



Multnomah County Charter Review

Safety & Justice Subcommittee

May 9, 2022, 7:00 – 8:30 pm

SUBCOMMITTEE MEETING 6

Purpose: To report out on subcommittee research

Attendees

Committee Members Present

- Donovan Scribes (he/him)
- Salma Sheikh (she/her)
- J'reyesha (Jay) Brannon (she/her)
- Danica Leung (she/her)
- Nina Khanjan (she/her)

Absent:

- *Ana del Rocío (she/her)*

Staff:

- Kali Odell (she/her), Charter Review Committee Program Coordinator
- Katherine Thomas (she/her), Assistant County Attorney

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 shared the Subcommittee Recommendation Form with the subcommittee members. She told them that they did not have to fill out the form in a meeting, but if they did vote on any recommendations to send to the full MCCRC, the categories in the form were ones they should consider and provide enough information to enable the subcommittee co-chairs to fill out the form and share it with the full committee.

County Budget Principles

Kali said she would not spend a lot of time talking about the county budget because she was not a budget expert and they would be hearing from the county's budget director at the next MCCRC meeting. She said the main point she wanted to impart was that if they decided to make recommendations that would cost a lot to implement, they should consider both the costs and resources in the area immediately impacted, but also the potential impacts to other county programs and services. She said that unlike the federal government, county

government could not operate a deficit. That meant that if something had a high cost, the county would likely either need a new revenue source (e.g. new taxes) or have to reallocate funds from other programs or services. She said that the subcommittee should do its best to identify potential expenses associated with recommendations, but that if they forwarded a recommendation to the full committee that seemed like it would have significant financial impacts she would speak to the County's budget department about providing some financial analysis.

Legal Analysis from Katherine Thomas, Assistant County Attorney

Katherine summarized the questions that had come to her from the subcommittee: removing the Sheriff from the evictions process and adding an elected public defender.

Sheriff's Role in Evictions

Katherine said her understanding of this question was whether state law allowed the Sheriff to be removed from the role of physically removing people from their residences in the eviction process. This happened after a court proceeding had happened and a person had been evicted through a court order. A notice would be posted that they had four days to leave; if they did not leave in those four days, the Sheriff would remove them. She said this was the only recourse for landlords and the idea was to prevent them from taking matters into their own hands.

Katherine said the state statutes provide that the writ of execution is directed to the Sheriff. Removing the Sheriff from the physical removal part of the eviction process would directly contradict state statute and require the Sheriff to disregard court orders and be held in contempt of court. She said there was not much of a path to change this through the County Charter. Even if it was added to the Charter, the Sheriff would not likely comply given the contradiction to state law. She said the path to change this process was changing state statute, either through the legislature or the initiative process.

Donovan explained that he and Nina had met with Katherine in advance of this meeting to talk about this. He said he was working to better understand when local laws can trump federal or state laws. He said he was interested in exploring other avenues for getting at the root of the problem, like using the Charter to require that the Sheriff's representatives be unarmed during the removal process. He said adding a mental health professional was a possibility, as well, although he was less excited about that option. He said that maybe this discussion could be a jumping off point for advocates to work on this issue at the state level.

Jay asked if committee members could lobby the state legislature about this after their committee service concluded and if they could include information about this in the MCCRC's final report so that future committees were not blindsided about what they could and could not do through the Charter.

Kali said that the subcommittee could put forward recommendations for what to include in the MCCRC's final report as well as former recommendations to amend the Charter. She said that once committee members were done with their service, they could say or do anything they wanted, in any form or forum.

Donovan said that if the Charter was not the tool to make these changes he would prefer to keep the issues on the down low until so that opposition was less likely to organize and get ahead of proposed changes at the state level.

Elected Public Defender

Katherine said that there was a comprehensive state statutory scheme that laid out how public defense services were delivered in Oregon. The state was constitutionally obligated to provide this. She said the statutes laid out how public defense was provided, how it was funded, and it was overseen by an elected official, the Chief Justice of the Oregon Supreme Court, who was responsible for appointing a nine member commission with a set composition of people with different backgrounds. The Office of Public Defense Services administered the public defense system, and then there were nonprofits and lawyers who contracted with the state to deliver services. Katherine's understanding was that they were currently paid on a per case basis, but there were some questions about whether that was the method.

Katherine said that if the subcommittee wanted to recommend the addition of an elected county public defender, they should figure out how that would fit into the state system. She recommended reaching out to the Office of Public Defense Services and the two primary consortiums offering public defense services in Multnomah County, Metropolitan Public Defender and Multnomah Public Defense Services, so they can understand how the system currently works.

Katherine said this would raise issues like whether an elected county public defender be operating in the state system and seeking state contracts so that they are solely funded through the state system, or would they draw a salary from the county and be contracting with the state, compensating them twice when currently other practitioners were only funded by the state. She said the other piece was that the state was obligated to provide these services, but if the county ramped up services in this area, would the state divert funding used for public defense services from Multnomah County to other places? She said that an elected public defender could likely be established, but there were a lot of details that needed to be developed to do so successfully.

Nina said that she and Donovan had talked about how this was a much more involved process than the original proposal had suggested and while they were still interested in the change, they felt the subcommittee did not have the capacity to answer all of these questions. She said she thought providing research and a recommendation in the MCCRC's final report that the next Charter Review Committee explore this possibility would be a good way to move things forward.

Donovan asked if the Board of Commissioners were required to read Charter Review Committee reports or did so in practice.

Kali explained that the committee would present its final report to the Board and the committee would be able to choose what to highlight to their captive audience. She said she hoped they would read the report in its entirety, but it was not required nor would they have any way of knowing if Board members did read it.

Katherine added that they would get the final report as part of their meeting packet.

Kali said that in addition to figuring out how to situate an elected public defender into the state system and how funding would work, if the subcommittee did want to pursue this as a recommendation, they would need to determine what the duties and powers of the office would be. Even if they did not include everything in the language of the Charter, it was important that they develop an understanding of what they thought the public defender should be; for example, was it one person with minimal or no staff? Or would role supervise county staff lawyers who would provide public defense?

Salma noted that while the state was supposed to provide legal defense services, the subcommittee was concerned about the current shortage of public defenders across the state. She asked Katherine if she had any advice about how they could make an impact on this issue.

Katherine said she heard Salma's question as a policy question: what is the way to solve the state's public defense crisis? She said this was a big question and not her area of expertise, which was why she had recommended speaking with the people working in the system, because they would have a better understanding of gaps in the current system. She also suggested looking at the report put out by the Legislature on this.

Salma asked what consequences there were for these services not being provided.

Katherine said one of the consequences currently happening was that people were not being brought to trial because they did not have legal representation. She said that while prosecution might be happening in Multnomah County through the DA's office, but the DA was a state officer, it was the state that was prosecuting, and it was the state's obligation to provide defense services, which made the state responsible for consequences. She said that did not mean the county could not do anything, but that addressing the issues with the state system was probably the first step.

Salma asked if there was a way to hold the county accountable for what it should be doing, even outside the Charter review process.

Katherine clarified it would be holding the state accountable since it is the jurisdictions obliged to provide legal services. She said she did not have an answer for this larger policy question.

Kali said that since this was a state system, it was unlikely that anyone at the county would have the answers Salma was looking for. She also said a question the subcommittee might consider was whether an elected county public defender would solve the problems they were concerned about. If the issue was about a deficiency in state funding, it was unlikely an elected public defender could do anything to solve that. She also pointed out that if the county funded public defense, that funding would likely have to come at the expense of funding for other county programs.

Donovan suggested getting in touch with state representatives and their staff. He said the ACLU might also help on this issue.

Jail Visits by the Board of Commissioners

Katherine said she understood there had also been a question about enshrining in the Charter a requirement that the Board of Commissioners visit county jails. She said that state law currently required the Board to visit county jails at least once a year, which was also established through a Board resolution. Katherine said Donovan had asked if visits could be randomized or surprises and she suggested reaching out to the Sheriff's Office to learn more about what visits to the jails entailed. Her understanding from speaking to the county attorney who worked with the Sheriff's Office was that a lot of planning was needed to ensure the safety and security of visitors, staff, and people in custody. They also needed to have the staff available to work with visitors in addition to managing regular operations.

Katherine said the subcommittee had asked her if there could be other people who accompanied the Board of these visits. She suggested to subcommittee ask the Sheriff's Office to provide information about what was

required for people to have visitor access to the jail. She thought that they had to go through a background check, so that would need to be accounted for.

Katherine said another question she had been asked was whether the subcommittee could recommend a required report be produced after the visit(s), and she said yes.

Katherine added that the jails were already heavily regulated and there was a lot of oversight. She said that state law required that every year a grand jury be convened to review management and conditions of the jails. Anyone eligible to serve for jury duty could be chosen for this grand jury. It was a multi-week and they had a lot of access, including eating the food served in jails, interviewing inmates, interviewing staff. The grand jury produced a report. She added that the County Auditor could audit the jails. The state Sheriffs Association had a set of jail standards that sheriffs agreed to abide by and they inspected jails on a biannual basis to assess compliance. Katherine noted there were also accreditation organizations that accredited for things like healthcare in jails, and groups would also do onsite inspections of the jails. She wanted to give the subcommittee this context. She added that they can require more than state law, but not less than it. So the Charter could require the Board visit county jails more than once a year, but could not require that they never visit.

Nina said it sounded like random visits were potentially a safety hazard, but that increasing the number of visits was still on the table. She thought this idea was the most doable idea in the time the subcommittee had.

Next Steps

Donovan said that he wanted to say for the record that criminal justice had been at the top of the list of topics that the MCCRC was interested in. He said it was disappointing to have narrowed down the subcommittee's focus to not have time to make recommendations or encounter other obstacles preventing them from moving ahead and having any substantial impact on the way the county's criminal justice system was governed. He said at the end of the day this was about saving lives, and said he would not put this on anyone engaged in the process, but in the process itself as being adverse to systemic change. He said that plenty of data showed that Black people were coming out at the bottom in the criminal justice system in a state that did not have a lot of Black people because the state had banned them from being there. He said that even a document that does not outwardly say anything about race, it can be fundamentally racist, and he did not know collectively whether the subcommittee believed this, but he believed the Charter was racist and prevented them from making fundamental change to how they were doing things in the county. He wanted to name that. He asked the subcommittee if there was interest in returning to any of topics they had spoken about earlier in their process. He also prompted a broader discussion about how the subcommittee should use its remaining time.

Jay asked what was left that was doable and if they did not have recommendations as a subcommittee.

Nina said that they could put research and information about their work in the final report, but did not have to make a recommendation if they felt this was all that was doable.

Kali said that the subcommittee could continue to pursue the idea of requiring the Board of Commissioners to visit county jails more frequently, if the subcommittee was interested in that. She said Katherine had raised a number of questions they could look into. Kali also flagged that Donovan had raised the possibility earlier of requiring a mental health professional's involvement in evictions during physical removal processes.

Katherine said that her understanding was Sheriff's employees had mental health training, so they could talk to the Sheriff's Office to learn more about what training they received. She also said that the Sheriff would have to carry out the eviction order, ultimately, so she recommended making sure that what they put into the Charter ensures that there was someone available to provide those services.

Donovan said he had gone on ride alongs and understood what mental health training they received and he thought the person should not be employed by the Sheriff's Office.

Jay did wonder if they should go back and look at earlier ideas, but she felt they did not have time.

Nina favored looking further into jail visits. She noted that when they had talked about this earlier, Donovan had suggested the Board of Commissioners visit four or eight times a year. She said this made her think of the assessments she did as a teacher, which were not done necessarily to catch students off guard, but was about keeping up between assessments because students knew they were coming without a lot of time to get into bad habits. She said even if the jail visits were not random, having them more frequently could improve standards. She said she did not think it was a small thing. Nina also added that they could continue to do more research on the other topics to add to the MCCRC's final report. She said she would continue to do research on the elected public defender.

Nina also noted the importance of the diversity of the committee and said she thought that was reflected in the ideas and resources they had brought forward.

Danica apologized that she had not had the time to dive more deeply into health in jails. She said she was also frustrated that they were not able to advance change at the level she had been hoping; she thought there was some utility in a report if they used that as a way to connect with other organizations to advance some of these ideas. She asked whether recommendations coming out of the other subcommittee might align with their purposes.

Donovan said the Government Accountability Subcommittee was looking at proposals from the Auditor, which could align with more oversight of the criminal justice system. Donovan said they could press ahead with the jail visits proposal, although he was less excited about this, particularly if visits could not be randomized. He thought scheduled visits would expose visitors to best behaviors and not what people in custody regularly experienced. He said he was willing to move forward with it because he thought it would have some impact.

Salma asked if there were other next steps the group could take on the elected public defender issue?

Nina said she would email Salma and they could work together on contacting the agencies they had discussed.

Kali pointed out that putting together information about an elected public defender and why that thought this was important to have could make a significant difference for the next Charter Review Committee. She noted that it had been challenging for the current committee to start from scratch and try to figure out what changes were possible, so leaving a place for the next committee to start could be helpful to them. She said after they were done with their current service, subcommittee members could take this up as a cause and build support for it in advance of the next review process, pointing out that might make a big change more possible. She also said the Government Accountability Subcommittee planned to recommend extending the Charter review process, which could also make a difference.

Donovan asked the subcommittee to do a fist of five indicating members' level of support for a recommendation requiring the Board to visit county jails at least four times a year. (Five indicating enthusiastic support and one indicating no support). Nina, and Salma were at five; Donovan, Jay, and Danica were at four.

Kali clarified that the next MCCRC meeting was next week and the last subcommittee meeting was scheduled for May 23rd. She suggested that the subcommittee use that last meeting to fill in the details of its recommendation.

Kali asked the group if there was any other information they wanted to plan to gather on this topic, such as whether they wanted to add people to the commissioner visits.

Donovan said he had been thinking about requiring members of the community be involved, for example maybe from the Community Involvement Committee, since it was a standing committee. He said he had heard what Katherine had said about a number of groups already visiting the jails, but maybe it would be more shocking to people not already heavily engaged in the criminal justice system.

Nina agreed. She wondered if someone should reach out to the Community Involvement Committee.

Kali said they could continue to discuss at their next meeting who they thought it would be beneficial to have accompany Board members on the jail visits.

Community Engagement Update

Kali told the subcommittee that the county was working on signing its contract with Espousal Strategies to conduct some community engagement efforts related to the MCCRC's work. She said that it would be helpful for the subcommittee to think about what kind of questions they would be interested in elevating to community members in focus groups. That could include gauging support for concepts like an elected public defender, or asking how frequently community members thought commissioners should visit the jails; whatever specific questions they thought it would be helpful to get community feedback on. Kali acknowledged that the timeline was not ideal since any feedback would have to go to the full committee instead of the subcommittees.

Jay said she thought at this point what this would probably look like is sharing their recommendations with community members, getting feedback, and then using that to demonstrate support or justification for the recommendations sent to voters. If the response was negative, that could signal not to vote for it.

Wrap-up

Donovan said that he and Nina were on an email thread with Katherine to get more legal guidance on some of the subcommittee's topics and asked if anyone else wanted to be looped in.

Other subcommittee members expressed interest and Katherine said that with more than three members, they would need to have a public meeting and notice it. She said she could also bring information to the subcommittee's next meeting. Katherine added that she did not think the discussion Donovan wanted to have would change her legal advice on anything they had spoken about so far and would mostly focus on more context around the issue of preemption. If it did change her advice, she could provide some written information as part of the subcommittee's next meeting packet.

It was agreed that Nina and Donovan would continue talking with Katherine and would report back on anything important.

APPENDIX A: ZOOM CHAT

01:09:09 J'reyesha Brannon: I'd love to see this information shared widely! Didn't know that was something folks could be selected for

01:09:11 J'reyesha Brannon: or that there was a report

01:09:19 J'reyesha Brannon: It should be front page on the paper, ha!

01:09:35 Nina Khanjan she/her: Agreed!

01:10:29 J'reyesha Brannon: I want all this "context" to be so accessible and public! Like as public as all the stuff we know about the City of Portland's work

01:10:31 Katherine Thomas (she/her), Assistant County Attorney: Here is the 2021 grand jury report: <https://www.mcda.us/wp-content/uploads/2021/11/2021-Multnomah-County-Corrections-Grand-Jury-report.pdf>

01:11:38 Katherine Thomas (she/her), Assistant County Attorney: Here's the statute on grand jury inquiry: https://oregon.public.law/statutes/ors_132.440

01:12:04 Katherine Thomas (she/her), Assistant County Attorney: Here is the board resolution on annual visits: <https://multco-web7-psh-files-usw2.s3-us-west-2.amazonaws.com/s3fs-public/board/documents/06-198.pdf>

01:12:37 Katherine Thomas (she/her), Assistant County Attorney: And state law on board annual visits: https://oregon.public.law/statutes/ors_169.040

01:39:45 Danica Leung: I take venmo actually

01:44:21 Danica Leung: 4

01:44:40 Danica Leung: Period

01:55:43 Danica Leung: sure add me

01:55:48 J'reyesha Brannon: add me too

01:55:56 J'reyesha Brannon: I'll work on future bills to get this stuff done haha

01:55:58 J'reyesha Brannon: oh dang

01:56:00 J'reyesha Brannon: nevermind

01:56:01 J'reyesha Brannon: keep me off

01:56:03 J'reyesha Brannon: no more meetings