



STATE OF WASHINGTON

OFFICE OF FINANCIAL MANAGEMENT

Insurance Building, PO Box 43113 • Olympia, Washington 98504-3113 • (360) 902-0555

**SENTENCING GUIDELINES COMMISSION
MINUTES**

September 14, 2018 9:00am – 12:00pm

Washington Association of Sheriffs and Police Chiefs
3060 Willamette Dr NE
Lacey, WA 98516

Members Present:

Greg Link
Kecia Rongen
Jennifer Albright
Sheriff Paul Pastor
Maia McCoy
Stephen Sinclair
Marybeth Queral (proxy Kathleen Harvey)
Senator Jeannie Darnielle
Phillip Lemley
Hon. Catherine Shaffer
Hon. Roger Rogoff
Jon Tunheim
Kimberly Gordon
Hon. Stanley Rumbaugh
Tim Wettack
Sonja Hallum
Judge William Houser, SCJA

Staff:

Keri-Anne Jetzer

Members Absent:

Rep. Brad Klippert
Rep. Eric Pettigrew
Senator Mike Padden
Michael Fenton
Russ Hauge
Tony Golik

Guests:

Ed Vukich, CFC
Clela Steelhammer, DOC
Felix D'Allesandro, Prison Voices WA
Keri Waterland, SCS
Byron C Coates, Veterans Advocate
Patricia Sully, Public Defenders Assoc
Shani Bauer, SCS
Rachel Seevers, DRW
Christopher Lewis, CRO
Monica Peters, CSG (phone)
Bree Derrick, CSG (phone)
Derek Young, WSAC (phone)

I. CALL TO ORDER

Acting Chair Rogoff called the meeting to order.

II. APPROVAL OF MINUTES

The Commission is asked to approve the minutes from August 2018

MOTION #18-17: MOTION TO APPROVE MEETING MINUTES FROM AUGUST 2018 PENDING CORRECTION

MOVED: Judge Rumbaugh

SECONDED: Sheriff Pastor

PASSED: Unanimous

Discussion: It was noted that the location on the meeting minutes was incorrect. Keri-Anne said she would correct it.

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

Judge Rogoff discussed the work of the sentencing work group. He thanked Greg Link who spent a lot of time working with him to come up with a draft of language that will give everyone the idea of what a judge’s job would look like when making these decisions. He noted that Clela also provided some language which he will overlay on the draft language. Judge Rogoff was asked who participated in this group. He named himself, Jennifer Albright, Greg Link, Clela Steelhammer, Ed Vukich, Councilman Lemley, Tim Wettack, and Kim Gordon joined later. He noted that there were no prosecutors on the team but called upon his past experience as a prosecutor during the exercise. Judge Rogoff took all the current aggravating and mitigating factors and the enhancements and incorporated those into factors a judge should consider when deciding whether to go above or below the range, or sentencing within the advisory range.

Senator Darneille inquired if judges would be required to make declaration regarding any of the advisory range decision so there is a record of the process. Judge Rogoff said that while it is not specifically written in the draft, it is a signal to courts that they need to put the reasons for their decisions on the record when the legislature uses language such as “the court is to consider...” Given that the decision has to be reasonable, that would be another signal that reasons need to be recorded.

Judge Rogoff added a presumption of unreasonableness for sentences that are 25% above and for sentences that are 50% below the range. He said those numbers are arbitrary as it is the structure that is the important thing. This would allow the appellate courts to review incredibly high and low sentences.

Judge Rumbaugh asked where the information for the factors would come from. Judge Rogoff replied that most members are of the opinion that pre-sentence investigations from DOC needs to be part of the discussion so he worked under the assumption those would be available. Judge Rumbaugh also inquired if there would be a database available with the information in order

to keep parity with all the counties around the state. Judge Rogoff thought that was a great idea but it was not part of the draft proposal.

Greg Link commented that he is not a fan of the proposal because he feels it eliminates any sort of mandatory range, it eliminates the current role of juries in determining aggravating factors or enhancements, it eliminates the role of prosecutors in charging aggravators and enhancements, and to some degree, it eliminates the role of the legislature in defining what the aggravators and enhancements should be. While he currently feels that prosecutors have too much discretion, he feels this proposal swings too far the other way and gives judges too much discretion. His suggestion was to add some amount (a percentage) to the top of the range for the finding of an aggravator charged by a prosecutor and found by a jury. Senator Darneille commented that she would caution members not to predict what legislators want to maintain or add on this topic. Commission members are experts on this where most of the legislators are not. She suggested they take their knowledge and create a proposal that they think will improve justice.

There was much discussion about the use of the factors used by judges in this proposal.

Senator Darneille asked about trying to create parity across the counties and about how judges would approach the guidance provided in this proposal. Judge Shaffer responded that there has been discussion about using current data systems to let judges see where their sentences are compared to their peers. After members' discussion about data and the use of it to guide judicial discretion, Senator Darneille thought part of the recommendation might include a request for a study of what data would be used, by whom, and how to make it accessible.

Judge Rogoff summarized that many members appeared to like guided discretion for the courts and that they believed the draft language wasn't guided enough or should be guided in a different way. He suggested that the sentencing work group meet again to work on some of the concerns of the larger group, such as finding a way to make the jury involved in making some of the decisions, and to find other ways to more strongly guide the court in its discretion. The work group would bring its work back to the members at the next meeting. Members agreed this was a good idea. Judge Rogoff asked Jon Tunheim if he would be able to help bring a prosecutor to the group as that representation has been missing. Jon said he would try to find someone to participate. Derek Young suggested it would be helpful to know what the state would pay for and what the counties would pay for. Judge Rogoff clarified that the sentencing alternatives and the ISRB would all remain the same under this proposal.

IV. COMMUNITY SUPERVISION / PRE-SENTENCE INVESTIGATIONS

Keri-Anne informed members that expanding the use of pre-sentence investigations has been discussed by the Commission and DOC was asked to provide the Commission with what they might need if the use of PSIs was expanded.

Secretary Sinclair provided information on DOC's current work on pre-sentencing investigations and what they would need if the use of PSIs was expanded to more, but not all, cases.

Judge Shaffer expressed that she believed the PSIs only really help when there is a formal sentencing calendar and that they really don't provide much useful information other than the risk information. She added that the majority of PSIs aren't read. She thought it would be better if we looked at how information is gathered on people coming into the system, get it out to the prosecutor, defender, and the judge that sees that person for the plea. She suggested enhancing the information with more risk information results and providing it electronically to the parties pre-sentencing. She felt, currently, the forms cost more to put together than the value they provide.

Kim Gordon suggested that funding could be given to more than just DOC, that there would be a need for FTEs in the prosecutor's and defender's offices. She believed a more informed sentencing process would require a lawyer who can spend more time on the case and provide better information, which would result in sentences that are fairer and better protect the public by giving the individual the proper sentence and services he/she needs, by determining the best way an individual might spend their time in DOC, and how DOC spends its resources. She also wondered if this information were gathered earlier would it save DOC some time and money from work that would not need to be done once an individual arrives at DOC. Secretary Sinclair thought there might an opportunity for a little bit of savings but he reminded members that the risk tool requires training and quality assurance checks.

Judge Houser asked how long it takes to get a PSI once it is requested. Clela Steelhammer said it takes about six weeks. Judges Rumbaugh and Shaffer agreed.

Jon Tunheim agreed that more information available pre-trial allows all the players to make better decisions. The context of the funding conversation may not be just at DOC as their efforts are focused on post-sentence. He believes the funding needs to be looked at as an investment in the whole pre-trial information gathering system, maybe going back as far as booking.

Secretary Sinclair went over DOC's perspective of the current community supervision including discussing who should be supervised and for how long.

He stressed the need of a risk tool in order to triage incarcerated individuals and correctly focus resources.

There was discussion about what happens to individuals for whom community supervision was ordered but, based on statute, DOC has determined does not fall under their authority to supervise. It appears some counties supervise the individual themselves while other counties do not.

Jon Tunheim wondered if more local level community supervision and reentry services would benefit. He framed the service to be more like a navigator than a probation officer. Kecia Rongen reminded members that some sex offenders receive lifetime community supervision.

Keri-Anne reminded members that the Council of State Governments would be providing a review of the current literature on supervision in the community at the next meeting.

Sonja Hallum expressed interest in looking at supervision as a sentencing option and as an alternative to incarceration. She also wondered if the alternatives to incarceration options that currently exist are being utilized to the greatest extent possible. Secretary Sinclair noted that having PSIs completed early on would help inform if an individual has needs that would be better addressed on supervision than in confinement.

Judge Rogoff asked if it would make sense to have a group look at Sonja's alternative to confinement suggestions and Jon's concerns about low level offenders. Senator Darnielle added that she would be interested in information on a step-down process for individuals moving out of the prison system. Secretary Sinclair, Clela Steelhammer, Sonja Hallum and Jon Tunheim agreed to work on some costs and/or proposals.

V. POST-CONVICTION REVIEW PROCESS

Tim Wettack wanted to bring this item back as an agenda item.

Senator Darneille reminded members that some community groups are planning on proposing another review process this coming legislative session.

Judge Shaffer asked if it was possible to provide the proposed process in a legislative proposal format. Judge Rumbaugh agreed to have the work group reconvene and create a draft legislative proposal.

VI. OCTOBER MEETING IN PASCO

Keri-Anne mentioned that most members had contacted her about their travel to Pasco next month. She encouraged those who had not to contact her very soon. She noted the block of government rate rooms she had secured at the Best Western in Pasco still has some rooms available so if there were staff

from any of the agencies who needed a room at the government rate, they should contact her.

VII. OTHER BUSINESS

At the request of Chair Hauge, Keri-Anne informed members that the Law & Justice Committee was holding a meeting on October 25 in Yakima. They have asked the Commission to present on the status of the review. Chair Hauge will be attending the meeting and asked if other members would like to join him. Councilman Lemley said he could attend the meeting.

VIII. ADJOURNMENT

APPROVED AND ADOPTED BY THE SENTENCING GUIDELINES COMMISSION

/ s /

Russ Hauge, Chair

Date