



STATE OF WASHINGTON

OFFICE OF FINANCIAL MANAGEMENT

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**SENTENCING GUIDELINES COMMISSION
MINUTES**

May 10, 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 (phone)
Stephen Sinclair
Maia McCoy
Kimberly Gordon
Kathleen Harvey
Hon. Stanley Rumbaugh
Phillip Lemley
Kecia Rongen
Tim Wettack
Jon Tunheim
Hon. William Houser
Hon. Roger Rogoff (phone)
Sonja Hallum
Russ Hauge
Jennifer Albright
Tony Golik
Senator Jeannie Darnielle
Hon. Catherine Shaffer

Members Absent:

Rep. Eric Pettigrew
Senator Mike Padden
Rep. Brad Klippert
Michael Fenton

Staff:

Keri-Anne Jetzer

Guests:

Riley Hewko, Office of Corrections Ombuds
Lauren Knoth, WSIPP
Martin Prresley, SRC
Jaime Hawk, ACLU

I. CALL TO ORDER

Chair Hauge called the meeting to order. He thanked Judge Houser for chairing the April meeting.

II. APPROVAL OF MINUTES

The Commission was asked to approve the minutes from April 2019

MOTION #19-31: APPROVE MEETING MINUTES FROM APRIL 2019 WITH THE EXCEPTION OF MOTION 19-29

MOVED: Judge Shaffer
SECONDED: Phillip Lemley
PASSED: Unanimous

Discussion: Chair Hauge questioned if there was data or research to back up the comment that increasing the amount of PSI information increased racial disproportionality as noted in Motion 19-29. Tim Wettack suggested putting that part of the minutes on hold until Judge Rumbaugh can weigh in since he made the motion.

III. PRESENTATION ON COMMUNITY SUPERVISION FOR SEX OFFENDERS

Leah Landon, Sex Offender Policy Board Coordinator, presented on a project that evaluates Washington's sex offender supervision system and determines areas for improvement. Areas that were found to have issues included pre-sentence investigations, conditions of supervision, access to the Odyssey database, prioritization and capacity of the Sex Offender Treatment and Access Program, forensic psychological evaluations, least restrictive alternatives and secure community transition facilities, cost of community care, and community custody board offenders. She reported that while project participants provided recommendations for many of the areas, they are still working on other areas.

There was discussion about the least restrictive alternatives and the secure community transition facilities. Sonja recommended having staff from the Special Commitment Center at DSHS and DOC to talk more about the issues of supervision.

Judge Shaffer had a concern about the proposal wanting to provide a reason why a victim didn't engage with the PSI. She said she is uncomfortable reaching out to victims for this information and that victim advocates should be the ones who are contacted. It was questioned whether such information is available elsewhere so contacting victims would not be necessary. Leah reminded members that this is an issue that the group is still working on. Chair Hauge suggested that topics such as what should be in a PSI and what obstacles exist in collecting that information are good topics for the SGC to look at going forward.

Members discussed the need for standardized forms, possibly in electronic form, possibly with required populations of fields.

IV. REVIEW DRAFT SRA REPORT

Chair Hauge reminded members that there is still a tabled motion to make all enhancements subject to applicable good time. Jon Tunheim reported that WAPA had recognized that there isn't a good policy reason for not applying good time to enhancements. He said they would accept applying the percent of good time to an enhancement as it would be applied to the underlying offense. There was discussion about how good time is applied, how it is lost, and how it can be re-earned.

MOTION #19-32: MAKE ALL ENHANCEMENTS ELIGIBLE FOR GOOD TIME AS APPLIED TO THE UNDERLYING SENTENCE (MOTION 19-17)

MOVED: Judge Shaffer
SECONDED: Judge Rumbaugh
PASSED: Passed; 1 opposed

Discussion: A point was made that anytime someone is released early, the victim is re-traumatized. Members discussed what might help mitigate the re-traumatization. Transparency and clarity as to what the release date is was suggested as this information is not made clear to victims at sentencing. It was noted that this is not apparent to defendants or judges as well. Secretary Sinclair said that the early release date can fluctuate depending on the incarcerated individual's behavior. DOC's calculation of the release date is also dependent on DOC receiving timely and accurate jail credits and Judgement and Sentence forms. Tony Golik added that explaining to the victim and/or the family what the ramifications of a sentence will be is a core function of the prosecuting attorney. He said these comments about victims and the families is one of the reasons he has been opposed to the second look discussions. Maya McCoy pointed out that crime victims have to be proactive about their own healing so transparency of the earned release date would be helpful but it is also about the victim programming that is in place.

Keri-Anne reminded members that she was instructed to include the information presented by the CSG on Washington's offender score and recidivism. Other than just presenting the information, she asked members if there was something they wanted to say in the report about this issue. Chair Hauge said he thought this was very interested and would like to discuss it more. Kimberly Gordon commented that this is what the Guided Discretion grid aims to deal with this issue. It creates a system that is less dependent on the offenders score, eliminating multipliers, adding discretion and building in opportunities for the parties to share information before sentencing.

There was much discussion about what the analysis means for sentencing and the offender score. Chair Hauge noted that, based on his work in other states, when an offender score is a straight one-to-one calculation, it is an effective stand-in for a risk assessment.

Jennifer Albright proffered that the inclusion of the offender score analysis may be premature. She noted there are no correlation coefficients to help assess the strength of the data and said there is an argument to made that the flat line over the offender scores in the chart might actually indicate that people are being scored appropriately, that the offender score is telling us that the individual is in the right 'bucket' for their recidivism rate. Her recommendation is to remove the mention of the offender score analysis until further information is provided by CSG on their methodology. She also mentioned that maybe equating the offender score with recidivism is problematic because an individual can get a higher offender score through various ways and have different risk profiles. What the individual does while incarcerated (treatment and programming vs doing nothing) can also impact the recidivism rate.

Secretary Sinclair said during lunch he was talking with Lauren Knoth of WSIPP who had previously worked with the Pennsylvania Commission on Sentencing on an evidence-based sentencing grid. He asked if she could speak to the members about that work.

Lauren explained to members that the Pennsylvania legislature mandated the commission to develop a risk assessment for sentencing and, during that work, there was much discussion about the state's sentencing guidelines system, which is a matrix similar to Washington's. She said they drew heavily on Norval Morris's work from the 1970s that talked about limiting retributivism and the notion that the sentencing grid's underlying philosophy is retribution, i.e. more serious offenses and more serious offenders. Whether an offender score stems from a few serious offenses that resulted in a high offender score or several offenses over time that results in a high offender score, that offender score is based in retribution. The result of their work was to create a sentencing matrix with large ranges within each cell based on the offense seriousness and the offender score, then use the sentencing risk assessment to look at the multi-variate characteristics of the offender and give a classification of risk. This would guide the judge to a sentence within that range. She added that all of the research and policy decisions that went into creating this new grid is available on the commission's website.

**MOTION #19-33: MODIFY OFFENDER SCORE SECTION
REMOVING THE CSG'S ANALYSIS AND NOTE
THAT THE SGC IS LOOKING INTO THE
ANALYSIS FURTHER**

MOVED: Judge Shaffer
SECONDED: Tony Golik
PASSED: Unanimous

Judge Rumbaugh briefed members on his concerns about the complexity of the sentencing multipliers and wondered if there was any correlation to offense multipliers and risk for recidivism. Chair Hauge summarized that he heard two main themes in the discussion: that the current system of offender scoring rules is very complicated and the operation of those rules restricts judicial discretion. Tony Golik cautioned on making things simple for simplification sake. Greg Link commented that the offender score is not supposed to be offense-specific. He noted that the offender score and the offense seriousness level were intended to do two different things, but over time the offender score has been allowed to do the same thing as the offense seriousness level because it is easier to add a multiplier. He feels the seriousness of the offense should be handled within the offense seriousness level.

There was discussion about how deterrence is likely behind many of the sentencing changes made by the legislature.

The unspoken connection to the argument to increase penalties for any crime has been that the increased punishment will deter future offenders. Tony Golik mentioned that, while the legislature may be discussing deterrence, when WAPA meets to discuss an increase in punishment, deterrence is also part of the discussion depending on the crime.

Kimberly Gordon ran through a check on the Guided Discretion grid. She found that, if multipliers were removed, they grid would still allow the judge to sentence as high as or higher than what they would be able to if the offender score had been increased due to multipliers.

Chair Hauge said to members that the commission must be clear on what it's doing. Multipliers increase the retributive value of a sentence. He went on to say we have created a model of guided discretion that would create the possibility of similar sentences without the complexity. We need to recognize the issue and be clear that when we are talking about multipliers/enhancements, we are talking about increasing punishment. Can we argue it will reduce recidivism/deter crime? Can we serve the same goal of serious punishment for serious offense with a different system?

Sonja Hallum suggested that this information about multipliers is important to have in the report as it will be useful to inform the soon-to-be-created Sentencing Task Force. It could provide the task force with a starting point and maybe even include some options to be considered for future work.

Tony Golik suggested if the commission recommended the incremental grid, there would be a better chance of seeing a change succeed.

Chair Hauge talked about the budget proviso that creates the Sentencing Task Force. He said the plan is that the task force will use the SGC's report as a jumping off point. He sees the two grid proposal as conversation starters for the task force.

There was discussion about the language describing the two grid proposals. Keri-Anne will send the draft language to Tony and Jon for feedback so they can make suggested changes available for the June meeting for discussion.

Senator Darneille brought up the work on juvenile brain science and suggested adding a comment about it in the report. Chair Hauge noted it has been considered along the way issues related to juvenile brain development, however, we could not fold those into our consensus recommendations. She further suggested including a list of other items that have been discussed but could not reach consensus. Greg noted it was also part of the discussion in scoring as a prior strike. Should there be a separate grid for 18-25 year olds. Look at offender as individual not just as offense.

Keri-Anne asked members for clarification on a few details on unranked offenses and enhancements. Secretary Sinclair said that DOC had sent to Keri-Anne some technical corrections to the report. There was talk about the consecutive/concurrent confusion about community supervision.

There was discussion about the language in the judicial discretion section. Keri-Anne will work on the language.

V. OTHER BUSINESS

Judge Shaffer wanted to mention her concerns about losing case managers and other issues related to individuals getting into the Residential DOSA treatment and the struggle it has become getting individuals into the program. She believes this resource issue may apply only to King County. Jon Tunheim mentioned these are things that have created a lack of confidence with residential DOSA in other counties, too.

VI. ADJOURNMENT

APPROVED AND ADOPTED BY THE SENTENCING GUIDELINES COMMISSION

/ s /

Russ Hauge, Chair

Date