



STATE OF WASHINGTON

OFFICE OF FINANCIAL MANAGEMENT

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

**SENTENCING GUIDELINES COMMISSION
MINUTES**

April 12, 2019 9:00am – 3:00pm

Liquor and Cannabis Board
3000 Pacific Avenue, 1st Floor Boardroom
Olympia, WA 98504

Members Present:

Greg Link
Sheriff Paul Pastor
Stephen Sinclair (Alex MacBain)
Maia McCoy (phone)
Kimberly Gordon
Michael Fenton
Kathleen Harvey
Hon. Stanley Rumbaugh
Phillip Lemley
Kecia Rongen
Tim Wettack
Jon Tunheim
Hon. William Houser
Hon. Roger Rogoff

Staff:

Keri-Anne Jetzer

Members Absent:

Rep. Eric Pettigrew
Senator Mike Padden
Rep. Brad Klippert
Sonja Hallum
Russ Hauge
Jennifer Albright
Tony Golik
Senator Jeannie Darnielle
Hon. Catherine Shaffer

Guests:

Autumn Witten, DOC
Kristine Skipworth, DOC
Ed Vukich, CFC
Kendra Wynn
Monica Peters, CSG
Andrew Barbee, CSG

I. CALL TO ORDER

Acting-Chair Judge William Houser called the meeting to order. He asked members to introduce themselves.

II. APPROVAL OF MINUTES

The Commission was asked to approve the minutes from March 2019

MOTION #19-19: APPROVE MEETING MINUTES FROM MARCH 2019

MOVED: Phillip Lemley
SECONDED: Sheriff Pastor
PASSED: Unanimous

III. PRESENTATION BY CSG – FINAL REPORT

Andrew Barbee presented the last analyses requested by the SGC from the Council of State Governments Justice Center.

Andrew talked about how Washington's offender scores are poorly related to recidivism rates. CSG's analysis shows that an offender score of 8 has a recidivism rate of 41% and an offender score of 2 has a recidivism rate of 40%. It's often said that the best predictor of future behavior is past behavior so it would be expected that the higher the offender score, the higher the recidivism rate. He noted that is the case in states with guideline systems that the CSG has reviewed. The conclusion is that the state's offender score is not consistently calculated for offenses, it includes factors not based on criminal history and the scoring rules vary by crime.

Sentencing Summary

- A variety of counties have experienced increases in Motor Vehicle Theft and non-narcotic drug possession.
- The number of FTOW and DOSA sentences issued have not change much over time. They comprise a small proportion of felony sentences.
- The application of FTOW sentences varies greatly by county and, to a lesser extent, so do DOSA sentences.
- Washington is different from other guidelines states in how a defendant's criminal history is integrated into the grid.

Supervision Summary

- The violator population has increased faster than the population on supervision. About 1/3 of those on supervision were confined for a violation at some point during each year.
- Violators are getting more violation sanctions, leading to longer confinement stays and an increase in confinement populations and costs.
- States with similar supervision approaches have fewer violator admissions. North Carolina was given as an example. Violator admissions per 100 people supervised is 109 in Washington and 4 in North Carolina.
- Further study is recommended to understand the drivers of supervision violation admissions.

Alex MacBain explained that upon the sixth violation, an individual will get confinement time. If an individual has five violations in their history, has been violation free for six months or more and violates conditions again, they automatically get confinement. Kathleen Harvey commented that the violation process utilized in North Carolina is very similar to what Juvenile Rehabilitation uses and they have reduced their violation numbers significantly.

Recidivism Summary

- For individuals released from a jail, those on community supervision have a lower re-arrest and reconviction rates in three years.
- High-risk individuals released from prison to supervision have lower recidivism rates than high-risk individuals who don't get supervision.

CSG data showed that in fiscal year 2018:

- 56% of all felony sentences received jail confinement.
- Of that 56%, 48% of those were re-arrested within six month after releasing.

This may be a population that needs some services.

IV. COMMUNITY SUPERVISION DISCUSSION

Keri-Anne briefed members on the materials provided to them regarding this subject, noting that the DOC supervision summary chart was for reference only.

There was discussion of the community supervision violation process, including the washing out of historical violations and use of confinement alternatives such as work crews and community service hours. Alex MacBain remarked that DOC is dealing with jail capacity issues which requires them to transport individuals from King County to Yakima.

MOTION #19-20: RECOMMEND BEHAVIOR-BASED INCENTIVES BE ADDED TO THE COMMUNITY SUPERVISION PROCESS

- MOVED:** Sheriff Pastor
- SECONDED:** Judge Rumbaugh
- PASSED:** Unanimous

Discussion: Incentives, including but not limited to positive achievement time, should be based on individual behavior, which gets at situations where a person followed directions and tried to get a job but couldn't.

MOTION #19-21: RECOMMEND EXPANDING THE RANGE OF SANCTIONS TO EXTEND BEYOND INCARCERATION TO ALLOW DOC TO ADDRESS ANY COMMUNITY SUPERVISION VIOLATIONS

MOVED: Judge Rumbaugh
SECONDED: Tim Wettack
PASSED: Unanimous

Discussion: Expanding the range of sanctions will allow the DOC flexibility to sanction behavior accordingly. The expansion should include imposition of non-incarceration based punishments.

MOTION #19-22: RECOMMEND DOC IMPLEMENT A MODEL TO ENCOURAGE MOTIVATIONAL-FOCUSED SUPERVISION IN ADDITION TO THE REGULATORY SUPERVISION MODEL

MOVED: Judge Rogoff
SECONDED: Jon Tunheim
PASSED: Unanimous

Discussion: Studies show the benefit of shifting from supervision used for discipline-only to supervision that motivates individuals but can also discipline when necessary, i.e. incorporating the use of carrots and sticks. This form of supervision also includes Risk, Need, Responsivity principles, trauma-informed coaches and core correctional practices. Effective supervision is more than just surveillance.

Acting-chair Houser asked members if there was any more discussion on washing out of violations in the Swift and Certain process.

MOTION #19-23: RECOMMEND THAT SUPERVISION AND VIOLATION SANCTIONS SHOULD BE INDIVIDUALIZED

MOVED: Greg Link
SECONDED: Kimberly Gordon
PASSED: Unanimous

Discussion: As with the Guided Discretion sentencing grid, violation behavior should be individualized based on risk and need. It should be based on the individual, the behavior, and the circumstances.

MOTION #19-24: RECOMMEND EXPLORATION OF A SYSTEM OF FRONT-LOADED REENTRY SERVICES FOR ALL FELONY OFFENDERS RELEASING FROM CONFINEMENT AND THE POLICIES, SERVICES AND PROGRAMS SHOULD ADHERE TO THE CURRENT THEORY OF RISK-NEEDS-RESPONSIVITY

MOVED: Jon Tunheim
SECONDED: Kimberly Gordon
PASSED: Unanimous

Discussion: A term of supervision should be flexible to meet the risk/needs of the individual. Much research has supported that front-loading supervision resources for an initial period of supervision is more important than extending the supervision term. Individuals have a high risk to reoffend immediately after release so front-loading supervision would give them resources at the time they most need them. Creating a separate class of supervision that is about providing transitional services and not about surveillance so as to provide services but not expand caseloads was suggested. Getting the right people on the right supervision – goes back to RNR.

Members discussed DOC immunity related to persons on community supervision. It was noted that DOC practices are largely driven by liability concerns. Members decided against making any recommendation on this topic.

MOTION #19-25: RECOMMEND LEGISLATIVE, JUDICIAL, AND DEPARTMENTAL DECISIONS ABOUT ELIGIBILITY FOR COMMUNITY SUPERVISION SHALL BE BASED ON INDIVIDUAL RNR AND NOT SOLELY ON OFFENSE TYPE

MOVED: Kimberly Gordon
SECONDED: Judge Rumbaugh
PASSED: Unanimous

Discussion: Community supervision eligibility should not be based solely on the offense but on the risk and needs of the individual.

V. SENTENCING GRIDS

Keri-Anne explained the three different documents related to the sentencing grid review in the report. She remarked that, in her review of the literature on judicial discretion, she found several studies noted that mandatory minimums inhibit judicial discretion and can contribute to unwarranted disparity.

She asked members if these documents reflect the SGC's position and if they can be included in the report. Judge Rogoff commented that he would like to

have included discussion about how judicial discretion and prosecutorial discretion effects disparity across counties. He would like the legislature to fund studies that compare alleged defendant behavior (what they were arrested for) to eventual sentence.

MOTION #19-26: APPROVE THE 3 SENTENCING GRID-RELATED DOCUMENTS FOR INCLUSION IN THE SRA REVIEW REPORT WITH CLARIFICATION TO THE INCREMENTAL GRID LANGUAGE

MOVED: Tim Wettack
SECONDED: Phillip Lemley
PASSED: Unanimous

Discussion: It was suggested to clarify in the language that the cells with a low range of 0 and those maintaining the jail/prison line had not been reduced by 20%. Maia inquired how the two grid proposals would be presented. Keri-Anne replied that both proposals would be included in the report as work product of the SGC as a whole.

Acting-chair Houser asked Jon Tunheim if he was ready to address the tabled motion from last meeting regarding making enhancements subject to applicable good time. Jon replied that he had not spoken to Tony Golik about the topic nor has WAPA had a meeting since the last discussion of the motion. There is a WAPA meeting scheduled for later in April. Members did not object tabling the motion until the May meeting to give the prosecutors time to meet and provide a response.

Keri-Anne asked if members had any further comments or suggestions related to enhancements, other than what had already been voted on. It was suggested that there be included a write up on the lack of offender scores relating to recidivism rates. Greg Link noted that he queried his colleagues and they responded that many enhancements they had never seen in their legal careers. He added that some enhancements are duplicative of aggravating factors. That causes confusion for many players in the system.

Member suggested adding a blanket statement on enhancements. Keri-Anne will write one and members can review it at the next meeting. There is no consensus on enhancements as exemplified by the two sentencing grids being proposed. Enhancements add to complexity, reduces judicial discretion, and hinders individualized sentencing. Members questioned if there was consensus on those points. Judge Rumbaugh may provide some write up on multipliers.

Judge Rogoff expressed interest in re-writing the same course of conduct rules as they can have a big impact on scoring.

Kimberly Gordon thought the probation information could also be placed under alternatives to prison confinement. Judge Rumbaugh talked about work crew as an alternative.

MOTION #19-27: RECOMMEND USE OF ALTERNATIVES TO CONFINEMENT FOR FELONY SENTENCES AS DISCRETIONARY OPTION AVAILABLE TO THE SENTENCING JUDGE

MOVED: Judge Rumbaugh
SECONDED: Tim Wettack
PASSED: Unanimous

Discussion: Probation is already used in District Court with success. As an example, Assault 4 DV in District Court could result in a probation sentence, whereas, an unranked felony could result in a single day in jail but no probation. Research is clear probation is as successful and less expensive.

VI. APPROVE LFO REPORT DRAFT

MOTION #19-28: APPROVE LFO DOCUMENT WITH CHANGE

MOVED: Tim Wettack
SECONDED: Judge Rogoff
PASSED: Unanimous

Discussion: Correct typo in document. There was discussion about mandating use of LFO calculator in order to make costs consistent. It was noted that some counties don't assess LFOs unless they are mandatory. There is a concern that if the calculator is mandatory, the amount of LFOs assessed may increase. There was also a concern about dictating to judges that they must use a specific tool. Members agreed to add that they "Encourage judges to use available tools to calculate the imposition of legal financial obligations" as part of the recommendations.

VII. APPROVE PRESENTENCE INVESTIGATION REPORT DRAFT

MOTION #19-29: APPROVE PSI DOCUMENT WITH CHANGE

MOVED: Judge Rumbaugh
SECONDED: Tim Wettack
PASSED: Passed

Discussion: Make change to language to read "The SGC recognizes that there exists the risk of perpetuating racial disproportionality by increasing the amount of PSI information to the courts and increasing the reliance on risk assessment tools."

VIII. OTHER BUSINESS

Acting-chair Houser informed members that Keri-Anne would no longer be working full time for the SGC after the end of the budget appropriation on June 30. He asked members if they would like to add a recommendation to that the SGC be funded with a full time staff member.

MOTION #19-30: RECOMMEND THAT SGC HAS A FULL-TIME STAFF MEMBER

MOVED: Kecia Rongen
SECONDED: Judge Rogoff
PASSED: Unanimous

Discussion: It was suggested that if the SGC wants to continue to provide valuable work and input to the legislature around these issues, it is important to have staff to support that work.

Keri-Anne provided an update to members on the status of the bills the SGC has supported or is watching.

IX. ADJOURNMENT

APPROVED AND ADOPTED BY THE SENTENCING GUIDELINES COMMISSION

/ s /

Russ Hauge, Chair

Date