

Multnomah County Charter Review Safety & Justice Subcommittee

April 25, 2022, 6:30 - 8:00 pm

SUBCOMMITTEE MEETING 5

Purpose: To report out on subcommittee research

Attendees

Committee Members Present

- Donovan Scribes (he/him)
- Nina Khanjan (she/her)
- Ana del Rocío (she/her)
- Salma Sheikh (she/her)
- J'reyesha (Jay) Brannon (she/her)

Absent:

Danica Leung (she/her)

Staff:

 Kali Odell (she/her), Charter Review Committee Program Coordinator

In addition, members of the public were welcome to observe the meeting as non-participatory attendees. There were no observers at this meeting.

Welcome

Kali opened the meeting with a brief overview of Zoom logistics and the agenda. Kali checked in with the subcommittee about moving its meeting time back to 7:00 since Ana was not available until then. They agreed to return to starting at 7:00.

Public Comment

No one signed up for verbal comment.

Kali summarized the comment submitted by Carol Chesarek, who served on the 2916 Charter Review Committee, who had suggested the possibility of removing jail administration from the Sheriff and putting it under the Chair, instead. Kali and Salma worked to share a link to the written comment in the chat (Appendix A).

Salma suggested having the County Attorney as a speaker for the subcommittee. She said it would be helpful to know more about moving the county jails under the Chair, as well as the establishment of an elected public defender.

Donovan said he would be interested in hearing from Carol. Was her suggestion one that the 2016 Charter Review Committee had explored? If they had let it go, he would be interested to know why.

Kali said she thought it was a new idea. In 2016 the committee had recommended making the Sheriff and appointed rather than elected position. She said she could invite Carol to a future meeting or one of the members could connect with her outside of meetings to learn more.

Donovan noted Carol's suggestion intersected with a number of the subcommittee's topics, perhaps especially health.

Nina agreed that she would be interested in hearing from Carol. Donovan and Nina agreed that they would reach out to her about learning more. Salma said she would also be interested in being involved.

Reflection on MCCRC Meeting

Donovan checked in to see if there were any responses to Katherine Thomas's (Assistant County Attorney) presentation to the MCCRC at its recent meeting.

Kali summarized key points of the presentation, which included a recommendation that the MCCRC avoid recommending any Charter amendments that they knew would conflict with state or federal law since this would very likely lead to a court challenge the county would lose. She said there had been some questions from committee members about recommending something if they thought there was some grey area; she recapped that was an option, but the committee should consider that could lead the county to waste resources on legal challenges that were unlikely to succeed, and they might prefer to see those resources expended on other county services. She added that the presentation also included information about the timeline for moving recommendations from committee to the ballot.

Nina asked if they needed to get the verbiage on their proposals together and then bring that to the County Attorney's Office.

Kali clarified that the committee did not need to focus on drafting specific language, just on clearly establishing the concept they were recommending. They could then share their proposal with Katherine and her office to receive legal analysis including specific state or federal laws that might impact their goals. Kali said they might hear back that a policy idea was untested or there was some potential for conflict with existing law, the subcommittee could weigh out whether it was worth it to continue. If Katherine were to say that there was a pretty clear conflict with existing law, then she would recommend against the subcommittee putting that proposal on the ballot.

Kali also explained that Katherine would only draft specific language to amend the Charter after the full committee had deliberated on and voted to advance a proposal. Katherine would share draft language with the full committee to determine if it aligned with members' objectives or if any changes were necessary.

Kali clarified that it was fine to consider recommendations that altered what was currently in the County Charter. The conflicts the committee should work to avoid was with state or federal law, which generally preempt the County Charter. She did note that the committee should also work with an eye to avoiding conflicts between different sections of the Charter since they would not want them to contradict one another. She said Katherine's office would likely help flag issues with that, too, but that the subcommittee should be considering it.

Kali noted that the public comment about the elected public defender had included proposed language to incorporate into the Charter. She said that the subcommittee could use that idea as a foundation for its own recommendation or draw elements from the specific proposal, but that she and Katherine recommended leaving the final drafting in the hands of the County Attorney's Office.

Report Outs on Subcommittee Research Topics

Elected Public Defender

Nina shared links to resources she had read while researching the topic of elected public defenders.

Nina shared a <u>peer reviewed article</u> about the four states that currently elect public defenders. She said it was legal in California to elect the public defender, but only one county, San Francisco, does so. She said that the article pointed out that public defenders are often paid less and have a higher caseload than prosecutors. It was also rarer for public defenders to move into higher level elected positions like judges or district attorneys than it was for prosecutors, which have a lot more say in how indigent people are treated in the justice system. Nina said the article also argued a benefit of elected public defenders was that they had more political power when they were elected because they had a platform and were independent from a supervisor. They had more freedom to make more bold statements. Nina reported that the article also included interviews with public defenders. The article had a targeted recommendation for LA County to have an elected public defender.

Nina said that the peer reviewed article was the one she had found with the most data, and that the other articles she looked at were opinion pieces on the benefits of elected public defenders: https://lvdsa.org/2020/12/04/erika-ballou-clark-county-district-court-judge/
https://aninjusticemag.com/when-public-defenders-run-for-da-d9bf77c535e5

Salma said she had looked at Multnomah County and how public defense worked here. She said that there were two main public defense offices, Multnomah Defenders Inc (MDI), a public interest firm that had around 50 staff members. She said there was also Metropolitan Public Defender, which was also a public interest form that contracted with the State of Oregon to represent indigent defenders.

Salma said that from her understanding, Oregon was the only state in the union that contracted out public defender work, so it was administered by nonprofits and private attorneys through the Office of Public Defense Services, a state agency. Salma mentioned a report funded by the Oregon legislature in 2020, The Oregon Project, which showed that Oregon public defenders were overworked and understaffed. She cited that there were currently 592 public defenders in Oregon and it was projected that the state needed 1,300 more public defenders to fill the existing need.

Salma reported that more funding had been designated for public defense in 2019, but that was diverted because of COVID. She said that in the last months, 35 cases had been dismissed against the recommendations of prosecutors because there were not enough public defenders to represent people. She cited 19 defendants in jail without attorneys to represent them. She said the Oregon Chief Justice was planning a summit to work on addressing the issue.

At Nina's request, Salma shared links to sources she had read: https://www.oregonlive.com/portland/2022/04/oregons-chief-justice-sounds-alarm-on-public-defense-crisis-multnomah-county-da-prosecuting-only-most-serious-cases.html

https://www.americanbar.org/groups/legal aid indigent defense/indigent defense systems improvement/pub lications/or-

project/#:~:text=ABA%20SCLAID%20and%20Moss%20Adams,resulted%20in%20attorney%20workload%20st andards

Salma added that the two nonprofits that contracted with Multnomah County for public defense were not taking any more misdemeanor cases because they did not have staffing capacity.

Nina said that aligned with what she had read about public defense being understaffed.

Kali provided a time check for the group and asked if they preferred to stay on the topic of elected public defender or preferred to make time to report out on the other topics subcommittee members had researched.

Sheriff's Involvement in Evictions

Donovan reported on his research into the Sheriff's involvement in evictions. He said he saw having police involved in this crisis moment as a moral issue. He said it was dangerous for people to be faced with an authoritarian force when they are in crisis mode. Donovan drew a comparison to when cars were repossessed in Oregon: Oregon law prohibited lenders from using force to repossess a person's vehicle, tow a vehicle with someone inside of it, or to enter a person's house or garage to reclaim the vehicle. Creditors could sue for a court order for police to enter a house or garage space.

Donovan said he had read an article that said law enforcement's role in evictions was not mandated by any state constitution. He said there were some provisions in the Oregon constitution that raised questions for him about where the subcommittee could go with removing the Sheriff from evictions.

He quoted from an article that said state constitutions did not directly give the power to carry out evictions to the Sheriff; generally the power to execute evictions fell under the power to execute court orders. The articles said that who executed the order could vary by county; it could be appointed law enforcement officials or private security. Donovan noted that these were still armed people, which is what he wanted to see removed from the evictions process. He cited recent cases of people who were killed around the country (San Diego, Sarasota, Cleveland) in the past year during eviction processes. He said there should at least be mental health professionals involved while removals were happening.

Donovan pointed out that the only audit he had seen from the Multnomah County Auditor of the Sheriff's Office was in 2008, which did look at the eviction process. He said something that stood out when he read the report from that audit was how infrequently the Sheriff's Office encountered violent responses when enforcing evictions compared to how often the Sheriff's Office said that was part of their job. Donovan referenced the section of the Sheriff's budget where funding for civil processes (evictions) was discussed. He acknowledged the time gap between 2008 and today but said the Sheriff's Office's description made it sound like they went into these situations on high alert with the assumption that they need an armed response to violence, as opposed to going in with a mindset focused on de-escalation and providing resources to help with housing transition.

Donovan said he was not sure who should be involved in the process instead. He also noted that Section 16 of Oregon State constitution says that Sheriffs are the ministerial officers of the circuit and county courts, which

he said gave them their authority in the eviction process. He wanted to know from Katherine Thomas in the County Attorney's Office if there was a legal way to work around this to achieve the subcommittee's goals.

Jay asked if they could just make recommendations on these topics. She noted the research and passion for these topics and wanted to know what else they needed.

Kali clarified that Katherine could provide feedback about whether the thing the subcommittee wanted to do conflicted with existing law, and that this analysis did not have to wait until the end of the process. She said that detailed legal analysis required a more specific proposal about their objectives. For instance, if the subcommittee said that it wanted to remove the Sheriff – or armed people – from the eviction process, that raised the question of who was supposed to carry out those duties? She said a more concrete proposal would address those types of questions and would allow Katherine to provide more relevant legal analysis. She said that Katherine would not be able to answer policy questions for the subcommittee like who should replace the Sheriff in the eviction process.

She said she could ask Katherine whether Section 16 of the State Constitution would prohibit shifting who enforces evictions. She could also ask if there were state or federal laws prohibiting the establishment of an elected public defender.

Donovan said he would like answers to those questions. He reminded the subcommittee that his day job was with the Community Alliance of Tenants, and he said his executive director had suggested looking at the situation differently and establishing an office of landlord-tenant relations that could allow the county to act as an arbitrator when things between landlords and tenants got sticky and prevent cops from getting in between. He said he had found an example of this in Montgomery County, MD, although he had not had a ton of time to research this and how effective they were.

Ana wrote in the chat:

"Love the idea of tenant-landlord relations office.

On specific Qs for legal: If I understood correctly that there's no constitutional requirement for the county to be involved in the business of evictions, then I think the question for Katherine is whether the charter can explicitly ban that activity on the part of county agents (or contracted agents) vs. transferring the authority elsewhere"

Ana in chat: On specific Qs for legal: If I understood correctly that there's no constitutional requirement for the county to be involved in the business of evictions, then I think the question for Katherine is whether the charter can explicitly ban that activity on the part of county agents (or contracted agents) vs. transferring the authority elsewhere.

Kali noted that if the subcommittee considered a recommendation to add a specific office in the Charter, they should also consider its potential impact on the section of the Charter that gave the power to create, change, or abolish county departments to the Chair and the Board of Commissioners. She said this did not mean they could not make this type of recommendation, but that they needed to make sure it did not directly conflict with other sections of the Charter or consider what changes would be necessary to other sections to remove any conflicts. Kali said they could consult further with Katherine if that was a direction they decided to pursue.

No one present had researched health in jails. Kali shared in the chat that Danica had said she would look at that area.

Donovan raised the written public comment the subcommittee had previously discussed that suggested requiring elected county officials to visit the county jails. He said he saw that as connected to health in jails and said if they pursued that as a recommendation he thought the visits should happen more than once a year. He proposed at least four visits a year and that they be randomized. He said the jails would be on their best behavior for those visits, which is why he thought the Board should have the authority to come at any time in the year.

Next Steps and Wrap-Up

Donovan encouraged subcommittee members to continue their research between this meeting and their next one.

Kali said it would be helpful for her to know if there was anyone the subcommittee wanted to hear from as a group at one of its upcoming meetings so she could make arrangements. She clarified that the subcommittee members were welcome to speak with whomever they wanted outside of meetings, too. She also said it would be easier for her to make arrangements for them to hear from people who worked for the county or were more local. She said she had talked with Nina about inviting an elected public defender to speak at a meeting, and she was not sure if the subcommittee would consider all elected public defenders to be equally worth hearing from nor did she know whether they would be inclined to speak with the subcommittee. She said she was happy to reach out to people, but it would be most helpful if the subcommittee could be more specific about who they wanted to hear from. She said it would be easier for her to identify specific people herself if they were looking for information from within the county.

Donovan said he was interested in hearing from the Joint Office of Homeless Services to know if they had ideas about who could replace the Sheriff in the eviction process. He said he could also reach out for a one-on-one, rather than having someone speak during subcommittee time.

Salma brought up hearing from the people who run the public defense nonprofits in Multnomah County.

Nina said it seemed like Tennessee had a great system, but that Tennessee and Florida elected public defenders statewide and not by county, so she did not know how realistic it would be to find someone from there to talk to them.

Kali pointed out that the subcommittee only had two more scheduled meetings and recommended they think strategically about who to invite to speak to the group and who to talk to independently outside of meetings. She also offered to help facilitate individual conversations if subcommittee members thought that would be useful.

Nina said she would like to have conversations with Carol Chesarek and Thomas Busse, the person who submitted the public comment about an elected public defender.

Salma suggested she and Nina could talk with Thomas Busse and the public defender nonprofits.

Kali asked if she could facilitate some of these conversations with non-subcommittee members outside the meeting space. The subcommittee agreed that they would continue to work on the topics they'd volunteered to research and connect with people who have information offline.

APPENDIX A: ZOOM CHAT

00:23:19 J'reyesha Brannon: No preference for me. I can make either time work.

00:25:16 Salma Sheikh She/her: https://mail-

<u>attachment.googleusercontent.com/attachment/u/1/?ui=2&ik=8a38e5a0a5&attid=0.1&permmsgid=msg-</u>

<u>f:1730655735013576423&th=18048638b9fa0ee7&view=att&disp=inline&realattid=f_l27yb3mg0&s_addbat=ANGjdJ-JE_2_m0aih6kXZTG9EVP2vWA8-vkFcUM_-</u>

<u>T9yAOPa03_123fEeFLzgiKegmA56SuuNvdHAfjAA0MdHBN56VGoS2caDgl1IRNKdj3TGaVg1umz3gy_R6c7CDuSt903vSeaNZLKwiSf_EtshzLIXbtUbCjQiXWrjJVk5BiUf7-_vhV9CASEzYKF-</u>

<u>CSwvl33vFtqM3wY8cP6TsyxC3YRoZ0XujTOL</u> 83KLaW9BRx4fdFSTKfNQAlaBkAFboidSg21sLiz <u>urhGRisYa8jImhmfKOfr41Oi3nmkFo1Lc1fD1HZxCKHkrXWzvtTsNJVz9CV6kU4N012</u> <u>AlrYFldcXtKRt7mROLVK8E6gq4GHFaj6eCwXW3SolaJQNKf2J2-</u>

WIOfviUelsMNMrIm4hQ8D78HLRgG6unOR4yFgsyzB6uulnN54JpUgbH_IIHV2II-

<u>cUwin5Fjx1ZPN7Nv3QR6LcjKb6K0_sB8hJBe4R68oBXZESusoB_VEXFRuQeNhYYGd18WMfp3</u>bbLX7XuNry-gs6qDQP4ypDOKd0WHs-

rHQWOy2m7t1s_yhZUOsEVVgUidxTtiRw6qcLtMssQCUvnPPW9dVcnhOE9QWZxkZfVwyB5b_3xBm_ivcldeAtWoQsk_BCku1QJ-njm2GDFYjn66qC8Xme98l5dLc534n-

ah 7oKl6lUnLE86yDAX6b3ZXhRzO9odJZi2Jx1BNURd9wz8o-RGXt6iLkyCa0-

zvYQM_LaimJWtcxMq3q_4usDPpdSh32yelMaW9O3nU_V-L-E-pMCGqhkdDzpeUJfcHNcPg

00:26:09 Kali Odell (she/her): https://www.multco.us/crc/mccrc-upcoming-meetings

00:35:53 Kali Odell (she/her): Did that PDF come through?

00:36:30 Salma Sheikh She/her: https://mail-

<u>attachment.googleusercontent.com/attachment/u/1/?ui=2&ik=8a38e5a0a5&attid=0.3&permmsgid</u> =msq-

f:1730139871961984549&th=1802b10c0008ae25&view=att&disp=inline&realattid=f_I1zobeyp0&s addbat=ANGidJ-

gAyZX1LnSlc_GCAimb4sjbbtVXEmTDIOu974yI15mWPVbVaecqtHZxO1Dm6ujaUtQ2Q_PppvVd_ZL48--

 $\underline{eBkD8RCclhwR3JUSG5CBjLURtR8NDRrgspJz2FMZwkRwtUlillsJp3hc51oQ42QhcBgt16deOOW}\\ \underline{SpGgk96LOTkD1tl9hjQUJLVgLu4QA5lHv0T2XrR5lgz3-}$

fDIGa5t1iR4VMFehJBZQAi8F ORH2vw0Rx0oPsinmOCblpAkOj8NcvmWSjzEbI5L7XrmkX5C3K3OsDXTc2C6AnlLVpfwoBsPfXJtDGNpZbKHLoGDoPtFpq3fvj-

k4ntwnhxXxP6r0AJ88cpm3docdSKezXo0zU1e88OSfV8dho3QlLrxlp5LE-

K8aLLsRG6OGqlQlM0kthJwZhZpV9h4Mh5V9Lw-z08rsqfXDorFpsefvlZFVl6dWy2RqWeM-

<u>SCpkHBGToMp67R82iJEPLQM6hCBtwgFX1P1dB9E7z3SF_uF06j0D8WuRzXi86KRhYPSbil3it-rrucCcz7kZDepnKK6ncPlr5DafmrN4gRbBze4snbAKfEUBXV-CL5PeAoycF4si-</u>

<u>kci1_hL8KCbOrtvMX2v3aVfpAdTZwaNs_zRWCdIUe7hHaNqXbyDPZoPExrjLz8A3or3EiZ_MH6WiQjgQXxfHiKfLHAwkc7DNUY2Z_L4m-</u>

PX8kdmG8OK9 XgF5SnWc7iuVydm jYPc1Mw2FtgF1cmfxn2MKFidG4y Y 0JIWEbo00ibJCFoq aswH1ArEFk1e3E2xR5pgtbtoKkN0JA6g

00:36:39	Kali Odell (she/her):	https://www.multco.us/crc/mccrc-meeting-records
00:46:14	J'reyesha Brannon:	I'm having a hard time hearing Salma
00:52:04	Nina Khanjan she her: the-impact-of-electing-	
00:52:32	Nina Khanjan she her:	https://lvdsa.org/2020/12/04/erika-ballou-clark-county-district-court-judge/
00:52:50	Nina Khanjan she her: d9bf77c535e5	https://aninjusticemag.com/when-public-defenders-run-for-da-
01:15:31		: https://www.oregonlive.com/portland/2022/04/oregons-chief-justice-c-defense-crisis-multnomah-county-da-prosecuting-only-most-serious-
01:16:12	Salma Sheikh She/her: https://www.americanbar.org/groups/legal aid indigent defense/indigent defense systems i provement/publications/or- project/#:~:text=ABA%20SCLAID%20and%20Moss%20Adams,resulted%20in%20attorney%20gorkload%20standards .	
01:24:53	Kali Odell (she/her):	Sorry about that, that may have been my misunderstanding Jay!
01:26:01	J'reyesha Brannon: coordinating!	I didn't have a chance or email to clarify. So my fault as well. Thanks for
01:32:06	On specific Qs for legal: If I understood correctly that there's no constitutional requirement for the county to be involved in the business of evictions, then I think the question for Katherine is whether the charter can explicitly ban that activity on the part of county agents (or contracted agents) vs. transferring the authority elsewhere	
01:35:59	Kali Odell (she/her):	Danica said she would look at health in jails