



STATE OF WASHINGTON

OFFICE OF FINANCIAL MANAGEMENT

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**SENTENCING GUIDELINES COMMISSION
MINUTES**

January 11, 2019 9:00am – 12:00pm
Liquor and Cannabis Board
3000 Pacific Avenue, 1st Floor Boardroom
Olympia, WA 98504

Members Present:

Greg Link
Russ Hauge
Sheriff Paul Pastor
Stephen Sinclair (Mac Pevey proxy)
Michael Fenton
Maia McCoy
Kathleen Harvey (phone)
Kimberly Gordon
Hon. Stanley Rumbaugh
Hon. Catherine Shaffer
Phillip Lemley
Tony Golik (phone)
Jennifer Albright
Kecia Rongen
Senator Jeannie Darnielle
Tim Wettack
Sonja Hallum
Jon Tunheim
Hon. William Houser
Hon. Roger Rogoff

Members Absent:

Rep. Eric Pettigrew
Senator Mike Padden
Rep. Brad Klippert

Staff:

Keri-Anne Jetzer

Guests:

Derek Young, WSAC
Clela Steelhammer, DOC
Ed Vukich, CFC
Keri Waterland, SCS
Kendra Wynn, Citizen
Carol Welch, Prison Voice WA
Felix D'Allesandro, Prison Voice WA
Noreen Light, WA CAN & Civil Survival
Portia Hinton, Citizen

I. CALL TO ORDER

Chair Hauge called the meeting to order.

II. APPROVAL OF MINUTES

The Commission was asked to approve the minutes from December 2018

**MOTION #19-1: APPROVE MEETING MINUTES FROM
DECEMBER 2018**

MOVED: Phillip Lemley
SECONDED: Jennifer Albright
PASSED: Unanimous

III. REPORT FROM COMMUNITY SUPERVISION WORK GROUP

Keri-Anne reported that this work group has decided to wait to meet until after the CSG presentation at the February Commission meeting.

**IV. REPORT FROM JUDGE SHAFFER’S REENTRY FOR PROPERTY
AND DRUG OFFENDERS WORK GROUP**

Judge Shaffer presented a different ‘second look’ population for consideration. This population would consist of non-violent offenses, non-crime against person offenses (except ID Theft), and drug offenses for individuals who have served 12+ months in prison. It would exclude any sentence with a firearm or deadly weapon enhancement. The work group members believe this population has a better chance at being rehabilitated and would prefer a second look directed at this group than the population of the current SGC-draft proposal.

Judge Rumbaugh reminded everyone that this population has a greater recidivism rate than the population of the current proposal. He inquired where the services would come from for these individuals. Judge Shaffer suggested that perhaps a program similar to DOSA would work for individuals from this population who are releasing into the community. She added that high risk/high recidivating group benefits the most from services.

Chair Hauge questioned if it would be better to address this population through a post-conviction release mechanism or by adjusting sentences and providing community support as a part of the sentence? Judge Shaffer replied that members of the work group are not enthusiastic about adding a second look structure to the Clemency and Pardons Board or the Indeterminate Sentence Review Board, but if one needs to happen, they prefer it would be for this population. Sheriff Pastor understands that there are people in prison who turn themselves around, but offered that this population is not being focused on and could offer cost reduction without high risk. Chair Hauge said he expected this population would be part of the discussions around the rethinking supervision in the community, that this is the population targeted in the Justice Reinvestment discussions.

Tim Wettack said he would prefer to use the current post-conviction review process the SGC has already created. Judge Rumbaugh noted that there is an

appetite for a second look mechanism for people who have served long sentences. He questioned whether the SGC wants be part of those discussions with the SGC's well-thought-out and researched proposal.

Judge Houser noted that, based on the data provided, many of the people in this different population have accumulated criminal history. He went on to say that since they have been through the system, they may have had chances to participate in community custody, treatment programs, or therapeutic courts.

Derek Young hopes the state will be providing the needed resources and not look to the county to fund this. He also noted his concern over including burglary as one of the offenses included.

While admitting there is a need to address this offender group, Kim Gordon is not convinced that this is the way to do that. She commented that it takes time for a person to adjust to the prison system and that people are often infraction-heavy until they get adjusted. Judge Rogoff added that he feels this population will have more recidivism than those who have been incarcerated for at least 15 years and who have a demonstrated track record for a significant period of time.

Tim reiterated that incarcerated individuals have told him that the benchmark for when the light comes on is about ten years.

Chair Hauge asked the members how they would like to proceed with this second look idea. Keri-Anne suggested that, with the current work load related to the SRA review, an option for members would be to table the topic and re-visit it after the SRA review is completed. Sonja Hallum liked Keri-Anne's idea and suggested members move forward on the items where there is consensus. Items without consensus can be revisited later and the members can decide to either not include them in the report or offer a majority/minority report.

MOTION #19-2: MOTION TO TABLE IDEA OF SECOND LOOK FOR CERTAIN NON-VIOLENT OFFENDERS

MOVED: Tim Wettack
SECONDED: Phillip Lemley
PASSED: Unanimous

Discussion: Tony Golik commented that he believes there is room to look at both ideas.

V. REPORT FROM POST-CONVICTION REVIEW WORK GROUP

Keri-Anne briefed members on the chart she created comparing the SGC draft proposal and S-0549.1.

Judge Rumbaugh informed members that the work group recently learned that not all serious infractions are the same and should not result in a disqualification of the petition. Kecia explained the difference between risk-related infractions and serious infractions. Clela added that serious infractions are broken down into subcategories which could be helpful in narrowing the definition. Judge Rumbaugh and Kecia talked about security threat concerns.

Judge Rogoff mentioned that there was a suggestion on the legislative proposal to remove Aggravated Murder and Murder 1 from the eligible population.

Senator Darneille notified members that her staff will be creating a comparison document with the upcoming post-conviction review proposals.

Jon Tunheim thought the Washington Association of Prosecuting Attorneys might be interested in looking at a proposal requiring a combination of age and time served. He indicated he would prefer that the 20 years serve time frame be consistent, referring to the difference between the 15 years in the proposal and the 20 year requirement for the current juvenile board cases. He said the S-draft proposal reminds him of a Clemency Board style process without the gubernatorial review and that WAPA would likely be more open to this proposal than the Commission's proposal, but there are still questions.

Chair Hauge asked what members thought of the 2-step process in the newest proposal from the Commission. Judge Rumbaugh explained the two-step process is to meant to keep victims and survivors from being re-traumatized when the person does not meet criteria for a hearing.

Maia McCoy suggested adding the disproportionality report to the factors considered by the panel for release.

**MOTION #19-3: MOTION TO SUPPORT THE GENERAL
CONCEPT IN THE COMMISSION'S PROPOSAL
FOR SECOND LOOK**

MOVED: Judge Houser
SECONDED: Judge Rumbaugh
PASSED: Majority passed; 4 opposed

Discussion: Judge Houser explained that his intent with the motion is for the members to either adopt or reject the general concept of the post-conviction review proposal so then there can be discussion on what specifics of the proposal the members support or oppose.

MOTION #19-4: THE POST-CONVICTION REVIEW PANEL TO BE CREATED WITHIN THE INDETERMINATE SENTENCE REVIEW BOARD

MOVED: Judge Houser
SECONDED: Tim Wettack
PASSED: Majority passed; 2 opposed

Discussion: Judge Shaffer suggested amending the clemency process and placing the authority there. Greg Link explained that the reasons the ISRB was chosen was because it already has a structure in place to handle these types of hearings and because Clemency Board members are volunteers. He expected it would require full-time personnel to handle the volume of cases this process would bring. Judge Rumbaugh added the political nature of a governor's decision is also a reason the Clemency Board was not chosen. Kecia also added that, since the ISRB completes about 400 hearings per year, TVW determined it was not financially feasible to film the ISRB hearings. Senator Darneille commented that the difference between the two processes is that one is presumptive and affects all, whereas the other is not presumptive and affects very few.

MOTION #19-5: THE POST-CONVICTION REVIEW PANEL TO BE COMPOSED OF PROFESSIONAL MEMBERS OF THE ISRB WITH A JUDGE TAKEN FROM A POOL OF RETIRED SUPERIOR COURT OR APPELLATE COURT JUDGES/JUSTICES

MOVED: Judge Rumbaugh
SECONDED: Judge Houser
PASSED: Majority passed; 1 opposed

Discussion: Judge Rumbaugh stated that his preference is to have professional, full-time, trained people who are familiar with the issues that will be coming before them when determining whether to release someone or not. Greg added that rather than try to structure who will be holding the review, perhaps the better avenue is to try to structure who is on the ISRB. He supported creating one body to look at all the groups as opposed to creating separate bodies to look at the different groups of prisoners.

MOTION #19-6: EXCLUDE AGGRAVATED MURDER 1 FROM THE POST-CONVICTION REVIEW PROCESS

MOVED: Judge Rogoff
SECONDED: Judge Rumbaugh
PASSED: 7 support; 3 oppose; 1 abstain

Discussion: Judge Houser believes that if not pursuing the death penalty is part of a deal, those sentences should not be included in the post-conviction review process. Jon Tunheim agreed. Derek Young observed that there are

some counties that take the death sentence off the table because of lack of finances. He would not be supportive of further reducing this kind of sentence. Tim Wettack feels the crime shouldn't govern the release decision. Whether the individual is the same person he/she was when the crime was committed should be what the decision is based on. Greg agreed with Tim and added that there is no presumption of release under the process, only the opportunity to be heard. Judge Rogoff replied that his supportive of excluding this offense because the legislature has put this offense is in a separate category.

MOTION #19-7: EXCLUDE MURDER 1 FROM THE POST-CONVICTION REVIEW PROCESS

MOVED: Judge Rogoff
SECONDED: Maia McCoy
FAILED: 2 support; 8 oppose; 1 abstain

Discussion: Greg Link submitted that Washington has the broadest definition of Murder in the country so someone convicted of this offense should be allowed to have the opportunity for a review. Senator Darneille expressed that when looking at the original reason for taking a second look, the review is on the person today, not the crime they committed. Keri-Anne asked how the Murder 1 mandatory minimum term of 20 years might apply and she asked if individuals who committed a Murder 1 offense would eventually be released anyway. Judge Rogoff believed that, because the legislature made a point of having people serve at least 20 years for Murder 1 that, if included in the process, it should require 20 years served before petitioning. Greg replied that he agrees with Senator Darneille's point that the person is what should be reviewed, not the crime. Kim Gorden also agreed and said the process created allows the professionals to weigh all the information and input and come to the right decision.

MOTION #19-8: REQUIRE 20 YEARS SERVED FOR MURDER 1 IN THE POST-CONVICTION REVIEW PROCESS

MOVED: Judge Rogoff
SECONDED: Judge Houser
PASSED: 8 support; 3 oppose;

MOTION #19-9: USE A 2-STEP PROCESS IN THE POST-CONVICTION REVIEW PROCESS

MOVED: Greg Link
SECONDED: Kim Gordon
PASSED: Passed; 1 abstain

Discussion: Chair Hauge reiterated that the two step process would institute an initial approval of the petition by the panel. Victims would only be notified when the incarcerated individual has passed on to the second step which is the formal release hearing.

VI. SENTENCING GRIDS

Did not discuss

VII. OTHER BUSINESS

VIII. ADJOURNMENT

APPROVED AND ADOPTED BY THE SENTENCING GUIDELINES COMMISSION

/ s /

Russ Hauge, Chair

Date