



STATE OF WASHINGTON

OFFICE OF FINANCIAL MANAGEMENT

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**SENTENCING GUIDELINES COMMISSION
MINUTES**

March 9, 2018 9:00am – 12:00pm

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

Members Present:

Greg Link
Hon. Catherine Shaffer
Kecia Rongen (Jeff Patnode proxy)
Phillip Lemley
Kimberly Gordon
Jennifer Albright
Sheriff Paul Pastor
Michael Fenton
Jon Tunheim
Russ Hauge
Rep. Brad Klippert
Hon. Stanley Rumbaugh
Tim Wettack
Stephen Sinclair

Members Absent:

Senator Kevin Van De Wege
Sonja Hallum
Senator Mike Padden
Rep. Eric Pettigrew
Marybeth Queral
Hon. Roger Rogoff
Tony Golik

Staff:

Keri-Anne Jetzer

Guests:

Ed Vukich, CFC; Alex MacBain, DOC; Kevin Black, Senate Committee Services

I. CALL TO ORDER

Russ Hauge, Chair

II. APPROVAL OF MINUTES

The Commission is asked to approve the minutes from February 2018

**MOTION #18-10: MOTION TO APPROVE MEETING MINUTES
FROM FEBRUARY 2018**

MOVED: Kimberly Gordon
SECONDED: Sheriff Pastor
PASSED: Unanimous

III. REPORT FROM POST-CONVICTION SUBCOMMITTEE

The subcommittee did not meet last month

IV. 2018 LEGISLATIVE SESSION

Keri-Anne informed members that instead of passing 4ESHB 1789, the Legislature included a budget proviso that directs the SGC to complete a review of the Sentencing Reform Act and provides .5 FTE and \$179,000 to do so. While the proviso directs the SGC to submit its report by May 1, 2019, Keri-Anne informed members that it is OFM's policy that all a legislatively-directed report need to be submitted to the OFM Communications Office for review prior to submission to the legislature. She suggested the SGC aim for a February or March completion date which would allow the Communications Office a month to conduct its review. Keri-Anne added that the Caseload Forecast Council has also been given money to assist the SGC with its review.

Members talked about wanting to get started and how to proceed. Jon Tunheim suggested that, based on the descriptions of the work the SGC is directed to focus on in its review, members could lay out a schedule for the year about what would be discussed, when it would be discussed, and what data might be needed. Chair Hauge agreed but said that he did not want to table the items on today's agenda as people have put a lot of work into them. Because he will not be available for the April 13th meeting and there is already a planned agenda item related to the presentation by the LFO work group, he suggested finalizing the work plan at the May meeting.

Keri-Anne finished briefing members on the status of SGC-supported bills and other bills of interest as of the end of the legislative session. Although SB 5588 (Racial and Ethnic Impact Statements) did not pass, the Caseload Forecast Council was given a budget proviso to complete a general disproportionality report. Ed Vukich explained that prior to session they would publish report that would provide percentages by the crime forecasting categories of the general at-risk population. Alex MacBain added that the provisions in SB 6114 (Identocard for Juveniles) were added to 6560 which did pass.

V. **STAKEHOLDER PRESENTATIONS**

Secretary Sinclair presented DOC's perspective on aggravating and mitigating factors and sentence enhancements.

Chair Hauge commented that the question of whether mitigating/aggravating factors and sentence enhancements have an impact on rehabilitation/recidivism is something that will need to be flushed out. Members expressed concern as to whether there is any research on this topic other than focusing on impact of longer sentences.

Jon Tunheim mentioned that WAPA has had discussions on this topic. He thinks they may be interested in the idea of turning some of the mandatory sentence enhancements into aggravating factors, which, plead and proven, would allow the judge to consider it as part of the overall facts of the sentence. Judge Shaffer asked if Jon thought the prosecutors would consider more discretion when it comes to firearms enhancements. He said they understand the concern with stacking firearm enhancements and may be open to a conversation on some adjustment to that.

Jon added that although it is not directly related to the current conversation, he feels a discussion on multipliers needs to occur, too. Members agreed. Chair Hauge thinks the discussion of multipliers should happen within this context. This discussion, at its base, is adding to the presumptive sentence in a mandatory fashion through a decision that is not reviewed judicially, except for the soundness of the underlying charge. Thus, multipliers get to the same place as the aggravating factors and sentence enhancements. Sheriff Pastor commented that a disproportionate amount the burglaries that occur in his county are committed by a few individuals. He went on to say that due to their prolific activity, using the burglary multiplier to incarcerate those few individuals for longer terms would provide a significant decrease in crime in the community. Chair Hauge questioned whether that would be better addressed through a mandatory feature of the sentence (multiplier or enhancement) that cannot be suspended or deferred, or by allowing a judge to enhance the sentence due to their prolific criminal history.

There was discussion about the impacts of judicial discretion, such as accountability to the public, the increase in racial disproportionality and the impact that an election year may have on judges' sentencing practices. Kimberly Gordon noted that even though there will always be anomalous cases, right now some of those cases are driving policy in the legislature that is not sound. She added that the hope is that if this was given to the guided discretion of judges, those cases would be treated differently and they would be able to respond quicker to evidence based research and the individual issues.

Jon commented that when a multiplier or enhancement is applied, it goes against judicial discretion and focuses solely on conduct without concern about factors of the crime or the offender. With aggravating and mitigating factors, a judge can take all the information into account when making a decision. Chair Hauge illustrated that point by saying that through statute the legislature says we want “X” done, without consideration of the characteristics of the offender. He continued by saying that there is a discretionary exercise that considers not just the facts of the crime but also the facts of the victim, the offender, court congestion calendar, and the local politics and it’s completed by the prosecutor. Judge Shaffer added that if you want to take the individual into account, you need to give judges some discretion, noting that they are the only player in the system who does not advocate for the defense, the prosecution or the victim, although they do list to what victims have to say.

Greg Link presented the perspective of the defense. They are in support of looking at the crime and the individual. He proposed, rather than just add time on to the sentence, let the additional facts found by a jury add some predetermined amount to the top end of the range while the bottom of the range would remain the same. For example, an individual charged with Possession of a Stolen Vehicle and an offender score of 2 currently would have a presumptive standard range of 3-9 mos. If there was a knife in the vehicle, the judge would have no discretion and would have to sentence the individual to 15-21 mos. Greg proposed still having the enhancement of 12 mos but adding it to the top end of the range only, thereby allowing the judge to sentence between 3-21 mos while still allowing them to still consider the characteristics of the individual. There would need to be a discussion on how much of a departure each fact would merit. Judge Rumbaugh thought a good place to start with this would be pre-trial services where one can learn a great deal about an individual when determining conditions of release pre-trial. Judge Shaffer commented that while this model goes up (aggravating), it should also go down (mitigating).

VI. OTHER BUSINESS

Chair Hauge mentioned again that he would not be available for the April meeting. Judge Rumbaugh agreed to chair that meeting.

Chair Hauge said that the May meeting will include the discussion of the work plan. He requested that the formation of work groups be deferred until the work plan has been established in order to make the most of people’s time.

Secretary Sinclair suggested members think about what research questions they would like to have answered. Chair Hauge said he had three distinct research questions in mind:

- Do longer than standard sentences deter criminal behavior?
- Do longer than standard sentences enhance rehabilitation?
- How do longer than standard sentences and judicial discretion each impact racial disproportionality?

Jon added another question: What is the cost/benefit of enhancements?

Jeff Patnode commented that sometimes it is beneficial to have a researcher around to aid in formulating the questions. Keri-Anne offered her assistance and noted that Jen Albright is an adjunct professor in criminal justice. Jen Albright commented that Ed Vukich could also be of help.

VII. ADJOURNMENT

APPROVED AND ADOPTED BY THE SENTENCING GUIDELINES COMMISSION

/ s /

Russ Hauge, Chair

Date