



STATE OF WASHINGTON

SENTENCING GUIDELINES COMMISSION

Helen Sommers Building, PO Box 43124 • Olympia, Washington 98504-3124 • (360) 902-0425

MEETING MINUTES

August 14, 2020 9:00am – 12:00pm

Skype

Members Present:

Stephen Sinclair
Hon. Stanley Rumbaugh
Greg Link
Derek Young
Rep. Lauren Davis
Tim Wettack
Hon. Catherine Shaffer
Sonja Hallum
Tony Golik
Kecia Rongen
Phillip Lemley
Kimberly Gordon
Sheriff Paul Pastor

Members Absent:

Senator Mike Padden
Rep. Skyler Rude
Norrie Gregoire
Jennifer Albright
Hon. William Houser
Maia McCoy
Senator Jeannie Darnielle
Kathleen Harvey
Jon Tunheim
Hon. Roger Rogoff

Staff:

Keri-Anne Jetzer

I. CALL TO ORDER

Vice-Chair Rumbaugh called the meeting to order.

II. APPROVAL OF MINUTES

Members are asked to approve the June and July 2020 minutes.

MOTION #20-11: APPROVE MEETING MINUTES FROM JUNE 2020

MOVED: Judge Shaffer

SECONDED: Derek Young

PASSED: Unanimous

MOTION #20-12: APPROVE MEETING MINUTES FROM JULY 2020

MOVED: Judge Shaffer

SECONDED: Derek Young

PASSED: Unanimous

III. CRIMINAL SENTENCING TASK FORCE – Update

Vice-Chair Rumbaugh briefed members on the last Sentencing Effectiveness work group meeting. He also asked Lauren Knoth, from WSIPP (who has been briefing him on the past work of the Sentencing Grid workgroup, the Sentencing Effectiveness work group, and the Criminal Sentencing Task Force) to explain the project timeline for these groups. Lauren described the research proposal the Sentencing Grid subgroup is working on and the analysis on criminal history scores being done by the Statistical Analysis Center. The hope is that both analyses will have concluded by March 2021, thus giving the Sentencing Grid workgroup April and May make recommendations for a new sentencing grid for the 2022 legislative session.

She spoke about the work group's review of enhancements and whether to make them aggravating factors instead (with the exception of the firearm and dangerous weapon enhancements). She informed members of draft legislation from Representative Goodman that proposes to make enhancements presumptive concurrent, eligible for good time, and remove the requirement they be served in total confinement.

Lauren also described to members a draft recommendation from the full CSTF that would request the SGC to review criminal penalties within Chapter 69.50 RCW and move them to Chapter 9.94A RCW. The SGC would also be asked to review related criminal penalties that could potentially be reduced or could be served in a therapeutic alternative. Keri-Anne added that there was support for this recommendation from the CSTF. If passed, Representative Goodman, as the Chair of the House Public Safety Committee, would send a letter to the SGC requesting this work.

Vice-Chair Rumbaugh asked members for their feedback on this project. Kimberly Gordon asked if there will be a look at racial, geographic and other demographics for sentences placed on the grid. Lauren replied that there are several lenses through which the CSTF research proposal would look at racial equity, although a lack of funds will result in a less-comprehensive analysis than would be desired. She reminded members that the Statistical Analysis Center is working on analysis of the criminal history score and part of that analysis include looking at demographic data. Keri-Anne offered to send the link to member to the CSTF website where the meeting materials can be found.

Vice-Chair Rumbaugh asked if there were any members who could provide an update on what the Reentry and Recidivism work group has been working on. Secretary Sinclair reported that this work group has 20+ recommendations it is considering. Many reflect recommendations found in the SRA Review report, he said.

Keri-Anne inquired if the member would like to discuss the CSTF draft recommendations. She offered to provide a list of the recommendations for discussion at the next SGC meeting. Members were interested in doing that.

IV. PRETRIAL REFORM

Vice-Chair Rumbaugh spoke about a Pierce County project that will divert people away from presentence incarceration and look at diversion possibilities.

Keri-Anne inquired what the members wanted to work on as regards pretrial reform, noting that the state already has a pretrial task force and local governments are already working on this topic. Judge Shaffer believes that, while not working in conflict with other organizations, the SGC still has a role, such as data collection and recommending legislative solutions. Vice-Chair Rumbaugh agreed that partnering with and obtaining input from victim advocate groups and groups representing criminal justice-involved persons to get as much inclusion as possible would be beneficial in developing good policy. He suggested that someone from the Arnold Ventures Group, whom he worked with in his county, should present their data and goals to the SGC.

Keri-Anne asked if the members would like to have someone from the Arnold Ventures Group and/or the Pretrial Reform Task Force present to the SGC. Judge Shaffer also suggested gathering information on the experiences of other states that have implemented the release or hold model. She offered AK, CA, NJ as states she's aware of that have implemented this model. Knowing that the Pretrial Reform Task Force did not have consensus on some of their suggestions, Kimberly Gordon felt it would be beneficial to hear from both the majority and minority opinions of that Task Force. [Judge Rumbaugh lost his connection during this discussion and was unable to reconnect to the meeting].

Councilmember Derek Young stated that his national association is doing quite a bit of work on pretrial and offered them as a resource on places that have already implemented and their experiences.

Sonja Hallum asked Keri-Anne to send members a copy of the final report from the Pretrial Reform Task Force. Judge Shaffer liked the comments from other members about being alert to racism and disproportionality in a qualitative way. She asked if Maia could talk at the next SGC meeting about the points she brought up in her email.

V. OTHER BUSINESS

Members discussed the draft legislative proposal for a mental disability sentencing alternative by Senator Dhingra. Kimberly Gordon said she had shared the draft with her colleagues at WACDL/WDA and the general response so far has been positive in terms of how it could benefit people who are charged in the system and work toward correcting the behavior that got them there. She received some suggested

language changes that she will forward to Keri-Anne who offered to send any feedback to Senator Dhingra. Kimberly also offered to help with any other drafting or suggestions on the bill.

Tony Golick thought the draft legislation was interesting and looks forward to discussing it at a WAPA legislative committee meeting. Vice-Chair Rumbaugh inquired as to what the general sentiment is for this kind of reform. WAPA has been clear in supporting a change to remove automatic stacking in enhancements, Tony said, but there is a range of opinions on various reforms and WAPA is working through them.

Vice-Chair Rumbaugh invited DOC to discuss their suggestions for the 15% reduction exercise requested by OFM. Secretary Sinclair briefed members on the purpose of the exercise and then asked Melena Thompson, Director of the Legislative Policy Office at DOC, to go through the draft suggestions. Melena shared with members that, while working through this exercise, DOC quickly concluded in order to reduce its budget to such a level, a prison closure would be required. She went on to review each suggestion.

After Melena reviewed the suggestion to eliminate life-time supervision for sex offenders, Kecia reminded members that research shows life-time supervision does not increase public safety and is not needed for all sex offenders. Kecia did suggest the use of a risk assessment when considering who should be released from life-time supervision as there is a small portion of that population that is high risk. Generally, she said, the high-risk individuals fall within the Class B and C sex offense categories since they would have a previous Class A sex offense conviction to be put under the jurisdiction of the ISRB.

Keri-Anne explained to members the list of possible projects that she created and asked members for their thoughts. Judge Shaffer really liked the idea of reviewing current offenses known for being racially disparate and suggested adding firearm offenses to the list. Sonja Hallum suggested taking a step back to look at the larger picture of racial inequities and the bias that exists in the criminal sentencing structure. She added that there is a wealth of information available on the impacts on criminal sentencing and on pretrial outcomes, which would also connect to the group's work on pretrial reform. Sonja recommended having someone present to the SGC on the big picture issues to provide context before moving into specifics.

Lauren Knoth reiterated the racial inequality analysis in the CSTF research proposal and the criminal history score research being completed by the Statistical Analysis Center. She submitted that research shows the largest causal link in the existence of racial disparities is not found at the offense-specific level but rather in the criminal history score because of the legacy of disproportionality in policies in the 1980s and 1990s.

Kimberly Gordon announced that she and Judge Shaffer have been collaborating with Microsoft to create a tool that would make the CFC data more easily searchable by people who need data. This project is being undertaken specifically with the idea that it could assist organizations like the SGC in taking on inquiries like those being discussed now. She hopes to be able to provide more details to the SGC soon but wanted to let members know that there may be an additional tool available that would assist in inquiries like this in the future.

Lauren offered another data resource, Measure for Justice, which has received Washington data from 2009 – 2013. This organization has compiled several different measures at the county level. Kimberly suggested the SGC assign itself the task of looking at specific offenses as time allows, understanding resources are limited. Judge Shaffer commented that disparate sentencing is linked to disparate treatment pretrial so it seems this is one large topic the SGC can focus on.

Judge Shaffer added that the other topic she feels is worth reviewing is the makeup of the SGC. Some members remarked that they would not seek a reappointment to the SGC so that a person of color from their organization could step in. It was observed that some organizations are working on increasing the diversity of their membership themselves and may not have people available. Kimberly Gordon noted another way to increase the diversity of the SGC is to bring in other stakeholder groups that have more diverse membership. Keri-Anne said she would add this topic as an agenda item for a future meeting.

Sonja Hallum asked members if there was interest in having someone present to the SGC on racial inequities and institutional racism in sentencing. She has been working with professors across the country and said some may be interested to provide an overview. Judge Shaffer wondered if there was someone who had expertise on what is happening in Washington. Kimberly Gordon thought that this may overlap with the work of Katherine Beckett and Heather Evans in their recent report in life in long sentences. Lauren proffered that she has presented to the CSTF on disproportionality and disparity at sentencing, about the history of the concepts, and on Washington state-specific literature, particularly before and after the Sentencing Reform Act and before and after the *Blakely* decision. If the SGC is unable to find a speaker, she offered to present. Sonja thought a high-level discussion would be critical to understanding how all these specific policies have impacted our criminal justice system and would be a necessary foundation to the more specific conversations. Greg agreed that it is a good idea to take a step back and look at what is being talking about; before looking for the problems, it's important to know where we should be looking. He added that while it's easy to look at the result of a sentence, how do we know if there are places within the criminal justice system where disparity is creeping in and, thus, leading to the outcome. There are other areas where disparity constantly creeps in, he noted, and we call those discretion, whether it's judicial discretion, prosecutorial discretion, or police discretion. Judge Shaffer said she doesn't disagree that this is useful information, but information that is specific to our state is available and suggested it

should be used. She would like to talk about that first and then zero in on the pressure points in the state once we have that data about our state.

Kimberly Gordon considered if the SGC could take on both higher-level and granular discussions/research at the same time. Lauren Knoth responded that those two conversations aren't mutually exclusive, so it is certainly possible. There could be a presentation discussing theoretical concepts, a national history, and development of the criminal justice system that is consistent across jurisdictions, followed by a drill down into how that is manifested specifically in Washington state. Lauren offered to talk with Keri-Anne about what this could look like.

Keri-Anne informed members that meetings will be held via MS Teams as of the September meeting. She will send information explaining MS Team for those who are not familiar with it. Councilmember Derek Young observed that almost every other level of government in Washington is using Zoom. Sonja Hallum replied that Zoom has security issues, which MS Teams addresses. Judge Shaffer commented that Zoom is being used for trials and feels it is the best platform she has used. In a chat message, Kecia Rongen mentioned that DCYF uses Zoom. Keri-Anne offered to check with OFM's IT team again.

VI. ADJOURNMENT

APPROVED AND ADOPTED BY THE SENTENCING GUIDELINES COMMISSION

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Judge Stanley Rumbaugh, Acting Vice-Chair

Date