 combined, only 2% of offenders with EHM orders had warrants issued against them, which is considered a remarkable success rate.

**ISSUES/BARRIERS:**

Whatcom County continues to contract for EHM services from a for-profit vendor that is more expensive than the City of Bellingham’s vendor. The potential for savings in the County’s EHM services has been discussed and should continue to be evaluated.

Stephen Gockley draft revised 5/6/18

[Outline B.e.] **Warrant Reduction Efforts**

**GOAL:**

Reduce the number of new and outstanding warrants, especially warrants issued by a judicial officer (“bench warrants”) for failures to appear in court, which in turn will drive a reduction of jail admissions.

**CONTEXT:**

Warrants play a significant role in causing and prolonging incarceration. The Vera Institute consultants pointed out the high proportion of persons booked into the Whatcom County Jail that have outstanding warrants against them (see Vera Institute Final Report, Recommendations, Part 2, pages 35-38). Warrants issued for failures to appear in court when required are among the most common causes for misdemeanor admissions to the jail (pages 35-36) and the persons who are jailed on those warrants comprise a majority of the average daily number of pretrial defendants held in jail. Authorizing, preparing, issuing, and serving

warrants create a burden on the resources of the courts, court administration, and law enforcement.

As that Final Report also notes, new and outstanding warrants limit the ability of law enforcement and the courts to divert low-level offenders from incarceration. Law enforcement personnel must arrest someone they encounter with an outstanding warrant against him or her, even if a new crime was not committed. That in turn usually results in having the person booked into jail. Even when a new crime is the basis for an arrest, the additional presence of an outstanding warrant can further complicate and delay the process the defendant must go through in the courts. This is particularly true if the outstanding warrant was issued by a different court than the one that will be hearing the new charges and must be resolved in a separate forum and separate proceedings.

Warrants for failure to appear can be reduced most directly by reducing failures to appear. Whatcom District Court Probation has installed case management software capable of generating text message reminders for all probation appointments, all scheduled substance tests, and all probation-involved court hearings. 81% of persons on probation have a cell phone and agree to receive text messages. Court data indicated that the failure to appear rate for court hearings has been reduced by half, from 28% to 14%, since the introduction of text message reminders. Reducing failures to appear so substantially has allowed probation staff to work more efficiently and have additional time to serve the persons receiving probation services. Because of this success, District Court Probation is now exploring the possibility of sending text messages for pretrial hearings that do not involve probation.

Bellingham Municipal Court has long used telephone call reminders from court staff for all court appearances of defendants on all its criminal calendars. Municipal court is working to adopt a text message capability like District Court's. Municipal court offenders receive probation services through District Court staff and thus also benefit from its existing text message practices.

#### **PROGRESS:**

The Whatcom County Sheriff's Office, Bellingham Municipal Court, and the Bellingham Police Department are making an effort to expand the ability of law enforcement officers serving warrants to "book and release" persons subject to warrants for minor offenses (see separate section of this report on "book and release" practices).

Whatcom District Court administration has coordinated a series of warrant reduction measures into a single initiative that relies in significant part on cross-referencing records and other data in the information systems of the courts, state agencies, and law enforcement entities. Inconsistencies in these records are identified and remedied so that they do not mistakenly become the cause for issuance of a warrant at a later date. For example, the District Court administrator now receives a periodic report identifying any instances where an unexpired no-

contact order is still in effect, but the underlying court case has been dismissed. In that instance, the order will be terminated so the records correctly reflect the status of the issues involved in the case. A different report shows situations in which traffic offense fines have been fully paid or other legal conditions have been satisfied but the defendant's driver license remains suspended. The District Court can now release Department of Licensing license suspensions from the District Court's office so that licenses can be reinstated immediately in the defendant's presence.

The Vera Institute Final Report recommends instituting practices to resolve old warrants that are still in effect (see Responsive Strategy 2(c), page 37). Currently, some local municipal courts act to terminate warrants for failures to appear when defendants later ask the court to continue with the proceedings.

**ISSUES/BARRIERS:**

Efforts to implement various best practices used elsewhere to resolve warrants should be expanded and broadened throughout Whatcom County courts

Warrant reduction measures individually provide small incremental reductions in incarceration. Local jurisdictions that implement as many warrant reduction steps as is feasible will reap the greatest cumulative effect on the jail population.

Many aspects of the Whatcom District Court warrant reduction initiative involve data gathering and analysis across multiple information systems. The staff and fiscal demands of developing, implementing and maintaining the data capabilities necessary for such analysis have not been clearly delineated at present.

Stephen Gockley draft revised 5/6/18

[Outline B.f.]      **Drug Court Improvements**

**GOAL:**

Effective engagement with high-quality treatment and appropriate support services for as many drug-dependent defendants as possible, as an alternative to prosecution and incarceration.

**CONTEXT:**

The drug court program was established in 1999 and nominally utilizes a team approach involving the prosecutor's office, the Superior Court bench, the public defender's office, and support by treatment professionals on the therapeutic courts staff. In most cases, defense attorneys apply for admission to the program for clients they believe will benefit from diversion

and substance use disorder (SUD) treatment, the prosecutor's office approves or denies such applications, approved individuals go through a certified chemical dependency evaluation, drug court staff screens approved applicants to ensure they meet other appropriate treatment criteria, and the supervising Superior Court judge admits recommended individuals to the program and monitors regular compliance and progress with program requirements.

Drug court expectations include avoiding new criminal charges, undergoing periodic drug testing, maintaining satisfactory involvement in SUD treatment, and pursuing activities to support a clean-and-sober lifestyle, such as educational advancement, meeting job training and employment goals, and securing appropriate housing. The supervising judge reviews any non-compliance, with consequences that can range from tightening the individual's restrictions to terminating involvement and returning his or her case to the normal judicial process. If all goes smoothly, completing the drug court program can take one year or less. However, the nature of drug dependency will often result in occasional missteps with compliance and thus most drug court participants take two years to complete their program requirements.

In starting its drug court program, Whatcom County used available recommended approaches in what then was a developing field. Considerable research since then has established clearer "best practices," several of which have not been incorporated in the Whatcom County program. In 2017, at the request of the IPRTF Legal and Justice System subcommittee, the drug court staff and supervising Superior Court judge identified steps that could enhance the quality and scope of the program and align it with current best practices

#### **PROGRESS:**

In 2016, the prosecutor's office approved and denied applications in about equal numbers and the court admitted about 2/3 of the approvals into the program. 2016 drug court "open cases" usually involved 37-39 individuals monthly. 53.5% of drug court cases that were closed in 2016 reflected successful completion of program requirements. In 2017, approvals of applications declined substantially while denials rose, while the court's admission rate remained about the same as in 2016. 2017 drug court "open cases" usually involved 38-43 individuals monthly. More drug court cases were closed in 2017 than in 2016, with 71.5% of the 2017 closed cases reflecting successful completion of program requirements. Early 2018 data show more application approvals than denials, with open cases ranging from 42 to 45 individuals monthly.

With support from task force and committee members, the drug court team achieved several of the improvements to the program they had identified in 2017. Drug court staff received approval to add a certified chemical dependency professional as a temporary part-time case manager, which has freed time for the program's coordinator to strengthen community and treatment provider relations and plan for additional program funding in the future. The staff also obtained county funding of approximately \$1500 to provide small positive incentives that recognize participants' progress meeting requirements, incorporating this national "best practice" into the program for the first time. Two new treatment providers are establishing themselves in the community, which will increase both the availability and the quality of

treatment services. Lastly, work is underway to develop additional supported housing for drug court participants, with positive expectations for success in this effort.

**ISSUES/BARRIERS:**

Obstacles remain in the effort to adopt accepted best practices for drug court programs. National standards now call for use of a validated screening instrument to inform a prosecutor's decisions to approve and deny applications for drug court participation. Currently, the prosecutor's office has declined to consider use of a screening instrument. This position effectively prevents an expansion of the number of defendants involved in drug court, and avoiding incarceration, that the national standards suggest might be possible. National standards also encourage joint training by all members of a drug court team. In 2018, all local team members will attend a national drug court training conference, with the exception of a representative of the prosecutor's office, which has declined the invitation to join the others. Besides losing the potential benefits of more informed decision-making and a stronger and more knowledgeable team, the failure to follow these best practices also greatly decreases the chances that Whatcom County would be eligible for substantial federal grant funding that is could otherwise be available to improve local drug court functioning.

Committing funds from the Criminal Justice Treatment Act to expand high-quality recovery housing and implement dedicated housing stipends would provide critical stability for drug court participants during the difficult work of overcoming dependency and building new lives.

Increased county funding to add non-temporary staff capacity to the drug court team would serve both short-term and longer-term goals of preventing or reducing incarceration.

Stephen Gockley draft revised 5/3/18

[Outline B.g.] **Pretrial Risk Assessment and Pretrial Services**

**GOALS:**

Implement a statistically validated risk assessment instrument to inform the decisions of judicial officers in the Superior Court, and other willing Whatcom County jurisdictions, about possible release of defendants while awaiting trial and about the conditions imposed for their release.

Select desired pretrial services and develop the appropriate capacity for monitoring defendants on pretrial release, including staffing levels and necessary administrative support.

**CONTEXT:**

Settled U.S. Supreme Court precedent states a basic constitutional preference for releasing defendants while they await trial. Consistent with that guidance, Washington rules for criminal cases (CrR 3.2 for Superior Court, and its parallel CrRLJ 3.2 for District Court and municipal courts) require that courts release pretrial defendants in most cases, although a court may impose conditions on a defendant for his or her release. This general directive allows exceptions when a case involves a capital offense or when a defendant is determined unlikely to reappear for subsequent proceedings or likely either to commit a new violent crime or to unlawfully interfere with the administration of justice.

While these rules list possible considerations for releasing pretrial defendants, actual decisions historically rested on the individual views of each judicial officer. In recent years, however, research established that pretrial release decisions more consistently ensure a defendant will return to court and will avoid new violent crime when a judicial officer also takes account of a set of specific predictive factors. Thus, the use of evidence-based and statistically validated risk assessment tools is now recognized as a national “best practice” for pretrial release decisions.

In Washington, Spokane and Yakima are implementing pretrial risk assessment instruments for their courts. King County has begun a similar process and a Washington Courts Task Force has also begun to study this area. We are taking exploratory steps in this direction in Whatcom County as well. Bellingham Municipal Court is utilizing its own informal risk assessment tool, which draws on tools used in other states but is not statistically validated for local defendants. In addition, the District Court is currently conducting a pilot project looking at one of the formal risk assessment tools used elsewhere which also has not been validated locally.

After considerable deliberation by the Legal and Justice System Subcommittee, in January the Incarceration Prevention and Reduction Task Force identified efforts to strengthen pretrial release options as one of its highest priorities. Vera Institute recommendations support this emphasis. The Task Force and the Vera Institute report acknowledge that the practical value of a reliable risk assessment instrument is limited unless it is also paired with a capacity to monitor pretrial defendants who are released so that they do in fact return to court as required. Depending on the level of risk identified for releasing any individual pretrial defendant, other jurisdictions choose to employ various kinds of monitoring measures, or “pretrial services.”

A recent Washington Supreme Court ruling substantially limited the kinds of requirements a court can impose on defendants who have not yet been convicted of the charges against them. Currently, judicial officers in Whatcom County District Court and Bellingham Municipal Court have an option to release pretrial defendants with phone call reminders about upcoming court dates managed through the District Court Probation Office. In addition, some Bellingham Municipal Court defendants are released subject to the additional requirement of wearing an electronic home monitoring device (EHM or EHD) overseen by a non-profit service provider.

Unlike the “pretrial services” available in District Court and Bellingham Municipal Court, judicial officers in Whatcom County Superior Court have had no other options for releasing pretrial defendants than imposing bail requirements. However, bail alone does not serve the twin goals

of pretrial release for several reasons. First, a pretrial defendant's ability to post bail is not reliably related to a likelihood that the individual will reappear for later court proceedings or avoid engaging in new crimes. Second, many defendants who would predictably return to court and avoid new crimes cannot afford to post even low amounts of bail and thus remain incarcerated despite the minimal risks their release would pose. The disparate economic effects of a bail-option-only system are widely considered one of the primary reasons why almost 60% of the jail population are pretrial defendants.

#### **PROGRESS:**

The Legal and Justice System Subcommittee has formed a Pretrial Processes Work Group, the participants in which include Superior and District Court judicial officers, court administrators, representatives from the prosecutor's office and the public defender's office, a municipal court victim advocate, and subcommittee members.

The Pretrial Processes Work Group contracted with a criminal justice expert as a planning consultant to assist it in creating a comprehensive outline for developing a statistically validated risk assessment instrument and for establishing a pretrial services capacity to monitor individuals who are released. The Work Group is currently dealing a series of necessary organizational issues for these tasks and is gathering data necessary to inform future plans.

The Work Group now plans to develop a supplemental budget request to County Council in summer 2018 for start-up costs of engaging an expert consultant to oversee adoption of a validated pretrial risk assessment instrument, and a project supervisor to guide initial implementation of the risk assessment instrument and creation of a pretrial services capacity.

#### **ISSUES/BARRIERS:**

Creating and using a pretrial risk assessment instrument and instituting pretrial services to support the release of pretrial defendants require the County's judicial systems to balancing a daunting number of complex, interrelated, and sometimes even conflicting issues. High among those are ensuring community safety, promoting efficient use of public resources, achieving consensus and "buy-in" from judicial officers and other stakeholders in the legal system, implementing chosen improvements as quickly and effectively as possible, and establishing information systems for gathering data necessary to evaluate progress and success in these efforts.

The Task Force, County Council members, and Work Group participants all agree that the desired outcome for developing pretrial release and monitoring processes is a unified approach accepted by all courts county-wide. The pretrial jail population offers the primary opportunity for addressing the community's overarching goals of preventing and reducing incarceration. Building consensus will require a careful and deliberate process to satisfy the needs of unrelated court systems and gain the acceptance by individual judicial officers.

Costs are always a factor in major public investments of time, resources, and personnel. The initial planning of the Pretrial Processes Work Group has resulted in reducing the estimate for the cost of developing a validated pretrial risk assessment instrument from an early suggestion of approximately \$200,000, based on Spokane's work, to a current outline involving expenditures of possibly \$50,000-\$75,000. The Work Group has not settled on the precise scope of pretrial services it might recommend, and thus it has not yet calculated the estimated cost of ongoing pretrial services to the Superior Court.

Putting improvements in place that can reduce incarceration as soon as possible is another priority for the Work Group. To this end, it is exploring ways in which the County may implement an expansion of pretrial services available to the courts even before adopting a validated pretrial risk assessment instrument. This approach would allow Superior Court judicial officers to release at least some low-risk pretrial defendants with monitoring measures, while the more formal risk assessment process is being established.

Stephen Gockley draft revised 5/5/18

DRAFT