

WSBA CRIMINAL LAW SECTION

10 Ways Washington State Should Begin Criminal Justice Reform

by Dan Satterberg



It is time to act on criminal justice reform in our state. Crime rates continue to decline toward historical lows, yet our state prisons exceed capacity. We don't use prison as much as other states — Washington ranks 42nd in the rate of incarceration — but that means the simpler reforms, like putting fewer people in prison for drug crimes, have already been done here. There is an urgent need to take a broad view of criminal justice reform, if for no other reason than to begin to rebuild trust between the communities most impacted by crime and the system that is intended to serve and protect them. We need strategies that improve public safety, limit growth in prison population, and bolster public confidence in the fairness of our system of justice.

Here are 10 ways to begin criminal justice reform in Washington state.

1 Graduate More Students from High School

Keeping kids in school is our best crime prevention strategy. Three out of four Washington prison inmates dropped out of high school; we know that people who drop out are five times more likely to go to prison in their lifetime. We should not accept graduation rates that leave a quarter of our young

people without the protective power of a diploma.

School discipline policies that expel or suspend students from classrooms to the streets without educational services must be re-evaluated, and on-campus strategies must be funded as an alternative to expulsion. The school-to-prison pipeline is real. The adults in the room can stop it.

2 Increase the Capacity of Our Mental Health System

Since 1955, America has lost 95% of its capacity to house and treat people with mental health concerns. Today, Washington ranks near the bottom in publicly funded psychiatric beds. The default system for those with behavioral health issues is too often the criminal justice system. We need to increase the capacity of our emergency mental health services in Involuntary Treatment Courts, and forensic wards of our state hospitals.

King County has invested in a "Crisis Solutions Center," an arrest diversion option for police encountering someone who has committed a minor offense due to mental illness. We need more of these throughout the state.

The Legislature recently funded a "Competency Diversion" program that will allow prosecutors to divert matters to an assisted community outpatient program, away from the courts and long waitlists at Western State Hospital. Competency is a legal standard, not a medical condition. People with serious mental health issues have more pressing needs than learning about the courtroom process, which is the overall goal of competency restoration.

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3 Prosecutors Should Divert More Cases

Prosecutorial discretion is a powerful tool for criminal justice reform. While society's most complex issues come to our doorstep, not all of them can be solved in a courtroom or a jail cell. Prosecutors and human service providers can work together to find alternatives that are more effective and achieve more efficient outcomes than results that accompany a conviction.

Four years ago, we started the 180° Program to complement traditional juvenile court diversion. More than 1,500 youth have taken advantage of this program, held monthly at Seattle University School of Law. The diversion workshop features powerful messages from the community, empowers youth to make better decisions, and helps them avoid a criminal record.

The LEAD (Law Enforcement Assisted Diversion) program, which offers life-saving services to a population that is mostly homeless, mentally ill, and struggling with addiction, is a national model of diversion that saves lives and taxpayers' dollars.

We have also effectively decriminalized Driving While License Suspended, removing more than 3,000 cases annually from District Court, and eliminating the possibility of jail and arrest warrants for people who fail to pay speeding tickets.

More diversion programs are in place or in planning in King County. We are exploring community solutions to truancy, juvenile domestic violence, youth marijuana possession, and other, more complex, problems. Prosecutors, working in partnership with the community, can use the power of the law to help find solutions without the need for criminal convictions.

4 Statewide Reentry Investment

Washington not only has an over-incarceration problem, but also a recidivism problem. Half of the people sent to prison last year had been there before, and 30% of those released this year will be back within three years. Many more will be re-arrested and serve time in local jails, or return to prison four or five years after release.

Reentry for most inmates leaving prison today consists of just \$40, a bus ticket back to the county of conviction, and a brand new official ID that says "Department of Corrections." We should not be surprised that people released from prison who are unable to find housing, a job, or any hope will return to the places and people that got them into trouble at the outset.

A system of reentry support must be built, funded, and operated in partnership with human services groups already doing this work. Reentry is a great untapped field that, if done right, will help people in transition succeed, reduce recidivism, and increase public safety.

5 Collateral Consequences

A felony conviction can prohibit a person from applying for more than 90 professional licenses in our state. Legislation was introduced last year to create a Certificate for Restoration of Opportunity (CROP) that would allow people who have paid their debt to society to apply for licenses that lead to living wage jobs. This needs to pass next session.

6 Eliminate the Impact of Prior Drug Convictions

We now recognize that our past urban drug enforcement decisions were too focused on open-air drug markets, low-level dealers and users, and arrests and convictions that unfairly impacted communities of color.

We have made tremendous progress developing multiple approaches to drug crimes, recognizing that drug treatment is the optimum result for drug-addicted offenders.

To close the chapter on the "War on Drugs" in Washington, we should consider changing criminal history scoring rules so that past drug convictions of low-level offenders wash-out more quickly, or not count at all. This way, we stop perpetuating the legacy of what history will reflect as the unfair application of our drug laws.

7 Three Strikes Law Reform

In 1993, Washington passed one of the first three strikes laws mandating life

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imprisonment without the possibility of parole (LWOP) for those convicted of three separate violent felonies. Our law was relatively conservative, compared to states like California, yet today there are over 300 people serving LWOP sentences in our prisons.

Charging practices have evolved since the 1990s, and today most prosecutors in Washington use their discretion to file non-strike offenses to avoid a life sentence when appropriate.

Washington should develop a process to review three-strikes cases after an offender has served at least 15 years of his or her life sentence. We should also take a look at the list of qualifying crimes, particularly Robbery in the Second Degree, and ask whether that type of conduct is deserving of a "forever" sentence.

8 Multiple Enhancements

Sometimes a prosecutor must file multiple counts and sentence enhancements to fully present to a jury the range of conduct committed by a defendant. This practice, however, can lead to extraordinarily long sentences that may not be justified by the circumstances. We should return some discretion to judges to impose shorter sentences when rules requiring consecutive terms for serious violent crimes and weapon enhancements clearly result in excessive sentences.

9 Prison Reform

I will be the first to say that most people sentenced to prison deserve to be there. Some offenders should never be

released because of the danger they pose to society or as punishment for especially heinous crimes. But that percentage of inmates is small. The average prison sentence is 40 months, meaning that with "good behavior," most people sent to prison are released within two years.

As such, successful transition back to the community needs to begin on the first day in prison. Simple things need to be implemented immediately to create a "corrections" system that helps people actually correct their ways.

First, legislators need to remove the counterproductive ban on funding for higher education in prison. Online college opportunities abound and should be used as a privilege to promote peaceful conduct by inmates.

Second, more chemical dependency and behavioral therapy programs should be offered to all inmates, regardless of the length of their sentence.

Lastly, we should build incentives for program participation by putting the "earned" into "earned early release," and allow inmates who complete positive programs to earn more than the current 50% sentence reduction for non-violent offenses.


10 Second Look Review Process

Washington should consider a new and improved parole process in which certain inmates serving long sentences can petition for early release after they have served more than half of their time. The clemency and pardons process is inherently political, requiring the governor to

take a risk without reward.

A "second look" process could be implemented to look at elderly inmates who have become less dangerous and more expensive to house, as well as those who have taken advantage of enhanced prison programming and shown demonstrable rehabilitation.

These 10 strategies will make communities safer, change our approach to criminal justice and might even help us avoid building the next prison. It is a great time for criminal justice reform. Prosecutors, defense attorneys, and other members of the Bar should lead the way. **NWL**



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