

PURPOSE

The purpose of this paper is to propose utilizing the legislative Blue-Ribbon Commission to create a subcommittee to negotiate expanding Washington's pretrial services. This paper focuses on the negotiation's stakeholders, structure, timeframe, ground rules, essential information, alternatives, and other anticipated strategies.

REQUIRED STAKEHOLDER PARTICIPATION

Participant representatives from the organizations described below should be in attendance. These required organizations will be brought together through a subcommittee within a legislative Blue-Ribbon Commission to unify the courts in the state.

Stakeholders

These stakeholders— the State's Administrative Office of the Courts (AOC), Washington Prosecutors Association, Washington Defender Association, House Civil Rights & Judiciary Committee, House Community Safety, Justice & Reentry Committee, and interested State Senators – have spoken to the Office of the Washington State Auditor (SAO) which is where I am a performance auditor conducting the pretrial service state audit. As a result of their cooperation and expertise, they should be included as participants of the subcommittee.

Ensuring Attendance

Incorporate legislation's preexisting plans to conduct a Blue-Ribbon Commission ("the commission") for unifying the courts within the state will ensure subcommittee attendance. Creating a subcommittee within the legislative commission closely positions participants with legislators who possess the power to create legislation and enforce statewide practices. Creating a sub-committee in the commission further ensures participant attendance because the subcommittee can be messaged to demonstrate that the subcommittee's negotiations support a greater goal and strides made pretrial services, through the lens of court unification, will be applied consistently throughout the state.

NEGOTIATION STRUCTURE AND TIMETABLE

The following is a proposed structure and timeline for subcommittee negotiations to expand the use of pretrial services:

Steps to Reaching an Agreement

- Legislative representatives should assemble the commission on court unification.
 - A member of the commission should create the pretrial service subcommittee and organize the following:
 - Calculate the cost of meetings by establishing an approximate meeting time, travel, preparation time, support staff time, facilities and other costs per participant.

- Reach out to SAO to confirm organizations invested in pretrial services for the state.
 - Reach out to each organization and discuss the subcommittee's purpose and request a representative from their organization to participate.
 - The organizer should discuss the subcommittee's objectives, membership requirements, operations and timeline.
 - The organizer should discuss the importance of providing the appropriate representative and how it can affect negotiation outcomes.
 - Organizers should ensure participants agree on a date, time, and place to hold the subcommittee's initial meeting.
- The organizer should establish a channel of communication for participants.
 - Subcommittee participants should discuss how future meetings shall be conducted before its initial meeting:
 - It is recommended that the commission have a mediator or facilitator. This individual should be someone all parties agree to and does not have an invested interest in this subject.
 - The parties can also use parliamentary procedures. However, this can create challenges for those inexperienced with Robert's rules, create disparate power within the subcommittee, and inhibit full subcommittee participation.
- The subcommittee should meet on the agreed upon time and do the following in its initial meeting:
 - Discuss interests in pretrial detention solutions and what they hope to accomplish as part of the subcommittee.
 - This display of vulnerability fosters trust among participants.
 - Discuss an outline of anticipated events and agree when and where to hold future subcommittee meetings.
 - Agree on who will create future agendas.
 - Agree on who will take meeting notes/ summary of meetings.
 - Agree on ground rules specific to the subcommittee.
 - Agree on additional matters as needed.

Anticipated Timeframe

This timeline does not include the length of time it takes to develop an agency, implement a program, locate legislative bill sponsorship, pass a bill, and obtain biennial budgetary funding:

July 2025: The Blue-Ribbon Commission subcommittee should occur after July 2025 so subcommittee participants can access and utilize SAO's findings pretrial services findings to understand current pretrial service climate.

August 2025: Legislative representatives form Blue-Ribbon Commission's subcommittee. Organizers will reach out to organizations to obtain representatives for the subcommittee.

September 2025: Participants should agree on time, place, frequency, and format of subcommittee meetings.

October 2025: Initial subcommittee meeting should be held.

November 2025: Subcommittee meetings should discuss potential strategy, program, and budget to resolve pretrial detention/expand pretrial services.

December 2025: No meetings to accommodate holidays unless otherwise agreed upon.

January 2026: Continue meetings to discuss potential strategy, program, and budget to resolve pretrial detention/expand pretrial services.

March 2026: Continue meetings to discuss potential strategy, program, and budget to resolve pretrial detention/expand pretrial services.

April 2026: Request public feedback to ensure communication/engagement from the affected community members and ensure all matters have been agreed upon and to generate support for agreed solutions.

June 2026: Discuss community sourced discrepancies and agree on solutions that address concerns.

August 2026: Draft initial agreement and draft bill/program implementation plan.

November 2026: Finalize agreement and draft bill/program implementation plan.

The total timeframe of the subcommittee is approximately 16 months. This timeline considers the 20-month period the 2019 Pretrial Reform Task Force timeline took and reduces the timeline to anticipate Winter 2026 scheduling conflicts and ensure maximum subcommittee participation and cooperation.

PROPOSED GROUND RULES

The subcommittee must agree on ground rules before negotiating pretrial service expansion. Ground rules should reinforce the subcommittee objectives and encourage accountability to deflect escalating tensions unrelated to the negotiations:

1. Participants will not disrespect or name-call others in the subcommittee.
2. Participants will acknowledge that everyone is from a different branch of the government and are in the subcommittee to come to a consensus for all branches and state jurisdictions.
3. Participants will agree that the definition of pretrial is *[decided on during the meeting]*.
4. Participants will agree that this is a discussion of expanding pretrial services, not a censure on paid bail. The subjects should stay on pretrial services and bail should only be discussed when examining how it affects pretrial service participants.
5. Participants should be transparent and acknowledge the subcommittee is working toward one goal to help the indigent, disadvantaged and marginalized achieve better and more equitable pretrial outcomes.
6. Members should raise their hand to participate while someone has the floor.

7. Raise your hand to request a break or to reconvene with other members. If longer than 5 minutes, duration may be subject to subcommittee approval.

ESSENTIAL INFORMATION

State-based pretrial service materials are essential for the subcommittee participants to comprehensively understand pretrial uses and recommendations within Washington. Most reports are readily available online, however SAO's pretrial service audit, information crucial to the subcommittee, will not be available until Summer 2025. This information includes:

- [2019 Pretrial Reform Task Force Report: Final Recommendations](#): The Pretrial Reform Task Force summarizes high-level recommendations to expand pretrial services and reduce pretrial detainees. Members involved within the task force mentioned that the task force included bail advocates which reduced the detail in the report recommendations. Despite its potential reduction in detail, the inclusion of bail advocates in the task force provides an unbiased, reputable source for subcommittee members to digest.
- [2019 Performance Audit: Reforming Bail Practices in Washington](#): This audit describes how bail perpetuates a cycle of poverty among indigent defendants, demonstrates how pretrial services as an alternative to bail is effective, and how pretrial detention alone produces greater costs to taxpayers than pretrial services. SAO is an independent executive office, and it can be seen as an unbiased reputable source for participants unaware of pretrial detention in Washington.
- [2023 Alternatives to Incarceration](#): This survey discusses the types of services jurisdictions use and provides recommendations for states to use certain services. This survey received a 30% response from all jurisdictions and is therefore not representative of the pretrial services in the state. However, the survey's discussion of a pretrial service utilization and barriers to alternatives to incarceration can be informative to subcommittee negotiations.
- [2025 Performance Audit Examining Pretrial Services in Washington](#): The 2025 audit is a follow-up to the 2019 audit report. The audit intends to identify pretrial demographics, interview specific jurisdiction's use of pretrial services, and analyze literature and interviews from jurisdictions outside of the state. Because of its relevance and comprehensive nature, the subcommittee should meet after the results of the performance to assist in its negotiations.

ALTERNATIVES

Alternatives are options that achieve the interest of the subcommittee and make it less risky for parties to move from discussing interests to discussing, assessing, and selecting solutions to achieve interests. These are assessed by criteria, or standards, to objectively analyze options.

Potential alternatives for the subcommittee include creating legislation, appointing an existing agency pretrial service responsibility, or creating an additional agency exclusively

for pretrial services. Criteria the subcommittee can use to assess options can include range of enforcement and effectiveness, ease of implementation, and access/ability to funding.

1. Using legislation to expand pretrial services.

- Range: Any statutes or regulations utilized to establish pretrial practices must be carried out by the branches of government and counties. Legislation can be as specific (e.g. discuss types of pretrial assessments and program implementation) or as vague (current RCW 10.21) as agreed upon by the subcommittee.
- Implementation: If the legislature is utilized in conjunction with other branches of government in mind, it is possible to minimize gridlock and ensure governmental cooperation to implement pretrial services. However, if other branches feel legislation is overreaching, they can decide to “interpret” a regulation contrary to its legislative intent and make implementation difficult.
- Funding: The legislature’s ability to appropriate money for programs makes access to funding easier than obtaining money through levies or property taxes.

2. Preexisting Agency, like AOC, is given authority to expand pretrial services.

- Range: This method leaves the agency under its governmental branch of authority to have statewide enforcement. This can conflict with other agency priorities and see state implementation efforts diminish with time. Additionally, without the power of legislation jurisdictions might not feel the need to comply unless there is a mechanism for oversight.
- Implementation: The agency has the authority to decide on leading practices and can freely dictate specific program implementation.
- Funding: The economies of scale of using an existing agency would lower costs because of the overlap in resources like personnel, training, and administration. However, this leaves the existing agency further dependent on legislative funding and can diminish the quality of statewide services it provides.

3. New Agency/Department can be seen as a fresh start.

- Range: A new agency/department might suffer from legitimacy concerns that the preexisting department would not have and can hinder its ability to ensure their adherence to developed programming. In contrast, a new department/ agency can present as a fresh start, be an intermediary between agencies, and solely focus on program implementation of solutions agreed upon within the subcommittee which would strengthen its state credibility and enforcement.
- Implementation: Focusing solely on pretrial services, the department can prioritize agreed upon subcommittee strategies and focus on internally to provide performance metrics to demonstrate implementation success.
- Funding: This program can rely on legislative appropriations. Additionally, this agency could work with third parties to obtain grants or utilize funding mechanisms such as utilizing state asset forfeiture money to obtain funding

CLOSING THE DEAL

There are several tactics that can be utilized to ensure an agreement is reached in the subcommittee and includes the utilizing a facilitator/mediator, ensuring that ground rules are the first order of subcommittee's business, and encouraging subcommittee members to think of solutions that would benefit participants outside their own organization.

1. A facilitator/mediator will equalize power within the participants. Subcommittee participants come from prestigious state government organizations who wield a substantial amount of authority throughout the state. As a result, disagreement or misunderstanding can create contention and chip away at participant cooperation and further power disparities. Utilizing an experienced facilitator ensures equitable participation as the facilitation and encouragement they provided to all participants to discuss their perspective will eliminate power disparities in meetings.
2. Agreeing on the ground rules provides a foundation that demonstrates participant consensus. Focusing on creating ground rules breaks the tension that could result from participants coming from different government branches. While this process will be tedious and seem unnecessary, it breaks down the internal defensiveness that participants might harbor in negotiation meetings. Additionally, a tangible commitment to decorum that participants can point to if anyone stray allows the subcommittee to focus on coming to a consensus instead and prevent negotiation distractions.
3. Incorporating "enlightened self-interest" within the negotiations process encourages subcommittee participants to look for solutions that others can benefit from. Encouraging participants to role model this behavior breaks down fears of "self-interest" and facilitates an environment of finding a comprehensive solution that the subcommittee agrees on.

UNSUCCESSFUL NEGOTIATIONS CONTINGENCY

Under the proposed rule, "Raise your hand to request a break or to reconvene with other members. If longer than 5 minutes, duration may be subject to subcommittee approval," subcommittee participants can individually or jointly discuss the status of the negotiations. If an overwhelming number of participants believe the subcommittee will not come to a consensus because nothing can be agreed upon, a participant can propose an indefinite "break" and dissolve the subcommittee meetings if subcommittee participants agree. Having an "undefined break" as opposed to a formal dissolution of the subcommittee prevents the image of defeat and maintains the reputations of the participants by allowing the public to believe that discussions are paused and might continue in the future.

POTENTIAL AGREEMENTS

There is already agreement within the governmental branches regarding pretrial services and therefore it is likely that the subcommittee will come to an agreement: Counties overwhelmingly want legislative clarity and funding to create programs. Localities with large indigent populations do not have the financial and regulatory support of a state power to create programs but recognize pretrial service benefits. State associations for the prosecutor and the public defender recognize funding limitations on court jurisdictions and agree that expanding pretrial services would benefit the state. Legislators also acknowledge the benefit of pretrial services but are hesitant to institute legislation because they do not want to overstep their power and create conflict with the judiciary.

I believe the subcommittee will agree to adding more definitive pretrial service language to RCW 10.21 to expand or mandate specific pretrial services statewide. I also believe that an agency, whether preexisting or a new one, will be responsible for overseeing the state implementation of pretrial services. However, I do not believe the agency will have state reach but likely implement a program like Illinois, where certain counties opt-in to the pretrial service agency and have the agency reimburse county pretrial service expenses.

UNIQUE NEGOTIATION TRAITS

The proposed negotiations are a subset of larger negotiations in a commission that attempts to wholly unify the courts in the state. This subcommittee can either strengthen the commission's ambition to unify the courts or the subcommittee negotiations can be overlooked by the commission. Additionally, if the commission feels they do not have support for their efforts, it is possible that the commission disbands and essentially erases the efforts made in the subcommittee. In the situation where the subcommittee reaches an agreement but is overlooked or the commission disbands, the subcommittee should branch out and be independent of the commission to implement the agreed upon negotiations.

IMPLEMENTATION INITIAL STEPS

Under the presumption that the necessary legislation, funding, and judiciary action has occurred to ensure the development of the agreed upon negotiation plan, the branch/agency/department must foster relationships throughout the state and consistently communicate with stakeholder's future implementation plans. Consistent communication ensures that police departments, jail facilities, attorneys, court administration, and other interdepartmental governance can facilitate a smooth transition to program implementation.