



STATE OF WASHINGTON

OFFICE OF FINANCIAL MANAGEMENT

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**SENTENCING GUIDELINES COMMISSION  
MINUTES**

**May 11, 2018 9:00am – 12:00pm**

Criminal Justice Training Commission

19010 1<sup>st</sup> Avenue South Room C-202

Burien, WA 98148

Members Present:

Greg Link  
Kecia Rongen  
Kimberly Gordon  
Jennifer Albright  
Sheriff Paul Pastor  
Rep. Eric Pettigrew  
Hon. Stanley Rumbaugh  
Tim Wettack  
Maia McCoy  
Stephen Sinclair (proxy Alex MacBain)  
Senator Mike Padden  
Marybeth Qeral (proxy Kathleen Harvey)  
Senator Jeannie Darnielle  
Phillip Lemley  
Hon. Catherine Shaffer  
Russ Hauge  
Jon Tunheim (proxy Tom McBride)  
Tony Golik (proxy Tom McBride)

Members Absent:

Rep. Brad Klippert  
Michael Fenton  
Sonja Hallum  
Hon. Roger Rogoff

Staff:

Keri-Anne Jetzer

Guests:

Ed Vukich, CFC  
Felix D'Allesandro, Prison Voices  
Donta S. Harper, DOC  
Kevin Black, SCS  
Keri Waterland, SCS  
Jaime Hawk, ACLU-WA

**I. CALL TO ORDER**

Chair Hauge asked everyone to introduce themselves for the benefit of the new members, Maia McCoy and Senator Darneille.

**II. APPROVAL OF MINUTES**

The Commission is asked to approve the minutes from April 2018

**MOTION #18-12: MOTION TO APPROVE MEETING MINUTES  
FROM APRIL 2018**

**MOVED:** Phillip Lemley  
**SECONDED:** Judge Rumbaugh  
**PASSED:** Unanimous

**III. REPORT FROM POST-CONVICTION SUBCOMMITTEE**

Judge Rumbaugh reported that the subcommittee is working on the general outline of the structure of the post-conviction review group, that being with the ISRB. The subcommittee is also considering a 15 year or a 20 year eligibility time frame and they are debating and if any offense types should be excluded from eligibility.

For the benefit of the new members, Judge Rumbaugh reviewed the charge of the subcommittee. Senator Darneille commented that she and Representative Jinkins had prime-sponsored similar bills. Chair Hauge mentioned that the Commission has been working on this topic for quite a while and, although it is separate from the directive from the legislature, the Commission has deemed it important enough to continue working on.

Tom McBride said that the Prosecutor’s Association has had many discussions about this and they feel that there already is a second look process in Washington state called the Clemency and Pardons Board. It has a proven standard of rehabilitation and change that has engendered respect and trust over time. He went on to say that there was a legislative proposal last year that expanded the Clemency and Pardons Board to two panels and added some full-time staff.

Kimberly Gordon added that one of her concerns with using the Clemency and Pardons Board is that there is no entitlement to counsel or assistance to the incarcerated individual to prepare the petition. She commented that defense attorneys spend many hours of free work on a single petition. Many incarcerated individuals are unable to find an attorney to assist them which prohibits people who may be deserving from being considered by the Clemency and Pardons Board. Another concern she had was that incarcerated individuals who are seeking a hearing with the Clemency and Pardons Board somehow manage to attain some programming but perhaps not the programming that is best for them. In order for DOC and the legislature to designate their resources accordingly it would help if it was a formal process through the Clemency and Pardons Board. Kimberly went on to say that she has concerns about the arbitrariness of the Clemency and Pardons Board process. She felt there was a more robust process in some jurisdictions and not

in other jurisdictions. Tom McBride countered by noting that a prosecutor's consent is not required to petition for or for determination to be made in the Clemency and Pardons process. Chair Hauge remarked that this encapsulates the debate that the Commission needs to have. In order to flesh this argument out, he would like to have a work product that the members can look at that represents an outline of the process from the subcommittee.

Judge Shaffer noted that this topic will consume quite a bit of discussion and suggested maybe tabling the topic until after the work on the SRA review is completed.

Senator Darneille requested, when looking at the options, to also include elements desired by the community such as having a better representation of people of color in the process. She hopes there is a goal to be more culturally competent or more culturally able to communicate the goals, objectives and outcomes of this process with input from communities affected by the decisions that are made.

Senator Padden would like to see data on the crime rate since 3-strikes legislation has been implemented. He also feels the victims should be considered in the process, too.

Judge Rumbaugh briefly discussed the recent Supreme Court decision of State vs Scott that referred to the statutory application of the "Miller fix".

#### **IV. REPORT FROM LFO WORK GROUP**

Judge Shaffer reminded members of the recommendations from the work group which were discussed at the last SGC meeting. She said the work group was in agreement to try to keep LFOs as low as possible which is the thrust of their recommendations. She talked about the penalty fee assessment and its funding of the crime victim services, noting that the question from the work group is whether it should be imposed on offenders or be a guaranteed source of funding. The same question was applied to the DNA fee which funds the crime lab. She said the work group wants to keep LFOs as low as possible, build on HB 1783, and they want to make sure that important services like crime victim advocacy services and the crime lab are adequately funded. Information is being gathered for the next meeting.

Chair Hauge asked if there was data to relate shortfalls in funding of the crime lab directly to collections from offenders. She responded that a request had been submitted to the Administrative Office of the Courts for information on the monies collected but the information was not available by the date of the LFO work group meeting. Chair Hauge also asked if it was possible to get the collection number for LFOs from across the state. He noted that he tried to get

that information for Kitsap County a some years ago and the collection rate was around 20 percent.

Maia McCoy commented that the funding is modeled after the federal system and one of the reasons for funding it through offender fees is that it is a steady source. Judge Shaffer replied that the group is committed to not replacing it unless it there is an assured source of funding that is adequate to support victim compensation programs. Senator Darneille informed members that the origination of these funding sources were to provide a sure funding source for something the general fund had a more volatile approach to.

Judge Rumbaugh noted that funding for the crime lab will be decreasing with the change passed in HB 1783. He also remarked that none of this has any impact on restitution.

Kimberly Gordon talked about a letter she received from an incarcerated individual regarding victim fees. His suggestion was to take the interest gained on the incoming/employment monies that are held in a savings account and apply them toward funding victim services or other obligations the individual has toward victims. Alex MacBain told members he would find out what, if any, interest DOC collects on those accounts.

## **V. STAKEHOLDER PRESENTATION ON COMMUNITY SUPERVISION**

Alex MacBain presented a handout to the members with DOC's perspective on the topic of community supervision, which includes all forms of time an individual could spend in the community.

Kecia Rongen presented some points of consideration regarding lifetime supervision for certain sex offenders. She also provided a chart that shows how the number of individuals under supervision with the ISRB continues to increase each year, largely due to the lifetime supervision requirement.

There was discussion about sex offender recidivism time frames and community supervision.

## **VI. SRA REVIEW PLANNING**

Chair Hauge discussed with members about meeting on the east side of the state. Councilmember Lemley offered to host the meeting in the Tri-Cities. The members decided on a September or October date when the Commission would be further along in the review process. Keri-Anne will work with Councilmember Lemley on finding a venue.

Chair Hauge mentioned that he has spoken with Marshall Clement from the Council for State Governments (CSG). Marshall informed him that the previous research completed by CSG for the Justice Reinvestment Initiative is still there and that the data could be updated fairly quickly. Chair Hauge noted that there is approximately \$80,000 from the appropriation for consultant work. Of course, any contract will follow OFM's procurement process. Marshall also informed Chair Hauge that the CSG is now working with a lot of private funders in addition to the federal government. He told Chair Hauge that there is a possibility that a private or other funder may wish to involve themselves in the Commission's project, given its scope and the impact it has.

Chair Hauge asked members to look at the budget proviso language to make sure all members were of the same understanding of what the Commission was asked to do.

He feels the best way to approach the review is to work on the big picture rather than get down into the nuts and bolts of drafting legislation.

- 1) Identify priority items
  - a) Assess SRA as applied
  - b) Stated purposes
- 2) Evidence-based
  - a) Align best practices
  - b) Consistent with law

Tom McBride said evidence-based makes sense when talking about reducing recidivism or rehabilitation, but what about the component of sentencing related to just desserts? How does one 'evidence-base' what the just desserts are for a rape? What is the amount of punishment that is appropriate for the rape independent of the considerations about future behavior? Chair Hauge replied that, as stated in the predicate of the SRA, we are not just trying to fix offenders, but we are also holding them accountable, to balance the scale. He added it could be aligned with best practices, too. He asked members if the moral dimension of just desserts is something to be taken into account as the review moves forward. Members agreed.

### 3) Just desserts

There was discussion about general deterrence and specific deterrence.

Senator Darneille remarked on the need to examine why the end product is a jail or prison full of individuals with mental illness? What else are we going to create in terms of our process that's going to address those issues differently than it is now, she asked? Chair Hauge replied that whatever it is, it will be evidence-based and aligned with best practices. He said while the fundamental

questions may be beyond the scope of the review, more efficient use of resources is exactly what they are talking about, so people aren't just locked up because we don't know what else to do.

- 4) Public Safety = Accountability + Reentry
- 5) Review and recommend
  - a) Simplify
  - b) Increase (structured) judicial discretion
  - c) Reduce cells and broaden ranges
  - d) Reduce seriousness level
  - e) Incorporate drug grid
  - f) Review minimum terms
  - g) Review mitigating/aggravating and mandatory sentences consistent with current policies
  - h) Review LFOs with restitution being called out
  - i) Review community supervision
  - j) Review earned time
  - k) Review alternatives to full confinement

There was discussion as to what "current sentencing purposes and policies and case law" actually refers to. Chair Hauge thought it referred to the policy of not wasting money, to look at best practices and evidence, determine what we are spending money on that we shouldn't be spending money on. Sheriff Pastor inquired if that was more about practices than policies.

One thing that Chair Hauge noted was not included in the review but that the Commission has discussed is information for judges, also known as pre-sentence reports. Donta Harper, from DOC, explained to members on what is included in a pre-sentence report.

Targets to address

- 1) Grids
- 2) Limits on judicial discretion
  - a. Aggravating factors
  - b. Mitigating factors
  - c. Mandatory minimums
  - d. Mandatory consecutives
  - e. Addressing the gap at judicial sentencing
- 3) LFOs
- 4) Supervision
- 5) Alternatives

Senator Darneille likes the summary but feels there are a lot of nuances about mental health issues, about cultural competency, about developmental disabilities and other things that should not be left off the table. She hopes

there is a way to turn the sentencing grid from a one-size-fits-all to a one-size-fits-most tool.

Members discussed how to proceed with completing the work. There was a suggestion to create several subcommittees and have them come back after a few months with a rough outline of their results. Chair Hauge suggested continuing with the work that has been happening, such as the LFOs and the post-conviction review. He feels the real work is going to be around aggravating and mitigating factors, mandatory minimums and judicial discretion so he'd like to tackle judicial discretion first.

Volunteers for the Judicial Discretion work group:

- Judge Shaffer
- Chair Hauge
- Jon Tunheim
- Greg Link
- Phillip Lemley

Chair Hauge expects the work group will have something to bring back to the group at the next meeting.

There was discussion about the plea bargain practices, under-charging and over-charging. Senator Darneille suggested documenting what current plea bargain practices are to inform other members, the legislature and the Governor.

**VII. OTHER BUSINESS**

Keri-Anne informed members of several manuals and reports on the side table that were available for the taking.

**VIII. ADJOURNMENT**

**APPROVED AND ADOPTED BY THE SENTENCING GUIDELINES COMMISSION**

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Russ Hauge, Chair

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Date