



STATE OF WASHINGTON

SENTENCING GUIDELINES COMMISSION

PO Box 40927 • Olympia, Washington 98504-0927

(360) 407-1050 • FAX (360) 407-1043

March 11, 2009

**MEMORANDUM**

**TO:** SGC

**FROM:** Shannon Hinchcliffe

**RE:** Draft of SGC Proposed Bylaws for Review

**ACTION REQUESTED:** Please review the proposed changes in SGC bylaws.

**Introduction**

The Sentencing Guidelines Commission bylaws are currently contained in WAC Chapter 437-10. Although the bylaws state that they may be changed by request of a member and simple majority vote, this is inaccurate. Because the bylaws are in administrative code, a change requires a formal rulemaking process that can last, at minimum, four months. There is no statutory requirement that bylaws be in the administrative code.

In order to be more responsive to changes requested by commission members, the SGC has started the process to change its rules, which includes removing the bylaws from administrative code. Public hearing for these rule changes will take place at the April 10, 2009 SGC meeting. If the proposed rule change takes effect, the SGC will need to take formal action to continue these bylaws.

**Proposed changes to SGC bylaws**

Attached is a mark-up proposal for changes to the current bylaws. The following list highlights changes to the applicable sections:

- Article II (formerly WAC 437-10-020) Meetings of the Sentencing Guidelines Commission.

*Removes a section which applied all policies and rules of the meetings of the commission to the meetings of subcommittees and advisory committees. Adds a section which states that all meetings will be run in accordance with the Open Public Meetings Act.*

- Article VI (formerly WAC 437-10-060) Voting Procedures.

*Allows members' designees to vote.*

- Article VII (formerly WAC 437-10-070) Minutes.

*Makes a reference to "designated" subcommittees to reflect the changes in Article II. Instead of providing staff for all subcommittees, the SGC will determine if the subcommittee is subject to the Open Public Meetings Act and then designate them as such.*

Sentencing Guidelines Commission Bylaws

- ~~(WAC 437-10-010)~~ Article I Officers of the sentencing guidelines commission
- ~~(WAC 437-10-020)~~ Article II Meetings of the sentencing guidelines commission
- ~~(WAC 437-10-030)~~ Article III Absences of members from meetings
- ~~(WAC 437-10-040)~~ Article IV Quorum
- ~~(WAC 437-10-050)~~ Article V Participation and discussion during sentencing guidelines commission meetings, rules of order, and forms of action.
- ~~(WAC 437-10-060)~~ Article VI Voting procedures
- ~~(WAC 437-10-070)~~ Article VII Minutes
- ~~(WAC 437-10-080)~~ Article VIII Change in bylaws.

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~~(WAC 437-10-010) Article I Officers of the sentencing guidelines commission~~

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The presiding officer of the sentencing guidelines commission denominated the "chairperson" shall be appointed by the governor. The chair shall call and preside over all meetings of the sentencing guidelines commission, appoint the presiding officers and members of subcommittees of the sentencing guidelines commission except as specifically provided herein, and do all such other things as are appropriate for or delegated to such officer by the sentencing guidelines commission; (2) a vice-chair, appointed by the chairperson of the sentencing guidelines commission, shall preside in the absence of the chair as well as act for the chair and the sentencing guidelines commission under direction; (3) in the absence of both the chair and vice-chair, an acting vice-chair, appointed by the sentencing guidelines commission shall preside at that meeting of the sentencing guidelines commission.

~~(WAC 437-10-020) Article II Meetings of the sentencing guidelines commission~~

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(1) The sentencing guidelines commission shall meet at the call of its chair or upon request of any three members of the sentencing guidelines commission.

(2) Subcommittees, advisory committees shall meet upon the call of their respective presiding officers.

~~(3) ((Policies and rules relating to the calling of, frequency, openness to the public, and opportunity for participant discussion during meetings; member's absences; quorums; rules of order; forms of action; and voting procedures pertain also to subcommittees. Minutes for the subcommittees and advisory committees shall be recorded and automatically adopted if there are not objections raised.)) Meetings of the sentencing guidelines commission will comply with the Open Public Meetings Act Chapter 42.30 RCW.~~

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~~(WAC 437-10-030) Article III Absences of members from meetings~~

Any member who misses three consecutive meetings will have the fact called to that member's attention by the chair of the sentencing guidelines commission with the request that the member reconsider his or her ability to continue as a member. The chair shall also advise the governor of situations regarding absenteeism which the chair deems appropriate to call to the attention of the governor and request that the governor consider a replacement for that member.

~~(WAC 437-10-040) Article IV Quorum~~

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A quorum for the transaction of business, except actions taken pursuant to RCW 9.94A.040, 9.94A.160, or 9.94A.165, shall constitute no fewer than a simple majority of the voting members appointed. The members present at a meeting at which a quorum is not present may elect to proceed with the business of the meeting subject to ratification of all action taken whenever a quorum is next present at a meeting.

~~(WAC 437-10-050) Article V Participation and discussion during sentencing guidelines commission meetings, rules of order, and forms of action.~~

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(1) Only duly appointed members or his or her designee of the sentencing guidelines commission and such other persons as are recognized by the chair shall be permitted to participate in the discussion of any matter before the sentencing guidelines commission unless otherwise authorized by a majority of the members of the sentencing guidelines commission present and voting. Any person wishing to participate in such discussion shall notify the sentencing guidelines commission in writing, not less than three days prior to the meeting at which such discussion will be held.

(2) The business of the sentencing guidelines commission shall be conducted in accordance with *Robert's Rules of Order*, new edition, unless such rules are suspended or unless otherwise provided for by these rules.

(3) The sentencing guidelines commission shall act by the adoption of a motion or a resolution.

~~(WAC 437-10-060) Article VI Voting procedures~~

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(1) Voting during meetings of the sentencing guidelines commission shall be recorded.

(2) The chairperson shall have the same voting rights as any other member of the sentencing guidelines commission.

~~(3) Only duly appointed members of the sentencing guidelines commission or their designees (not designees) shall be permitted to vote on any issue before the sentencing guidelines commission. ((except for the designee of the director of the office of financial management who shall be permitted to vote; n)) No proxies shall be permitted to vote.~~

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(4) Action by the sentencing guidelines commission will be determined by a simple majority vote in accordance with quorum requirements.

(5) Any member on the sentencing guidelines commission who has a direct or indirect personal interest in a contract or application before the sentencing guidelines commission will withdraw himself/herself from voting on that matter. The sentencing guidelines commission member may, however, participate in discussions and answer questions from other sentencing guidelines commission members.

~~(WAC 437-10-079) Article VII Minutes~~

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(1) All meetings of the sentencing guidelines commission and designated subcommittees will have staff available to make a written record concerning the actions of the commission.

(2) Upon termination of the sentencing guidelines commission meeting, the minutes shall be promptly recorded and submitted to the commission members for final approval.

(3) At the next scheduled meeting of the sentencing guidelines commission, the minutes shall be reviewed by the commission and any amendments or changes will be made. The commission will then adopt the minutes as final. Designated (S) subcommittee minutes will be recorded and mailed to the subcommittee members. These minutes will be automatically approved and adopted if there are no suggested changes.

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(4) The chair of the sentencing guidelines commission along with the executive officer will sign the approved commission meeting minutes. The minutes will then be placed in appropriate folders for a permanent record, subject to audit and public inspection. Designated ~~((S))~~ subcommittee minutes will be signed by the subcommittee chair and the executive officer.

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~~(WAC 437-10-080) Article VIII Change in bylaws.~~

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(1) A section or subsection of the bylaws may be reviewed for change at the request of any voting member of the sentencing guidelines commission.

(2) A change in the bylaws must be approved by a simple majority vote of the sentencing guidelines commission.

**Budget proviso version of HB 1689**

**Plan to implement an evidence-based system of community custody for adult felons**

**2/26/09**

**IN Sentencing Guidelines Commission budget section:**

**Sec. \_\_\_ ( )** Within funds appropriated in this section, the sentencing guidelines commission, in partnership with the courts, shall develop a plan to implement an evidence-based system of community custody for adult felons that will include the consistent use of evidence-based risk and needs assessment tools, programs, supervision modalities, and monitoring of program integrity. The plan for the evidence-based system of community custody shall include provisions for identifying cost-effective rehabilitative programs; identifying offenders for whom such programs would be cost-effective; monitoring the system for cost-effectiveness, and reporting annually to the legislature. In developing the plan, the sentencing guidelines shall consult with: the Washington state institute for public policy; the legislature; the department of corrections; local governments; prosecutors; defense attorneys; victim advocate groups; law enforcement; the Washington federation of state employees; and other interested entities. The sentencing guidelines commission shall report its recommendations to the governor and the legislature by December 1, 2009.

**Effect:** Directs the Sentencing Guidelines Commission, with the courts and other interested organizations, to develop a plan to implement an evidence-based system of community custody for adult felons that includes evidence-based risk assessment, programs and supervision. The commission will report to the legislature and Governor by December 1, 2009.

**Washington State's Evidence-Based Community Custody Planning Committee**  
March 2, 2009

**Co-Chair: Spokane County Superior Court Judge Kathleen O'Connor, J.D.**

Judge O'Connor is serving her fifth term as a superior court judge in Washington's major eastern county. She is known across the state for her leadership in many issues and is a former president of the Washington State Superior Court Judges' Association (SCJA). Judge O'Connor, as Chair of the SCJA's Sentencing and Supervision Workgroup, attended SGC meetings throughout 2008. During this period the SGC hosted research presentations from Ed Latessa, Ph D and Christopher Lowenkamp, Ph D from the University of Cincinnati Center for Criminal Justice Research as well as Steve Aos, from The Washington State Institute for Public Policy (WSIPP). Judge O'Connor and the four judges appointed to the SGC led judicial discussions which resulted in the partnership agreement between the SGC and the SCJA.

**Co-Chair: King County Prosecutor Dan Satterberg, J.D.**

Dan Satterberg has been the Prosecuting Attorney for King County, Washington's most populous county, since 2007. Dan had served as Chief of Staff for the King County Prosecutor for 17 years, and was responsible for the management and operation of the Prosecuting Attorney's Office, including budget, human resources, technology, legislative and policy matters. The King County Prosecuting Attorney's Office employs more than 220 attorneys, 268 staff, and has a budget of over \$56 million. Dan was recently appointed to the Sentencing Guidelines Commission by the Governor and agreed to co-chair the Evidence-based Community Custody planning process at the request of SGC Chair Dave Boerner.

**Lucy Berliner, M.S.W. – Director, Harborview Center for Sexual Assault and Traumatic Stress and Clinical Associate Professor, University of Washington School of Social Work; Department of Psychiatry and Behavioral Sciences**

Ms. Berliner is well known as a researcher and public policy advocate in Washington State. She was appointed to the Evidence-based Community Custody planning committee to represent a victims' perspective and because of her known ability to apply research.

**Jon Ostlund, J.D. – Criminal Defense Attorney**

Mr. Ostlund has been practicing criminal law since 1974. He is a former member of the Sentencing Guidelines Commission and a core member of the Legislative Committee of the Washington State Bar Association. He was the Director of the Whatcom County Public Defender for 25 years and serves as Chair of the Washington State Bar Committee on Public Defense. Mr. Ostlund was a member of the Washington State Bar Board of Governors from 2001 to 2004.

**Lynda Ring-Erickson, Ed. D. – Mason County Commissioner**

Dr. Ring-Erickson is the President of the Washington Association of Counties and is serving her second term as County Commissioner in Mason County. She is a member of the Sentencing Guidelines Commission and the Washington State Forensic Investigation Council. Dr. Ring Erickson has served as a senior policy analyst, as a corrections program officer in state and local government, and was once a police officer in the King County Department of Public Safety. From 1993 to 1999 she was the Executive Director of the Suburban Cities Association of King County.

**Karen Daniels, M.A. – Assistant Secretary for Community Corrections, Washington State Department of Corrections**

Karen Daniels has over 37 years experience in state and local corrections work and is a graduate of the FBI National Academy. She has served in the past as a gubernatorial appointee to the Washington State Jail Industries Board and the Criminal Justice Training Commission and is currently a board member of the Washington State Mental Health Council, Washington Association of Sheriff's and Police Chiefs Corrections Committee and the American Jail Association.

**Jim Nagle, J.D. Walla Walla County Prosecuting Attorney**

Jim Nagle has been the Walla Walla Prosecuting Attorney since 1989. Prior to then he was the Deputy Prosecuting Attorney since 1985 and was in private practice before then. Mr. Nagle Was President of the Washington Association of Prosecuting Attorney sin 2003-2004 and a member of the Sentencing Guidelines Committee from 2001 through 2007.

**King County Superior Court Judge Michael Trickey**

Judge Trickey became a judge in 1996, and has served as the Chief Judge at the Maleng Regional Justice Center and Presiding Judge for King County Superior Court. Judge Trickey is a former president of the Superior Court Judge's Association and has been a Member of the Board for Judicial Administration.

**Clark County Superior Court Judge Barbara D. Johnson**

Presiding Judge Johnson was sworn in as the first female judge for Clark County on January 1987

In-Kind Staff:

**SGC Chairman David Boerner, LLB.**

Professor David Boerner is a member of the law faculty of the Seattle University School of Law. He currently serves as Chair of the Washington Sentencing Guidelines Commission. He has served as Chair of the Ethics Committee and the Character and Fitness Committee of the Washington State Bar Association. He was named the "Outstanding Lawyer of 2002" by the King County Bar Association, in 2004, he received the Award of Merit from the Washington State Bar Association; and in 2006 received the Excellence in Diversity Award from the Washington State Bar Association. Mr. Boerner was a key planner and drafter of Washington's Sentencing Reform Act and The Community Protection Act, amongst many initiatives.

**Snohomish County Deputy Chief Criminal Deputy Seth Fine, J.D.**

**SGC Executive Director Jean Soliz-Conklin, J.D.**

Jean Soliz-Conklin became the Executive Director of the Washington State Sentencing Guidelines Commission in July, 2007. Ms. Soliz-Conklin has worked for nearly two decades in Washington State after beginning her professional career as a legal aid lawyer. She was Senior Counsel to the state Senate Human Services and Corrections Committee, after which she served as Senior Adviser for Social Services to Governor Booth Gardner. She then directed Washington's Department of Social and Health Services (DSHS), one of the largest umbrella social services agencies in the nation. Next, Jean was a professor at Central Washington University, where she taught Social Welfare Policy and Criminal Justice.



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March 13, 2009

### Evidence-Based Community Custody Planning Workplan

#### Introduction

This memorandum contains the agreement of the Sentencing Guidelines Commission (SGC) and the Superior Court Judge's Association (through the Sentencing and Supervision Workgroup) to co-facilitate a planning process to develop an evidence-based system of community custody for adult felons in Washington State.

#### Background

In 2005, the Washington State Legislature directed the Institute for Public Policy (WSIPP) to study options to stabilize future prison populations. The Sentencing Guidelines Commission was directed to examine changes that could be made to Washington's sentencing laws, including sentencing alternatives and the use of risk factors in sentencing. These options are to be analyzed in conjunction with the work by WSIPP. The goal of these policy choices is to allow the legislature to consider different combinations of options that have the ability to keep crime rates under control while also lowering the long-run fiscal costs of Washington's state and local criminal justice system. (*ESSB 6094, Section 708, Chapter 488, Laws of 2005*).

In late 2006, WSIPP issued its report entitled *Evidence-Based Public Policy Options to Reduce Future Prison Construction, Criminal Justice Costs, and Crime Rate* by Steve Aos, Marna Miller, and Elizabeth Drake. Olympia: Washington State Institute for Public Policy.

The Sentencing Guidelines Commission began its work by preparing legislation to make the community custody statutes readable, following twenty years of piecemeal legislation.

In 2008, the Legislature reorganized and simplified Washington's community custody statutes in SHB 2719, a bill requested by the Sentencing Guidelines Commission. The Commission then began to work with the courts to propose policy changes to further improve the Sentencing Reform Act relating to the supervision of offenders by using evidence-based practices.

After reviewing the national research and the success of the evidence-based juvenile rehabilitation system in Washington State, the Sentencing Guidelines Commission and the Superior Court Judges' Association (SCJA) decided to embark on the creation of an evidence-based community custody system for adult felony offenders. An initial workplan was approved on February 13, 2009.

The Legislature is currently considering legislation to underscore their intent to adopt an evidence-based system. This year's legislative session is crisis-oriented because of the state's huge revenue shortfall. While this has increased the policymakers' interest in a new community custody plan, they are concentrating on critical immediate bills. Right now the plan is to pass a budget proviso (with no new funds) to restate their support of this planning process.

The planning will take place in two phases. Phase I will focus on the sentencing and supervision of the 70% of felons who serve the incarceration portion of their sentence in jails. Phase II will focus on felons who are incarcerated in prisons and then serve a community custody term as well.

#### **Purpose**

The purpose of this process, which is a joint effort of the SGC and the Sentencing and Supervision Workgroup of the SCJA, is to develop a multi-year plan to implement an evidence-based system for community custody of adult felons. This planning will be done in conjunction with the Washington State Institute for Public Policy (WSIPP).

The goals of the evidence-based system are to:

- a) increase public safety through decreased recidivism;
- b) produce significant cost savings for the state and local government; and
- c) simplify and improve the sentencing reform act relating to the supervision of offenders.

The evidence-based system of community custody will, at a minimum, include provisions for (a) identifying offenders for whom rehabilitative programs are cost-effective; (b) identifying cost effective rehabilitative programs; (c) monitoring the system to ensure that it operates in a cost-effective manner; and (d) providing annual reports to the legislature on the costs and benefits of the system.

**Process (Please see "Attachment A: Roles" and "Attachment B: Timeline")**

## ATTACHMENT A: ROLES

### Developing an Evidence-Based Community Custody System for Adult Felons in Washington State

#### I. SGC and SCJA Sentencing and Supervision Workgroup

- Appoint representatives to the Community Custody Planning Committee (EBCC)
- Jointly oversee the planning process, approve plans at key milestones
- Oversee the "Research and Data Gathering"
- Oversee "Stakeholder Consultation"
- Approve the final plan for submission to the Governor and Legislature.

#### II. Community Custody Planning Committee (EBCC)

- Break the planning into manageable components
- Include research and stakeholder input
- Develop the Plan
- Revise in accordance with stakeholder feedback and SGC/SCJA decisions

#### III. Research Agencies

- Washington State Institute for Public Policy (WSIPP)

The Institute's mission is to carry out practical, non-partisan research—at legislative direction—on issues of importance to Washington State.

**Role:** Advise on implementation design and evidence-based research and programs, including:

- a) Assessment of Offenders
- b) Cost-modeling
- c) Identification of Evidence-Based and Economically Sound Community Custody Policies, and
- d) Statewide Analysis of Policy Alternatives

- Center for Court Research (CCR):

The Washington State Center for Court Research (CCR) is the research arm of the Administrative office of the Courts, established by order of the Supreme Court in 2004. CCR provides empirical research intended to improve understanding of the courts, help guide judicial policy, and improve the functioning of the judicial system. CCR serves judges, clerks, victims, offenders, legal advocates, and all other participants in the judicial process, including ongoing data collection and monitoring of Washington State's Juvenile Justice System.

**Role:** advise on implementation design, assist in the development of an ongoing system for quality assurance, and assume performance monitoring responsibility.

- PEW The Pew Center on the States Public Safety Performance Project

The Public Safety Performance Project works with national partners, including The Council of State Governments Justice Center, The National Center for State Courts, The National Conference of State Legislatures, The National Governors Association and The Vera Institute of Justice to provide expert, nonpartisan information and assistance to states.

**Role:** Discussions have begun about PEW assistance to:

- Provide technical assistance
- Support stakeholder forums-feedback sessions

- Provide financial support for WSIPP and EBCC activities

#### **IV. Criminal Justice Community**

Important experts on community custody include:

- The Department of Corrections
- The Office of the Governor
- The Legislature
- Local government
- Prosecutors
- Defense attorneys
- Victim advocates
- Law enforcement
- The Washington Federation of State Employees
- Program providers
- Treatment providers, and
- Others as yet to be identified

**Role:** The expertise of these stakeholders is critical to the planning process. Many of these entities are represented on the SGC and some will be represented on the Community Custody Planning Committee (EBCC). The EBCC will informally seek advice from stakeholders as they design each component. Criminal justice stakeholder opinions will be formally sought at two important junctures, before the Community Custody Planning Committee begins its detailed planning, and after a draft plan is developed.

## ATTACHMENT B: TIMELINE

### Developing an Evidence-Based Community Custody System for Adult Felons in Washington State

#### Evidence-Based Community Custody Planning Committee (EBCC) Initial Meeting March 6, 2009

**Task I: Pre –Planning** **March, 2009 SCJA and SGC Meetings**  
The Community Custody Planning Committee (EBCC) will report to the SGC/SCJA regarding a detailed meeting schedule and planning process for Phase I, which focuses on adult felons who serve their incarceration period in jails. Phase II will focus on prison-bound felons.

**Task II: Initial Design** **July, 2009 SCJA and SGC Meetings**  
The EBCC will make initial design recommendations for SGC/SCJA approval. As follows:

**Milestone #1 Creating a System, including a Proposed Allocation of Responsibility**  
An evidence-based system of community custody will, at a minimum, include provisions for (a) identifying offenders for whom rehabilitative programs are cost-effective, (b) identifying cost-effective rehabilitative programs, (c) monitoring the system to ensure that it operates in a cost-effective manner, and (d) providing annual reports to the legislature on the costs and benefits of the system. The EBCC will discuss allocation of responsibility as it develops options.

#### **Task III: Stakeholder Consultation and Information Sharing**

In July and August, the SGC and SCJA will offer education and feedback events tailored to interest groups (i.e. prosecutors, defense counsel, local government officials, DOC staff, etc.).

The events will include presentations on the research related to evidence-based community custody and the current community corrections system in Washington.

Events will also include a process for attendees to provide information on issues and concerns from their perspectives as criminal justice system professionals. This information will be compiled for use by the EBCC as it designs the initial plan.

#### **Task IV: Draft Evidence-Based Community Custody Plan – Phase I**

**September, 2009 SCJA and SGC Meetings**

The Community Custody Planning Committee will present an initial plan for Phase I to the SGC and the SCJA, which will include a Detailed Implementation Plan and Cost Modeling:

**Milestone #2: Detailed Implementation Plan**

**Milestone #3: Cost Modeling**

The EBCC will work with experts to do cost-modeling of plan options and the current system, for comparison.

**Task VI: Field Test**

In September and October, the SGC and SCJA will have facilitated a process to seek feedback on the Plan.

**Task VII: Phase I Plan Adoption November, 2009 SCJA and SGC Meetings**

The EBCC will revise the Initial Plan, after consideration of information gathered during the Field Testing, and present a final plan to the November SGC meeting.

**Task VIII: Submission**

**December 1, 2009**

Upon approval by the SGC and the SCJA, the Phase I Plan and Report will be submitted to the Governor and Legislature. An Initial Plan for Phase II will be adopted by the SGC/SCJA.

**PHASE II: Phase II will focus on prison-bound felons who serve a term of community custody. The SGC and the SCJA will plan Phase II for submission to the legislature in December, 2010.**

**ONGOING**

**I. Research and Data Gathering**

Under the direction of the Community Custody Planning Committee, and with assistance from the Institute for Public Policy, staff will collect, compile and prepare for presentation information on laws and sentencing, including:

**A. Washington's System of Community Custody**

Structure

- a) statutory structure;
- b) jail and prison authority;
- c) current sentencing practices;
- d) costs, and
- e) administrative issues.

Offenders

- a) demographics;
- b) criminal history;
- c) risk levels; and
- d) other relevant factors.

**B. Evidence-Based Research**

- a) identification of offenders for whom rehabilitative programs are cost effective;
- b) identification of cost-effective rehabilitation programs;
- c) monitoring the system to ensure that it operates in a cost-effective manner;
- d) sentencing; and
- e) the correlation of these aspects to the purposes of the planning process.

## **II. Evaluation Planning**

Under the direction of the Community Custody Planning Committee, CCR and WSIPP will meet to formulate and implement a workplan that includes:

- a) ongoing consultation to the design process;
- b) a data availability analysis;
- c) review of similar evaluation plans and processes (including the juvenile system);  
and
- d) a plan for ongoing quality assurance of the evidence-based community custody system.