



STATE OF WASHINGTON

SENTENCING GUIDELINES COMMISSION

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

MEETING MINUTES

April 10, 2020 9:00am – 12:00pm

Skype/Conference Call

Members Present:

Stephen Sinclair (proxy: Mac Pevey)
Hon. Stanley Rumbaugh
Russell Hauge
Jennifer Albright
Kimberly Gordon
Phillip Lemley
Kecia Rongen
Hon. William Houser
Maia McCoy
Greg Link
Derek Young
Rep. Lauren Davis
Tim Wettack
Tony Golik
Senator Jeannie Darnielle
Sheriff Paul Pastor
Kathleen Harvey

Members Absent:

Senator Mike Padden
Rep. Brad Klippert
Sonja Hallum
Hon. Catherine Shaffer
Jon Tunheim
Hon. Roger Rogoff
Norrie Gregoire

Staff:

Keri-Anne Jetzer

Guest:

Lauren Knoth, WSIPP

I. CALL TO ORDER

Chair Hauge called the meeting to order.

II. APPROVAL OF MINUTES

Members were asked to approve the February 2020 minutes.

**MOTION #20-04: APPROVE MEETING MINUTES FROM
FEBRUARY 2020**

MOVED: Judge Houser
SECONDED: Phillip Lemley
PASSED: Unanimous

III. CRIMINAL SENTENCING TASK FORCE

The April Task Force meeting was rescheduled for April 16 so instead Chair Hauge briefed members on the last Sentencing Effectiveness work group meeting. He felt not a lot of progress had been made and invited others to share their perspective. Greg Link remarked that he didn't have much to add, other than Lauren Knoth, from WSIPP, volunteered to gather information on different sentencing grids. Chair Hauge also conveyed appreciation for the data and analyses Lauren shared with the work group.

Chair Hauge reminded members that they set themselves the task to identify discretion points in sentencing that may not be visible to people who are not professionals in the criminal justice system. He added that he doesn't have much hope that the SGC will be able to make a formal presentation to the Sentencing Effectiveness work group or the full Task Force in the near future due to the current work atmosphere in the state.

Chair Hauge stated that work group members discussed whether and to what extent to develop offense-specific grids. He asked members to consider if they wanted to address the current issues through a variety of different grids or if that would be a non-starter. Judge Houser posed that a recommendation for a single grid would include the risk that legislators, as is their right, would move crimes around the grid as they see fit. A recommendation for separate grids for property crimes or non-violent/violent crimes) would limit the discretionary placement of crimes within a grid. He admitted he's unsure which one is better. Greg Link remarked that the drug grid is easy to use because drug crimes are easy to determine. He noted, however, 35 years after the implementation of sentencing grids and people are still having problems understanding them. He believed that multiple grids would add to the complexity as they could get out of whack fast if the legislature turns its attention to one of the grids and not the others and it could invite disparity to reappear quickly. Kimberly Gordon used the change in prostituting a minor from a non-violent offense to a "strike" offense in response to society's view of it as an example of how this could be complicated.

Lauren Knoth from WSIPP commented that, while she's not aware of any state that has several separate sentencing grids, New York does have separate sentencing structures for violent and non-violent crimes; their violent sentencing structure is determinate and the non-violent allows for more discretion. They don't have grids but their statutes could be laid out in a grid-like format.

Chair Hauge said that suggestions were made in the SRA Review report related to the proliferation of multipliers and scoring rules to increase the punitive nature of our response. One of the sources of complexity is scoring rules, including multipliers, which have been layered on. He felt that a move toward making things simpler requires multipliers and enhancements be

addressed. Tony Golik suggested in reality every sentencing system will have significant complexity. He does not think that other suggested systems will be any less complex. Chair Hauge concurred that it will always take a law degree and a lot of experience to figure out a criminal sentencing scheme.

Senator Darnielle posed the question of how to move people out of the institutions because of COVID-19, saying that they are in an incubator for transmission of this disease. She also asked Lauren Knoth if she knew of any states that are addressing drug crime from a treatment perspective and if any states addressed sentencing grids from a racial disproportionality index. Lauren replied that one of the items she's putting forth to the Task Force is a model that's used in several other states that directly integrates alternative sanctions into the grid for non-violent or drug offenses. Some states, she said, conduct a drug and alcohol assessment which is triggered by the offense type. She explained that if the outcome of the assessment is above a set threshold, the court may be mandated to make treatment an explicit part of the sentence. In response to Senator Darnielle's question about racial disproportionality, Lauren reminded members that the grids used by most states today were created in the 1980s and 1990s and were focused on retribution. She added that the Robina Institute at the University of Minnesota Law School has done a lot of research on the components of state sentencing grids that are associated with racial disparity, particularly looking at offender scores, which has been found to be one of the largest drivers in racial disparity. That is where the research is headed but she does not know of any state that has created a new grid that is data-driven explicitly with the intention of reducing racial disparity. Keri-Anne informed members that the Statistical Analysis Center is currently seeking approval to include an analysis of Washington's offender score calculations and components in one of their federal grants.

Chair Hauge thought it would be valuable for the SGC to explain to the Task Force members the "when and how" things like enhancements and multipliers are added to a charge. He asked for volunteers to assist with this. Kimberly Gordon volunteered and offered to recruit someone in public defense, too. Tony Golik volunteered. Lauren informed members that the Task Force asked her and Clela to present on sentencing and disparity and disproportionality. Chair Hauge asked Lauren if she could join him, Keri-Anne, Kimberly and Tony in a call sometime before the presentation so they could provide her with information that might flush out some of her points. Lauren agreed and offered to send those members her presentation before then. Greg volunteered to participate on the phone call so he could also help translate if needed for the Task Force meeting. Maia McCoy noted that it's important to also look at the roll that law enforcement plays as well as putting the charging decision into context.

IV. OTHER BUSINESS

Chair Hauge thought it was important that the SGC comments on the current COVID-19 situation regarding people being held in custody and their exposure to the virus.

Judge Houser informed members that he was diagnosed with COVID-19 in March. While he has come out the other end, he does not know where it came from and neither will the prisons. He added that it is incumbent upon us to safely hold people who are incarcerated and agreed that it should be discussed.

Tony Golik said Clark County reduced its jail population by about 200. He noted that reducing the population is much easier for jails because individuals are serving less serious offenses while the crimes committed by individuals in prisons are more serious. He feels the Governor is on the right path by looking at the non-violent population for possible release.

Chair Hauge asked Mac Pevey to update members on how DOC is currently addressing the situation. Mac replied that DOC's public website has a plethora of information on its response to COVID-19, as well as daily situation reports and COVID-19 testing data. He added that yesterday Secretary Sinclair and the Governor's Office gave a press conference that contained a lot of information about what efforts DOC has been taking since screening criteria for staff was set up about six weeks ago. He added they are also limiting discretionary movements of individuals between institutions. Jennifer Albright reported that King County has been working closely with DOC to follow some of the same guidelines. She said King County has reduced its jail population by about 1/3 and has put restrictions on booking at the front door. At this time, no inmates or officers had tested positive. There has only been 1 non-program staff in the juvenile division that tested positive and that person was self-quarantining.

Mac added that changes had been made on the community corrections side of DOC as well. Technology is being used to make contacts with supervised individuals, screening is taking place in the field offices, and the violator population has dropped by about 66% by focusing more on high level violations than on technical violations.

Chair Hauge asked Mac and those in touch with local jails if there is any statement or encouragement that the SGC could make that would be useful. Tim Wettack stated that he believed the Governor should release prisoners who have received a recommendation for clemency from the Clemency and Pardons Board as they had been vetted through the petitioning process and then again by the Board. Chair Hauge asked if anyone knew how many people this would include. Judge Rumbaugh provided that this issue is a matter that is pending with the Supreme Court for adjudication right now. He does not feel

it is wise to release individuals without a release plan to this environment. He added that at his hearing, he thought there was a bit of opportunism in some cases but also recognized that, having served 25 months of a 27 month, the last two months would do that much to improve the outcome.

Tim Wettack informed members that in order for the Board to make that recommendation, the people have demonstrated that they do have a plan in place and a support system in place.

Tony pointed out that the Governor is mindful of this issue so he doesn't think the Governor needs the SGC's help in making this particular decision. Additionally, he said, this addresses only a small number of individuals and that isn't going to make the institutions as a whole safer. Judge Rumbaugh noted that it may protect the individuals who are due for clemency release anyway and keep them from carrying the disease into the community.

Senator Darneille asked Keri-Anne to forward to the membership a document she just emailed to her that shows how many people this would entail. Keri-Anne said she would, and also reported to members that from the current list available on the Board's website, her rough count was around 20 people who could be impacted.

In response to Tony's comment, Tim Wettack, thought the SGC's recommendation would give the Governor some political cover to make this decision. Tony replied that the SGC should not be engaging in political cover but making decisions based on policy concepts. Chair Hauge submitted that the SGC is one of the agencies that is supposed to step up and say 'here is the information.' He added he doesn't feel this would be something the SGC hasn't done before; this is the SGC's job. Tony said that his concern was about the 'political cover' comment. Derek Young emphasized that these individuals need a housing plan. If they don't have one, they are far less safe in the community than they are in prison and it would be a disservice to the homeless population to release them there. He appreciates the thought and the desire behind the motion, but said he cannot support it without a lot of additional information. He encouraged the SGC to continue to think about this issue because he believes there will be financial pressures that will encourage much less incarceration on a wholesale scale as a result of the pandemic. Chair Hauge stated that his understanding is that part of the clemency process includes submitting a vetted release plan and agrees that it would be irresponsible for the SGC to advocate release of just anybody into the general population of the homeless. Tim Wettack offered to amend the motion to include the qualification that the individual has a housing plan. Judge Rumbaugh shared that one does not get a clemency petition granted unless there is a release plan to a specific address and some type of employment lined up.

Tony Golik reiterated his belief that the Governor is well aware of this issue, has a strong grasp of what needs to happen in the prisons, and doesn't need the SGC to make this recommendation in order for him to take appropriate action. Greg Link responded that he doesn't see any harm in the SGC making the recommendation. Judge Rumbaugh suggests it would provide input from a knowledgeable body to the decision maker. Kimberly Gordon observed that this is a recommendation from a group that over the years has discussed different ways to take a second look at cases. Throughout that time, from what she remembers, the representatives of the prosecution vocalized support for the clemency process. She said it is concerning to her that there was no support for this recommendation now. Tony Golik said that he isn't arguing against the clemency and pardons process, but rather he feels the Governor already has an understanding of this issue and will take action, but he respects all the comments made during this discussion.

Chair Hauge asked Keri-Anne to take a roll call vote.

MOTION #20-05: RECOMMEND TO THE GOVERNOR TO GRANT CLEMENCY FOR THOSE PRISONERS GIVEN APPROVAL BY THE CLEMENCY AND PARDONS BOARD AND HAVE A CURRENT HOUSING PLAN

MOVED: Tim Wettack
SECONDED: Kimberly Gordon
PASSED: Yes – 10; No – 3;
Mac Pevey abstained

Maia asked that language about notification to victims be included in the letter to the Governor. Chair Hauge agreed.

Representative Lauren Davis asked Mac Pevey what planning efforts are underway at DOC related to release planning for a broader population. Mac replied that DOC has not changed any current processes relative to release planning. In preparation for additional transitions from the institutions to the community, they have changed some of the work with the community corrections staff around social distancing and will hopefully, depending on the volume of cases, be able to investigate the transitional release plans in a more expeditious manner.

Keri-Anne informed members that the three legislative bills (concurrent community supervision terms, swift and certain violations sanctions, and compliance credit) the SGC voted to support in the past legislative session had passed into law.

Keri-Anne inquired if the group wanted to meeting in person for the May meeting, if the stay-in-place order is lifted or if they want it to be a Skype meeting. Chair Hauge presumed that is what will have to occur.

MOTION #20-06: MOTION TO ADJOURN

MOVED: Tim Wettack

SECONDED: Kimberly Gordon

PASSED: Unanimous

V. ADJOURNMENT

APPROVED AND ADOPTED BY THE SENTENCING GUIDELINES COMMISSION

/ s /

Russell Hauge, Chair

Date