To: Sentencing Guidelines Commission

From: Legal Financial Obligations Work Group

Re: SRA Reform Recommendations

Dated: March 22, 2018 (revised 4/6/18)

The LFO Work Group for the ongoing SGC effort to consider proposed reforms of the Washington Sentencing Reform Act (SRA) met by telephone today.

The Work Group first discussed the recent passage of ESSHB 1783 (copy attached.) There was uniform agreement that the provisions in this bill are desirable reforms, and that the Work Group recommends they be carried over in any reform or revision of the SRA.

The group also discussed the revised provisions under ESSHB 1783 for sanctioning offenders who do not pay LFOs, which seek to limit the ability to sanction to individuals who have been ordered to pay LFOs and who are demonstrated to 1) have ability to pay and 2) be choosing deliberately not to pay. The most expensive part of this sanctioning process is the typical pattern of setting a hearing for an offender who has not been paying LFOs, not having that person appear, and issuing a warrant. Moreover, even people who are not sanctionable under ESSHB 1783 who are picked up on a warrant will nonetheless find they are serving days in jail pending the hearing on the return of the warrant: this is very disruptive to jobs and housing and ability to continue to function in society and contrary to the provisions of ESSHB 1783. The group suggested a revision to the SRA to require a showing to the judicial officer before an LFO warrant can issue that the offender does in fact have the ability to pay and is simply deciding not to do so. This would cut local costs in enforcing warrants and prevent detentions of people who are not eligible to be sanctioned in any event.

The Work Group next discussed restitution. There is consensus that crime victim restitution is a key component of Washington sentencing, and should be carried over to any reform or revision of the SRA as a financial priority obligation for qualifying offenders.

There was considerable discussion of the current crime victim assessment, which is $500 for felony and gross misdemeanor cases. The prosecutors have generally also supported this assessment, because it is a means for victims to obtain coverage for losses which are not covered by insurance, for example because of deductibles, and because it is the source of funding for the vital victim advocate programs. However, the following potential reforms of the crime victim assessment may deserve consideration, and the prosecutors will be reviewing them:

1. For many years there have been accounts of victims who are not considered to be "deserving," for example because of prior relationships with the defendant, being denied funds from the crime victim compensation fund which is sourced from the

crime victim assessment. It may be wise to legislatively require that victims be treated the same in terms of their access to these funds. The prosecutors suggest that this idea be first reviewed by the victim advocate community, and that they indicate whether they agree with this suggestion.

2. The crime victim compensation fund appears to have been struggling with rationing limited funding for some time. (Our staff kindly agreed to do a little research on how much money the victim penalty assessment actually produces for the fund.) Perhaps it would be best to legislatively prioritize available funds for violent crime victims.
3. There are cases where a defendant who happens to be sentenced for multiple causes at the same time – as opposed to a single cause with multiple counts – is also necessarily ordered to pay the victim penalty assessment on each cause. The LFO group thought it might be worth considering whether instead a revised SRA should provide that the defendant is only required to pay the victim penalty assessment once for each sentencing occurrence, rather than on each cause that is simultaneously sentenced. The prosecutors plan to discuss this idea.
4. The major concern that the prosecutors have with preserving the crime victim compensation fund is assuring ongoing funding of victim advocate programs. Perhaps it would make most sense to simply require that the state fully fund these victim advocate programs as a key part of the criminal justice system, rather than requiring offenders to do so by way of the victim penalty assessment. The prosecutors will also discuss this suggestion.

Someone suggested that the $500 crime victim assessment does not fund the state's CVC program and that it almost exclusively funds victim advocacy and other victim support services. If this is the case, the discussion would change substantially because any reforms of the CVC funding would now be a separate discussion from LFOs (staff is checking into this).

The Work Group finally discussed the DNA fee. It appears to be in place as an offset to the State's overall cost to fund the Washington State Patrol's DNA collection efforts and state crime laboratory. It is unclear how much money the DNA fee actually raises (our staff kindly agreed to research this question as well), but it does appear the WSP crime laboratory continues to be seriously underfunded. For example, there is a well-known backlog in examining rape kit evidence for DNA. The consensus of the Work Group is that it seems inappropriate to require offenders to contribute to this essential criminal justice resource for investigating crimes forensically. Prosecutors would not oppose ending this fee provided the legislature provided full and adequate funding for the crime lab and DNA analysis. It is recommended that the SRA revisions include a clear mandate to the State itself to fully meet this obligation, and that the DNA fee be eliminated.