



STATE OF WASHINGTON

OFFICE OF FINANCIAL MANAGEMENT

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**SENTENCING GUIDELINES COMMISSION
MINUTES**

August 10, 2018 9:00am – 12:00pm

Tukwila Community Center
12424 42nd Avenue S Room B
Tukwila, WA 98168

Members Present:

Sheriff Paul Pastor
Maia McCoy
Marybeth Queral (proxy Kathleen Harvey)
Phillip Lemley
Hon. Catherine Shaffer
Michael Fenton
Senator Mike Padden
Hon. Roger Rogoff
Russ Hauge
Tony Golik
Hon. Stanley Rumbaugh
Tim Wettack
Sonja Hallum
Hon. William Houser

Staff:

Keri-Anne Jetzer

Members Absent:

Rep. Brad Klippert
Rep. Eric Pettigrew
Jennifer Albright
Jon Tunheim
Kecia Rongen
Greg Link
Kimberly Gordon
Senator Jeannie Darnielle
Stephen Sinclair

Guests:

Ed Vukich, CFC
Clela Steelhammer, DOC
Alex MacBain, DOC
Monica Peters, CSG (phone)
Rachael Seevers, DRW
Tom Palmersheim, Prison Voices WA
Juliana Roe, WSAC
Sunshine Harper, WA CAN
Virginia Parham, WA CAN
Byron Coates, Veteran Advocate

I. CALL TO ORDER

Chair Hauge called the meeting to order.

II. APPROVAL OF MINUTES

The Commission is asked to approve the minutes from July 2018

MOTION #18-16: MOTION TO APPROVE MEETING MINUTES FROM JULY 2018

MOVED: Tony Golik
SECONDED: Phillip Lemley
PASSED: Unanimous

III. REPORTS FROM GROUPS “G” and “R” ON SENTENCING

Chair Hauge refreshed members on why the two groups had been created at the last meeting.

Tony Golik reminded members that before he could put forth a proposal to the Commission he wanted to get approval from WAPA. His proposal is an alternative that would maintain the stated purpose of the SRA -- to minimize disproportionality in sentences while increasing judicial discretion. It maintains the current split between jail and prison cells. It does change the cells in the ‘southwest corner’ of the grid to 0-12 with the exception of Level V, Offender Score 0 which was left at 6-12 due to the offenses within that seriousness level. He expanded the ranges in the rest of the cells. He said Level XIV was left as it currently is as the ranges are already quite wide. Under this proposal, judges would have greater discretion, they would still have the option to sentence up or down from the cell, and Tony said he believes there would not be significant litigation resulting from these changes. He had also worked on a scoring proposal but decided to just work on the sentencing grid changes. He thought addressing changes to the scoring history could come later.

Chair Hauge inquired to the prosecutors’ perspective on changes to offender scoring, enhancements, mandatory minimums and mandatory consecutives, and other items that the Commission was directed to review. Tony replied that he feels those should be looked at separately from the sentencing grid. WAPA, he said, is interested in working on enhancements but they are not as interested in collapsing the grid as this proposal accomplishes the same goal of increasing judicial discretion but does not increase potential litigation. He noted that it does not include the drug grid and said changes to that would be a separate discussion.

Judge Shaffer expressed interest in having alternatives built into the sentencing grid and to be able to look at one grid and see what felony offense is being looked at. Judge Rumbaugh agreed with the inclusion of alternatives in the grid. There was mention of the difficulty in doing that as local programs can differ by county and some state programs are dependent on the offense.

Judge Rumbaugh noted that when exercising discretion, it would be helpful to have more a formalized process to provide additional information to judges. There was general recognition of the financial impact that increasing pre-sentencing investigations would have on DOC and on the judges.

David Boerner commented that the change to the prison cells would likely not have much of a bed impact since the lower and the upper ends of the ranges were changed by the same amount (20%), but the 'southwest corner', where all the cells were changed to 0-12, could have a greater bed impact. Tony replied that WAPA discussed this and felt it would be a county by county issue. Senator Padden added that he recently spoke with a superior court judge who was frustrated with the lower range like 1-3 month so he thinks it is good to give judges more discretion and fix the issues where a gross misdemeanor offense can get a higher sentence than a felony offense.

Judge Rogoff briefed members on the results of his work group. He said the group broke into three subgroups. One group worked on a mandatory grid and on an advisory grid that falls within the mandatory grid. Seriousness levels were eliminated and replaced with the already-existing classification structure. The classification structure was broken into three different groups to separate some offenses that are in the same class. This proposed grid also incorporates the drug grid.

The second subgroup worked on statutory language inform judges on their discretion for the mandatory and the advisory grids. The court would be given a number of factors to consider when determining whether to sentence within the advisory range or go above/below that range. Those factors would include enhancements, most aggravating and mitigating factors, the purposes of the SRA (as noted at the beginning of the statute) and the court would be told to consider all of the factors and document its decision.

The third subgroup will look at all the alternatives that currently exist and determine if they still make sense given this proposed scheme. Judge Rogoff said work from the subgroups is still a work in progress. He noted that there is a concern from the defense and prosecution that a judge may give a sentence that doesn't make sense or isn't fair and there is no judicial review of it. His response was to provide data to judges on sentences so they know what other judges are giving for similar offenses. He added that judges are always vulnerable to being unelected.

Members discussed the importance and the types of databases that would be helpful to judges in sentencing.

Tony commented that reassessing the offenses in the current seriousness levels is an easy fix but adjusting them to fit in only nine categories is a more difficult process. He added that he expects there will be a lot of litigation

around the definition of ‘presumptive’. Judge Shaffer suggested that a list of factors, similar to the 14 factors used in the juvenile system, would reduce litigation. There was discussion about the impacts of making too big of a change in sentencing.

Chair Hauge commented that the Commission needs to address enhancements, aggravating factors and the like regardless of which sentencing proposal is focused on. He proposed that work happen in the context of the Group R proposal. He clarified that this does not suggest rejection of the Group G proposal but rather works on them both in tandem. Members agreed with this approach.

Judge Rogoff said if anyone from Group G wants to work on any of these subgroups to let him know.

Senator Padden inquired if anyone knows of a document on the history and rationale of the creation of enhancements and some of the other items. Keri-Anne replied that she had a timeline published in one of the studies she did. She will update it and provide to members.

Chair Hauge asked for DOC’s input on the proposals. Alex MacBain said that adding the enhancements, aggravators, etc. into a sentencing grid would likely reduce the complexity on their end. Clela Steelhammer added that it would take time to gain back predictability in forecasting bed impacts on wider ranges.

IV. COMMUNITY SUPERVISION / PRE-SENTENCE INVESTIGATIONS

Chair Hauge informed members that he has reached out to the Council of State Governments. They worked with the state during Justice Reinvestment in developing policy and analyzing the data. The Commission is working to contract with CSG to update their work on policy regarding supervision, who benefits from supervision, what lengths of supervision are necessary and are not necessary, what successful supervision looks like, and to update the data they received from Washington. Chair Hauge commented that this work is not meant as a critique of DOC practice but rather to show where the state has been in the past and to compare what we know works versus what we are doing.

Judge Rumbaugh informed members that he is heading a judges’ group on pre-trial release program evaluation. Dr. Van Wormer of WSU is analyzing the data. Senator Padden referenced a Law & Justice Committee meeting in Spokane in October 2017 on community supervision that included the prosecuting attorney and law enforcement. They voiced concerns about the number and serious offenses of people who were on warrant status from community supervision. Chair Hauge said he would like to collect more information on the pre-release programs happening around the state.

V. OCTOBER MEETING IN PASCO

Keri-Anne informed members of details and options for the meeting in Pasco. She said she will send the information to members but also wanted to briefly review it here.

Senator Padden asked if the public would be able to come. Keri-Anne replied that all Commission meetings are open to the public. He suggested advertising the meeting since it is not a regular location for the Commission. Phillip Lemley said he had already discussed that with Keri-Anne and would work on that.

Phillip also offered to set up a dinner for those who will be arriving the night before.

VI. OTHER BUSINESS

Chair Hauge asked Tim Wettack to share information with Commission members he had shared with subgroup members. Tim explained that the information was suggested to him by Dr. Katherine Beckett from UW. He said, that the research showed that long sentences and mandatory minimums were not effective as a deterrent to future crime and that the best deterrent was the certainty of apprehension. Chair Hauge asked Keri-Anne to forward that information to the rest of the members.

Judge Shaffer added that Washington State Supreme Court just passed down a decision that essentially forbids a look back in cases involving youthful offenders at the time of the offense who receive long sentences. She said it is the Kevin Light-Roth case. She thought a legislative fix might be in order.

Keri-Anne informed members of two studies that will be published by the Statistical Analysis Center sometime in October. One looks at the cost of prison and the other looks at the impact of repeated revocations.

VII. ADJOURNMENT

APPROVED AND ADOPTED BY THE SENTENCING GUIDELINES COMMISSION

/ s /

Russ Hauge, Chair

Date