



STATE OF WASHINGTON

OFFICE OF FINANCIAL MANAGEMENT

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**SENTENCING GUIDELINES COMMISSION
MINUTES**

September 8, 2017 9:00am – 12:00pm

Criminal Justice Training Commission

19010 1st Avenue South Room C-202

Burien, WA 98148

Members Present:

Russ Hauge
Kathleen Kyle
Hon. Catherine Shaffer
Hon. Roger Rogoff
Kecia Rongen
Hon. Stanley Rumbaugh
Rep. Brad Klippert
Stephen Sinclair (Alex MacBrain proxy)
Phillip Lemley
Senator Mike Padden
Kimberly Gordon
Jennifer Albright
Rep. Eric Pettigrew
Tony Golik (Mark Rowe proxy)
Sheriff Paul Pastor
Michael Fenton

Members Absent:

Senator Kevin Van De Wege
Rev. Terri Steward
Tim Wettack
Jon Tunheim
Hon. Maryann Moreno
Marybeth Queral
Sonja Hallum

Staff:

Keri-Anne Jetzer

Guests:

Shani Bauer Senate Committee Services; David Boerner; Erika Rusher, WA Appellate Project; Juliana Roe, WSAC; Ed Vukich, CFC; Jaime Hawk, ACLU; Mark Lindquist, WAPA; Leah Fischer, SOPB; John Bailey, US District Court (WD Wash); Zach Thal US District Court (WD Wash); Robert Lasnik, US District Court Judge (WD Wash); Erik Kiffe, House Democratic Caucus Staff;

I. CALL TO ORDER

Chair Hauge asked members to introduce themselves.

II. APPROVAL OF MINUTES

**MOTION #17-20: MOTION TO APPROVE MEETING MINUTES
FROM AUGUST 2017**

MOVED: Kimberly Gordon
SECONDED: Sheriff Pastor
PASSED: Unanimous

III. FEDERAL SENTENCING GUIDELINES

Chair Hauge reminded members that it was decided at the last meeting to explore the difference in sentencing schemes and how guidelines can function not as mandatory but as advisory. To that end, Judge Rogoff and Kimberly Gordon obtained speakers who currently work or have worked with the federal guidelines system.

Judge Rogoff said that in his experience as an Assistant US Attorney working in a scheme where the guidelines are advisory created a different dynamic amongst the defense bar, the assistant US attorneys and the judges. Judge Rogoff introduced Judge Robert Lasnik, Senior US District Judge of the Western District of Washington, who was instrumental in the passage of the Sentencing Reform Act; Nick Brown who used to be an Assistant US Attorney and also worked on criminal justice issues as the General Counsel to Governor Inslee; and Dennis Carroll who is currently a federal public defender but also has worked as a state public defender.

Judge Lasnik provided historical information on the state of criminal sentencing prior to the SRA and the passage of the SRA itself. He touched on a few ways the federal system differs from the state system, such as fewer cases go to trial, the federal prosecutor having the option of sending the case to the county court, the US Sentencing Commission having a larger staff and budget which allows it to provide greater resources and training to judges and prosecutors.

Dennis Carroll briefly explained the sentencing process at the federal level. He went on to say that the big difference in federal court is that the sentencing hearing is more offender-focused. The defense is most often responsible for presenting particular or unique circumstances of the offender's history or characteristics, sentencing alternatives, evidence-based research about brain injuries or youth, etc., to convince the judge that perhaps the guidelines are not appropriate in this case. He talked about the effect advisory guidelines have on the system by citing US Sentencing Commission data before the

guidelines became advisory in 2005 and after. He noted the trial rate did not change significantly, there are more sentences below the guidelines range than above, however, there are more sentences above the guidelines range than before 2005.

Judge Rogoff commented that there is a difference between the state and federal definitions of offense characteristics that drive the sentencing range and asked Dennis to explain offense characteristics that go into creating the federal guidelines. Dennis gave an example of a drug case where someone sold a pound of marijuana. He said that offense would result in a low guideline range because the guideline range for drug offenses is driven primarily by the type of drug and the amount of drugs. The range for a firearm offense can be driven by whether the firearm was possessed in relation to some other felony offense or possession of drugs.

Chair Hauge inquired if offense characteristics were distinguished from enhancements. Dennis replied that there are they have what is known as departures, which are more formal enhancements that aren't necessarily part of the charging process. There are also separate charges that could be brought against the individual that could enhance the sentence. Judge Lasnik added that the number one reason you get reversed as a federal judge in sentencing is by not getting to the right guideline because he/she messed up on these offense characteristics.

Nick Brown remarked that he feels another way the state and federal systems differ is because the probation officer can provide a third perspective of the individual being sentenced. He added that when discussing flexibility within the system, many may assume that means flexibility for the defendant. It also allows prosecutors to argue departures from the guidelines upwards if they felt the guidelines was not appropriate.

Chair Hauge told a story of an individual he had prosecuted numerous times who, unbeknownst to him until after the individual's death, had been abused severely as a child. Chair Hauge commented that if pre-sentence reports were part of the state system, like they are in the federal system, some of this knowledge may have been used to provide a response better than just locking him up. Judge Rumbaugh observed that, unlike the federal system, none of that information is taken into account. There was discussion about why pre-sentence investigations are no longer completed.

Dennis explained the difference between departures and variances. Departures are embedded in the guidelines and the probation department would have to give notice that they are seeking a departure, such as criminal history over or under represents their risk to community. Variances are a more informal way to seek a departure from the guidelines. Factors under a variance might include history and characteristics of the defendant, nature and circumstances

of the offense, etc. Variances have become more frequent because of the procedural requirements for departures. Both are appealable but the departure is based on pre-Booker case law whereas a variance is within the more general discretion a judge has to consider aggravating and mitigating factors.

IV. SRA REVIEW

Chair Hauge reminded members where the discussion ended last meeting. He talked about the Course Correction memo he sent to members and about how members would like to move forward with the review.

There was conversation about the presentence investigation reports like the ones the Department of Corrections used to complete.

Chair Hauge asked members to bring ideas that would help envision what the review should look like to the October meeting. These ideas should be upper level, not too much detail.

V. OTHER BUSINESS

VI. ADJOURNMENT

APPROVED AND ADOPTED BY THE SENTENCING GUIDELINES COMMISSION

/ s /

Russ Hauge, Chair

Date