



STATE OF WASHINGTON

OFFICE OF FINANCIAL MANAGEMENT

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

SENTENCING GUIDELINES COMMISSION

MINUTES

October 12, 2018 9:30am – 2:30pm

Jim Morasch Conference Room

Tri-Cities Airport, 2nd floor

3601 North 20th

Pasco, WA 99301

Members Present:

Greg Link
Russ Hauge
Sheriff Paul Pastor
Maia McCoy
Stephen Sinclair (Clela Steelhammer proxy)
Marybeth Queral (proxy Kathleen Harvey)
Phillip Lemley
Hon. Catherine Shaffer
Hon. Roger Rogoff
Jon Tunheim
Kimberly Gordon
Hon. Stanley Rumbaugh
Tim Wettack
Judge William Houser

Members Absent:

Rep. Brad Klippert
Rep. Eric Pettigrew
Senator Mike Padden
Michael Fenton
Tony Golik
Jennifer Albright
Kecia Rongen
Senator Jeannie Darnielle
Sonja Hallum

Staff:

Keri-Anne Jetzer

Guests:

Ed Vukich, CFC; Keri Waterland, SCS; Byron C Coates, Veterans Advocate; Shani Bauer, SCS; Monica Peters, CSG (phone); Bree Derrick, CSG; Noreen Light; Kendra Wynn; Jamie Hawk, ACLU-WA; Portia Hinton; Michelle Miller

I. CALL TO ORDER

Chair Hauge called the meeting to order. He thanked Phillip Lemley for getting us this conference room. He then asked members to introduce themselves.

II. APPROVAL OF MINUTES

The Commission was asked to approve the minutes from September 2018

MOTION #18-18: MOTION TO APPROVE MEETING MINUTES FROM SEPTEMBER 2018

MOVED: Judge Rumbaugh

SECONDED: Phillip Lemley

PASSED: Unanimous

III. PRESENTATION - EFFECTIVE SUPERVISION

Bree Derrick, from the Council of State Government Justice Center, presented to the Commission on community supervision.

Key points:

- Prisons have a criminogenic effect
- Lack of lower-intensity accountability measures at sentencing can lead to individuals better managed in the community spending time in confinement.
- People on community supervision typically do better than those who went to prison first.
- Longer sentence lengths don't improve outcomes – may be wasting money with long sentence terms
- Risk, Need, Responsivity is effective approach to supervision
- Use the 'coaching' model community supervision
- Reduce the supervision 'footprint' by incentivizing time off through compliance

Thinking about – evaluations

- Assess risk and need
- Target the right people
- Frontload supervision and treatment
- Ensure adequate linkage to proven programs
- Use case planning to facilitate behavior change
- Respond to both positive and negative behaviors
- Hold individuals accountable
- Measure and incentivize outcomes

Swift and Certain

- Reduction of likelihood of confinement after a violation
- Reduction of average number of days of confinement
- Reduction of odds of reconviction
- Concerns
 - What are long term outcomes? Research is not there yet.
 - Lack of replication
 - Curbing undesired behavior doesn't teach desired behavior
 - 4 reinforcements : 1 punishment

- Community based sanctions are as effective or more effective than incarcerative sanctions.

Areas for further consideration in Washington:

- Expand the use of probation as an alternative to incarceration.
- Can compliance incentives be applied to all supervision terms?
- Are there enough program in the community to effectively change behavior?
- How to balance accountability with right-sizing the population under correctional control?
- Access to real-time revocation measures to monitor outcomes.

Chair Hauge thanked Bree for her informational and helpful presentation.

IV. REPORT FROM COMMUNITY SUPERVISION WORK GROUP

Jon Tunheim reported that the work group had a preliminary meeting and that another meeting has been scheduled.

V. REPORT FROM GROUP “R” ON SENTENCING

Judge Rogoff informed members that the information presented is essentially what was presented at the September but with a few modifications to address the concerns that it tilted too far toward judicial discretion. He incorporated a requirement for a jury finding as to the considerations that a judge would look at before deciding whether a sentence was reasonable, as well as a few other changes. The changes are meant to shift the discretion back to the judiciary at sentencing from the executive, to allow judges more decision making power at the time of sentencing when that decision is made in public.

Chair Hauge noted that in the data provided by the CFC between fiscal years 2000 and 2017 nearly 60% of the reasons for exceptional sentences were where the defendant agreed to the aggravated sentence. This illustrates how frequently the prosecution and defense work out a deal behind closed doors he said.

Judge Shaffer requested that alternative sentences be added on to the grid. She wondered if the Community Supervision work group may want to address that idea. Chair Hauge replied that, along with more information for judges at sentencing, members have largely agreed that alternative sentences need to be available, consistent, funded and specified in the grid. Judge Rogoff reminded members that in prior discussions about including such alternatives in the grid, it was noted that this would be complicated as many of the alternatives have differing requirements that are not related to the offense or the offender score.

Jon Tunheim was asked to provide his perspective as a prosecuting attorney on the newest draft of the grid proposal. Jon reiterated that while there are other places where prosecutors may be open to discussion, they are committed

to the fundamental grid of the SRA in terms of its structure and how it works. They are open to the idea of what came out of the Justice Reinvestment work of broadening ranges to give judges more discretion to count individual factors.

Keri-Anne talked about the feedback she had received from a couple of members and DOC on suggested changes to offense seriousness level ranking and/or classification. Chair Hauge proposed putting this on the November agenda to allow members time to review the material.

VI. REPORT FROM POST-CONVICTION REVIEW WORK GROUP

Judge Rumbaugh briefed members on the draft legislative proposal. Keri-Anne noted that the work group had agreed that education and work experience requirements for ISRB members should be included in statute, but that she had inadvertently not included that language in this draft.

There was brief discussion about the use of the ISRB vs the Clemency and Pardons Board. Kim Gordon suggested that those in favor of using the CPB for the hearings provide a proposal outlining the reasons for their support.

Judge Shaffer said she would like to see the ISRB member qualification requirements added to the current legislative proposal, at least as far as the post-conviction review panel goes. She also suggested increasing the panel to five members to include someone from the victim advocate community as well as a representative of the prosecution.

Tim Wettack asked Maia McCoy what her thoughts are about the proposal from a victims' advocate perspective. She replied that this would be a re-traumatizing process for people. Trauma recovery is not linear and this would be taking them back to the start, she said. She's concerned the 15 year limit would make these 15+ year determinate sentences.

Judge Shaffer suggested four changes:

- Using a designated victim advocate representative so victims won't have to be subjected to the process.
- Having a representative for the prosecutors, perhaps a retired prosecutor.
- Hearings are placed under Open Public Meetings Act and Public Records Act to increase transparency.
- Need protections around the legislation.

Greg Link noted that the composition of the hearing panel and the length of time for review are the two sticking points he has heard. Both of these are research-based. He said a professionally composed board has better outcomes based on the research Keri-Anne found, and that the 15-year term comes from the American Law Institute. He vocalized his concern that when different interest groups are added to the panel, it becomes second-guessing, which was

the prosecutions criticism. He feels the idea of the review panel is not to determine if the sentence was the right outcome 15 years ago, but rather what is the right thing now.

VII. SENATE LAW & JUSTICE COMMITTEE MEETING IN YAKIMA - OCTOBER 24, 2018

Chair Hauge informed members that he received a communication that morning from the Law & Justice Committee that there would be a panel presentation from the SGC on the review of the SRA. There was confusion expressed by many members regarding the panel assignments and the non-SGC persons invited to speak. Chair Hauge thought it sensible that invited members speak together as a commission and suggested that those members come together to discuss their presentation. The members agreed. Chair Hauge said that either he or Keri-Anne would reach out to committee staff to request a joint presentation. He suggested the following points: judges need more information at sentencing and DOC needs more resources to supervise the people who will benefit the most from supervision.

Judge Shaffer believes everyone needs more information but instead it should be at the beginning of the process as most sentences are determined before coming in front of a sentencing judge. At that point it is too late for the judge. She thinks it should be part of the plea bargaining process.

Chair Hauge will draft an outline of remarks for the L&J Committee and connect with the other presenters.

VIII. PUBLIC TESTIMONY

Chair Hauge will open the floor to members of the public.

Kendra Wynn addressed the members and offered her support of the post-conviction review process proposed by the Commission.

Byron Coates addressed the members and thanked them for their work. He offered his support for the post-conviction review process. He believes that public safety can be attained through the transformation of the lives of incarcerated individuals. He supports the use of incentives, which was suggested in the CSG presentation. He was in agreement that judges need more information. He commented that of all the free nations, the U.S. has more people incarcerated per capita. He believes that means we are failing.

Noreen Light addressed the members and thanked them for their work on the SRA review and the transparency of the materials available on the website. She noted that there is a lot of emotion round these topics so she appreciates the use of evidence-based practices, such as those related to sentence lengths and brain science/impulsivity. She cautioned using information that DOC provides on an incarcerated individual because once a person is labeled as a

member of a ‘security threat group’, that label does not go away. She added that she feels having a formerly incarcerated individual participate on the post-conviction review panel would be beneficial. She mentioned several previously incarcerated individuals who have gone on to become educated, successful members of society.

IX. OTHER BUSINESS

Judge Rogoff briefed members about two competing juvenile justice proposals that were provided. These proposals are designed to limit the effect of juvenile convictions on adult offender scores. One proposal seeks to eliminate the juvenile conviction points altogether and the other limits the points to only juvenile violent offenses. He asked that this be added to the agenda for the next meeting.

Chair Hauge informed members that he had been sent information on the Clean Slate project, which aims to develop a state-by-state approach to deal with criminal history. He referred the inquiry to Senator Darneille and noted it is also being addressed through the Reentry Council.

X. ADJOURNMENT

APPROVED AND ADOPTED BY THE SENTENCING GUIDELINES COMMISSION

/ s /

Russ Hauge, Chair

Date