Memorandum

David Bennett Consulting
Thinking Outside the Cell

To: Criminal Justice Commission

From: David M. Bennett and Donna Lattin, Consultants

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Re: Spokane Regional Criminal Justice Commission Report

We appreciate the work of the Spokane Regional Justice Commission. You approached your task with a sincere interest to learn about the local criminal justice system and with a broad receptiveness to new ideas. We are impressed by the time you invested, and we support your advancement of progressive goals and principles which reaffirm many existing efforts and, if applied, will benefit the entire system. We appreciate the opportunity we had to provide input into the Commission's work.

As criminal justice system consultants we know that every system review has its inherent limitations. As system consultants we fully understand that conclusions and recommendations invariably reflect the process itself: the depth and breadth of the review, the access to data, the reliance on subjective or objective analysis, and so on. We have reviewed the report with this understanding.

As consultants, who are concluding six years of working in Spokane County on local system reform, we offer our suggestions to help strengthen the report, and to advance the reform efforts already underway.

System Consolidation

It is not every day that a jurisdiction pauses to consider the possible benefits of consolidating criminal justice system functions. It is a rare opportunity. As such, the issue deserves a thorough approach. It deserves an examination that transcends current conditions, existing players, and political viewpoints and takes the long view.

We suggest that a review of consolidation should be grounded in certain system goals: How might consolidation enhance efficiencies, improve case coordination, support common baseline services, ensure a more equitable distribution of resources, deliver uniform victim services, advance and support system reform, improve public safety and reduce costs? We believe that an examination of consolidation should be based on an objective analysis of costs and benefits, should consider other examples of court consolidation, and should produce a concise analysis of pros and cons.

Unfortunately, the report submitted by the Commission makes an argument against court consolidation based on no hard facts and no comprehensive analysis. Even worse, it appears that the recommendation against court consolidation is based largely on the wishes of one particular player (municipal court) rather than an assessment of what is best for the larger system.

This outcome undoubtedly reflects a project strategy that was based in large part on a listening campaign. This approach certainly has a role in formulating conclusions about system issues; however, the danger of this method is that often the loudest or most persuasive voice can dominate.

The argument advanced against consolidation goes against the national research presented in the Commission's report regarding the proven benefits of consolidation (reduced redundancies, money saved and public safety improved). It also contradicts the conclusion of the National Center for State Courts (NCSC) which stated, "In general, the NCSC believes that when it is carefully conceived and effectively executed court consolidation can reap benefits envisioned by stakeholders such as improved services to the public, greater access to justice, and a quality of justice at a lower cost that is equal or better than before consolidation." (NCSC, 2011)

A decision against consolidation forestalls the full realization of the principle of 'offender-based systems' (in contrast to an offense-based approach) proposed by the Commission in their report. Band-Aid approaches and half-reforms will prevent the jurisdiction from fully realizing the very principle on which the report stands.

A recommendation against consolidation weakens the system reforms proposed in the report, such as universal pretrial operations, streamlined front-end diversion, more efficient case processing, reduced court hearings, reduced reliance on incarceration, adoption of risk-based offender management, and improved offender outcomes. After 6 six years working within the system we know all too well the limits on criminal justice reform within a balkanized system.

In our view, so important is consolidation to effective system functioning that we have recommended that, while outside the purview of the Commission's work, the state of Washington establish a unified court system with two trial courts, a misdemeanor level court and a felony level court. There is no justification in a modern criminal justice system to have two limited jurisdiction courts.

Finally, the argument in the report against consolidation is made without answering the core questions the report poses, and which the Commission indicates guided their review: Would a particular change save the system money? Would a particular change improve outcomes?

We encourage a deeper analysis of the consolidation issue. The jurisdiction has received a recommendation based on subjective input from system players. That is a start, but we encourage that this be supplemented with an objective analysis of the long-term costs and benefits of consolidation and that this information help inform the ultimate decision about the future.

A decision of this magnitude should not solely rest on current politics or players. A decision of this importance deserves a full analysis.

We Recommend a Unifying Tone

We are disappointed at the stark criticism leveled against District Court. We do not believe that this report was intended as a report card for any particular system component. The process simply did not lend itself to delivering verdicts about the quality or functioning of any one court or department. Yet this report extols Municipal Court and Municipal Probation while criticizing District Court—without substantiation.

There is a claim made in the report that the District Court relies heavily on incarceration. Where is the data to support this? We have been hearing this allegation ever since beginning our work in Spokane but have found **no** evidence to support it.

We do not hold the opinion that District Court does not employ alternatives, nor can we agree that one court is out-performing the other. In a recent meeting that we had with the District Court judges we were very pleased by the interest in expanded alternatives and their eagerness to take full advantage of them. Moreover, District Court has been innovative in a number of areas such as Mental Health Court, DUI Court, and Veterans Court, as well as the use of cognitive treatment, and more.

We are well aware that District Court, like every other component of this system, has its own challenges and areas in need of improvement; but to single it out for censure places the court in the unfair position of having to defend its reputations, and in the end this can only serve to further divisiveness. A more unified system requires the building of mutual trust and respect. To single out one component defeats this larger goal.

The selective praise of Municipal Court is not only unfair, but it sets the commission up for a faulty conclusion about consolidation. The report seems to suggest that unequal levels of court functioning render consolidation untenable: the report appears to argue that consolidation would compromise the quality of Municipal Court through a dilution of its good work. But in a fragmented system the goal is to standardize operations, to make uniform the best system practices, and to raise all boats to the same high level. Differences in quality (if they did exist) should never be an excuse for maintaining the status quo; it should be a call for common high standards.

We suggest a more unifying tone.

Recommended Additions and Clarifications

This Report contains many substantive recommendations. We appreciate the emphasis on certain principles: an offender-based approach, an assumption for pre-trial release, the use of the least restrictive offender response, a goal for recidivism reduction, risk-based offender management, and improved system coordination.

We applaud recommendations for more front-end diversion, a 24/7 Pretrial Services program, the cross-jurisdiction funding of a Community Corrections Center, routine program evaluations, and the integration of information technology and case management systems.

Overall, the Report appears to be trying to reset a balance, to move the system toward a clearer consideration of alternatives and a commitment toward improved offender outcomes. This is something we support. On the other hand, striking the right balance can only happen when we put all the pieces on the scale.

The Report makes the right case for expanded and improved alternatives but it includes no direct mention of jail capacity needs into the future. This will be important to address as this process moves forward. Our experience and research inform us that the best Community Corrections Center or treatment program or supervision effort is undermined by a lack of the one empty jail bed. Striking the right balance requires having jail in the mix. Below we offer some comments on specific Report recommendations.

Consolidation of Prosecution and Indigent Defense

The report makes no mention of consolidation for prosecution or indigent defense. This recommendation was made in our original 2008 report and is critical for optimum efficiency.

County Probation

The Early Case Resolution (ECR) program has made tremendous strides in streamlining case processing and delivering swift justice. In the interest of ensuring the best possible outcomes it is important to now extend sentencing options. Toward this end, we recommend the dedication of County Probation officer(s) to ECR to give the court non-jail supervision options for felony reduction cases; an option that the Department of Corrections does not offer. Supervision resources should be expended on the misdemeanor population with the most significant risk/needs, regardless of the court of jurisdiction. There is no reason to require that a felony reduction case be returned to district court simply to accomplish this goal.

Consolidating the two probation departments is only the beginning of what needs to be comprehensive evidence-based reform. The existing inappropriate uses of probation, in which supervision is applied without differentiated intensity or duration, needs to be eliminated and replaced with a risk/needs approach: one that allocates supervision resources based on criminal history, that develops case plans based on an assessment of individual crime-related factors and that affords individuals the opportunity to routinely earn their way off of probation for good behavior.

Pre-Trial Services

We applaud the recommendation for a 24/7 Pretrial Services program. System coordination and improved case management must begin at the front end. We would add to this a recommendation for joint city/county funding of Pretrial Services.

We would also recommend a call for universal screening of all cases (in fact, the recommendation for a 24/7 Pretrial Services program that has been made in the past is premised on screening all municipal and district court cases).

Also, we note that this recommendation is not noted in the suggested timeline. We would encourage that the development of a 24/7 Pretrial Services program be a high priority recommendation, especially given that so many other reforms depend on it.

Pretrial Services manager, Cheryl Tofsrud, and her staff have done a tremendous job over the last five years to build program capacity with minimal added funding. The Report betrays a lack of understanding about the extent of their duties. The tasks that the Report suggests should be developed already are in place: appointment of defense attorney, continual case review, management of pretrial release conditions (there are now 130-felony defendants in the community under pretrial supervision), referral to services, etc.

That the Report calls for the program to conform to court rule regarding pretrial release implies non-conformance, without providing evidence of a problem. This recommendation could use more specificity.

The Report recommends expanded front-end assessments (ones that would consider defendant needs and strengths) that are confusingly melded with the pretrial interview and verification process. The concept offered in the report will need further clarification.

The Ceasefire Approach

We have encouraged the adoption of the Ceasefire model but would not limit it to cases involving gun violence, which the Report takes as its focus. Not only does the Ceasefire model have applicability for other offenses (drug sales, property, etc.) but its approach should be viewed not only as a program, but also as a new paradigm. What might the system learn from the community-involved Ceasefire model for managing higher risk offenders?

Allowing Defendants to Opt-Out of Mandatory Court Hearings

The Report recommends that, in the interest of reducing failures-to-appear (FTA) in court, a mechanism to allow defendants to opt out of some court hearings should be explored.

While the reduction of FTA's is an important goal we would instead encourage a focus on streamlining the process and reducing the number of court hearings as the

Commission recommended in 5.5 (2). The flip side of not having a defendant at a hearing is that the case cannot then be resolved. Although this Report recommendation is offered as a creative solution to a very real problem, we encourage the system fix you recommended in 5.5 (2). If defendants are not having unnecessary court hearings, then defendant's appearances do not need to be waived.

Early Case Resolution

As a point of clarification, referring to Early Case Resolution (ECR) as 'also known as DCM' is not accurate. Differentiated Case Management kicks in after ECR. All cases are first examined to try and resolve them through ECR. If that is not successful, then the case is assessed and assigned according to a DCM system so that there are different tracks and assignments based upon the seriousness/complexity of the case.

The Report calls for less use of jail as part of the ECR process. As a matter of point, the ECR program was not designed specifically to reduce jail population, although that is an outcome. Part of the reduction does come from resolving the cases of in-custody defendants earlier and part of the reduction comes from resolving out-of-custody cases early so that defendant's are less likely to FTA or get arrested on a new offense, and this also reduces the need for pre-trial jail space.

The Report suggests that ECR focus more directly on in-custody cases. However, resolving the out-of-custody cases is equally as important because the defendants are back in the community continuing the same behavior that brought them into the system in the first place.

We agree that getting the case resolved and having the individual in treatment and under the appropriate supervision levels is very important. However, any blanket argument against using the jail post-trial limits the prosecutors' options for resolving cases and is not necessary. Some defendants may need to be stabilized for a short period before entering treatment, and the jail serves that purpose. And, in other cases if the defendant gets time in jail that is less than they would have otherwise, it is an appropriate outcome. There are significant benefits to defendants pleading guilty early in the process and receiving a jail sentence as opposed to remaining in custody for the same amount of time classified as a pre-trial defendant and simply be given credit for time served.

Also, although the Report advocates for video court hearings it should be pointed out that this is NOT a panacea and in some instances (such as ECR) would delay resolution of the case.

The Community Corrections Center

Any discussion about a Community Corrections Center (CCC) is made possible by the foundation built over the last several years by Sheriff Knezovich.

In taking the next step toward a full-service CCC we recommend that the plan not try to be too many things to too many people. While such a program can serve a vital role as

a step-up and a step-down from jail, programs that try to also serve as an all-purpose one-stop shop (for assessments and diversion and probation and more) can topple under the weight of its task. We caution against over-reach.

Mental Health

The Report calls for more Crisis Intervention Training (CIT) to better prepare the system to respond to the mentally ill. We support this. At the same time, we encourage the county and the region to work toward a comprehensive approach for the mentally ill. We encourage a more appropriate, coordinated and humane response across the spectrum of the system, from pre-booking diversion (receiving center) to re-entry.

Risk and Need Based Offender Management

We support the focus on using offender risk and needs assessments to guide pretrial release decision and post-trial supervision. We also support the development of locally validated risk tools.

We encourage a broad application of the risk concept. We have been working with the jail to explore the use of risk assessment to guide movement across custody and re-entry case planning; we have recently engaged ECR and staff from the district attorney's office in discussions about evidence-based sentencing (and the proper use of risk assessment); and we have spoken to the importance of risk-based sanctions and risk-based 'tracks' to help organize and coordinate system efforts. We encourage a systems approach to the use of risk and the conformance to evidence-based practices.

Program Quality and Outcome Evaluations

We appreciate the call for routine evaluations and department reports. In terms of program evaluations we need to look at both the outcomes and the process. We encourage the county and region to consider validated program assessment tools that are available for this purpose (the Oregon legislature mandates the scoring of corrections services by such a tool); we encourage the development of a remediation protocol for those programs falling short (how can we help them come into compliance?); we encourage the development of an assessment/feedback system for probation officers to improve individual performance; and finally, we encourage an overall 'system report' that transcends the many parts of the system and allows everyone to consider overall system functioning: how do we rate overall efficiency, money saved, coordination, and public safety?

Governance Structure

A regional approach to criminal justice requires a regional governance structure. The structure put forward in the Report for consideration is a reasonable step but it might not go far enough. It does not reflect any changes in governance functions. With the recent

transmission of jail responsibilities to the Board of Commissioners, as well as the Report's call for some administrative changes (a consolidation of municipal and district probation, a call for joint city/county funding of a Community Corrections Center, and a 24/7 Pretrial Services program—presumably to serve all courts) it is an opportune time to consider a new governance model.

We recommend the creation of a Corrections Director/Criminal Justice Coordinator to oversee the Jail, the Community Corrections Center, Pretrial Services, and a consolidated Probation Department. Importantly, the Director should have a full-time support person to provide the necessary data analysis and research needed to support the RJC and help move the system forward.

Thank you for the opportunity to provide feedback. Our comments are a call to strengthen the Report with supplemental analysis on Consolidation; to set a more unifying tone; and to clarify and expand upon particular recommendations. We will be in Spokane for our last visit, 9-11 December and would be happy to meet with the Commission and any other interested groups to further discuss our input.