



STATE OF WASHINGTON

SENTENCING GUIDELINES COMMISSION

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

MEETING MINUTES

December 11, 2020 9:00am – 12:00pm

MS Teams

Members Present:

Hon. William Houser
Hon. Stanley Rumbaugh
Jon Tunheim
Derek Young
Rep. Lauren Davis
Stephen Sinclair
Jennifer Albright
Senator Jeannie Darneille
Phillip Lemley
Kimberly Gordon
Greg Link
Kecia Rongen
Tim Wettack
Tony Golik
Norrie Gregoire

Members Absent:

Senator Mike Padden
Rep. Skyler Rude
Sonja Hallum
Kathleen Harvey (technical issues)
Hon. Catherine Shaffer

Staff:

Keri-Anne Jetzer

Guest:

Chief Cherie Harris, WASPC

I. CALL TO ORDER

Vice-Chair Judge Rumbaugh called the meeting to order.

II. APPROVAL OF MINUTES

**MOTION #20-22: APPROVE MINUTES FROM NOVEMBER 2020 MEETING
WITH CHANGE**

MOVED: Kimberly Gordon
SECONDED: Secretary Sinclair
PASSED: Unanimous
ABSTAIN: Judge Rumbaugh

III. DOC AGENCY REQUEST LEGISLATION

Secretary Sinclair discussed DOC's new proposal to make all earned release time 33%. He said DOC has worked with the Governor's Office and he's fairly confident that this will end up in the Governor's budget. He feels that the increase of earned release time of 33% for some offenses, and its application to all enhancements, is an opportunity to not only reset the percentages of incarcerated people of color, but also to correct issues of the past if this is applied retroactively.

Clela Steelhammer commented that the jail earned release time for Class A sex offenses and serious violent offenses is still 15% and was not changed when the prison rate was reduced from 15% to 10%. She asked if this proposal included a change to make the jail percentage consistent with the prison percentage. Secretary Sinclair wasn't sure but would check into that. He added that in addition to this helping to deal with racial disparity, it would also alleviate a large complexity component to how DOC calculates sentences.

Greg Link reminded members that the SGC has been discussing for several months ways to address racial disparity in sentencing and noted that this is one way to do something now. He believes that the only way it works is to address the current prison population and make it apply to everyone. If specific populations are carved out as ineligible, that only perpetuates the current situation.

Members discussed concerns about how applying increased earned released time retroactively might undermine sentences that had plea agreements. Jon Tunheim said that WAPA supports simplification and feels the cleaner and easier it is to calculate earned release time, the better it is for everyone. He feels that when a change is made retroactively to a sentence that has been plea bargained, there is a sense of betrayal to the victim because they were told what the end result would be. Judge Houser agreed with Jon but also believes that not making the changes retroactive acknowledges and condones a racially disparate system. Greg Link said that it wasn't just one aspect of the process where racism came in but that the process itself lead to it; the sentencing, the plea negotiation, the police investigation, it's been at every point.

Kimberly Gordon referred to an article that noted a national survey revealed that crime survivors, by a 2 to 1 margin, said they would like less investment in punishment and more in rehabilitation (she also emailed the article to Keri-Anne for distribution). She believes respect is owed to the position some victims will have but doesn't think a decision should be based solely on that while excluding the data and the priority of remedying racial disparity.

Vice-Chair Rumbaugh wondered, if this proposal became law, would it change the attitudes of prosecuting attorneys in terms of what offenses they would allow a defendant to plead down to. He asked Tony Golik for his thoughts. Tony replied that, yes, a prosecuting attorney would consider what the earned release time is in a sentence. He asked if DOC has studied its implementation of earned release time calculation and if there are racially disproportionate impacts in how its calculated? In

other words, because earned release credit can be given or taken away, has DOC studied if there is any racially disproportionate impact in how DOC gives or takes away credit from individuals? Secretary Sinclair responded that DOC partnered with the Office of Corrections Ombuds to complete an internal assessment of DOC's use of discipline based on a racial lens. System-wide, the results indicated they were racially balanced. He offered to send the report to Keri-Anne for distribution to the membership.

Secretary Sinclair asked if there were any members who would not be in support of this proposal. Jon Tunheim replied that changing the earned release time from 10% to 33% for class A sex offenses and serious violent offenses was too dramatic of a move for WAPA to support. Their perspective, he remarked, is that earned release time is a behavior management tool and not a population management tool. He added that he could possibly persuade his WAPA colleagues to support an increase from 10% to 15% to match the amount given in the jails, including retroactivity. Tony Golik added that in cases where individuals had been badly damaged or killed a change to 33% would be too much.

MOTION #20-23: ENDORSE DOC'S PROPOSAL AS WRITTEN

MOVED: Greg Link

SECONDED: Kimberly Gordon

PASSED: Passed by majority - 2 members did not support the motion

IV. RECOMMENDATIONS FOR EXPANDED REPRESENTATION ON SGC

Keri-Anne went over survey results on the ranking of recommended expansion positions for the SGC. Of the results, a representative from the Minority and Justice Commission received the highest ranking, a behavioral health professional was second and, tied for third, was a formerly incarcerated individual/family member and someone from academia.

Vice-Chair Rumbaugh asked members how they wanted to move forward on this, e.g. how many positions to add, which positions to add. Keri-Anne suggested an option could be to include all the positions listed as 'positions/perspectives of interest' that the SGC feels would add value to its membership and let legislators decide who and how many. Members discussed the matter.

Senator Darneille stated that many small bills won't pass during this upcoming legislative session. Additionally, the Criminal Sentencing Task Force, which is already working on issues in this area and include most of these perspectives, will be asking for an additional year.

A few members were in support of including the Minority and Justice Commission as an ex-officio position as there is a good amount of cross-over work between the two commissions.

Greg Link wondered if it would be helpful to draft a letter to the Governor's Office requesting that they consider these perspectives when filling the currently open positions. He also suggested that, based on Senator Darneille's comments about the challenge of small bills making it through this legislative session, perhaps this could be considered as a recommendation from the Criminal Sentencing Task Force.

There was discussion about whether the SGC already includes positions that represent the perspective of individuals who have experienced incarceration since there are already positions that represent crime victims. It was noted that the survey results indicate a majority of respondents' support adding the perspective of a formerly incarcerated individual. It was also pointed out that there are four positions that are not currently being represented, including the law enforcement and victim advocate positions. A member posited that good intentions don't always make it down to the level of incarcerated individuals and felt including that perspective would be of value.

Representative Davis clarified that her suggestion last meeting to include a formerly incarcerated individual/family member meant a formerly incarcerated individual and a family member of someone currently incarcerated. They were lumped together in the results, but she feels they are two different perspectives, and both are very valuable. She quoted "those who are closest to the problem are closest to the solution" and feels it is imperative to have the voices of people with lived experiences at the table. She also noted that over 90% of the individuals in the correctional system live with untreated behavioral health challenges and felt that the perspective of a behavioral health professional is also valuable.

Vice-Chair Rumbaugh offered to draft a letter to the Governor's Office outlining the issues that the membership discussed in terms of expansion and the interest groups and ask that consideration be given to these perspectives for pending appointments and new positions. He would include that it is the SGC's desire to achieve a balance and hear from all corners of the criminal justice world and ask that be kept in mind when making appointments. The letter would also ask which additional interest groups the Governor's Office might think would be information and useful if the list of voting members was expanded.

V. PRE-TRIAL REFORM

Vice-Chair Rumbaugh introduced the letter provided by former SGC member Maia McCoy that is related to pretrial reform.

Vice-Chair Rumbaugh talked about current pretrial practices and participation in the Advancing Pretrial Policy and Research project funded by the Arnold Ventures Group. Jon Tunheim provided comments as another participant of that project.

There was discussion about pretrial diversion programs and pretrial services used in the state and related issues due to change precipitated by Covid.

Representative Davis informed members she has been working on draft legislation to remove the simple possession charge from the criminal code and replace it with a Law Enforcement Assisted Diversion (LEAD) model to connect people with a menu of social determinants of health care, medical care, harm-reduction pathways, and treatment pathways. She added that in order to offer LEAD type of programs statewide, the funding mechanism would be two-fold. One mechanism would be some sort of justice reinvestment model and the other would be a tax on the alcohol and opioid industries to build up robust services for substance use disorder, diversion prior to contact with the legal system, and for personal possession cases.

VI. CRIMINAL SENTENCING TASK FORCE UPDATE

Jon Tunheim reported that the Task Force has completed its deliberations and will be finalizing its report at the final meeting of the year later next week. Next year the focus will be on the sentencing grid.

VII. OTHER BUSINESS

Keri-Anne explained to members in years past the SGC has had a legislative subcommittee to review draft proposals for the SGC’s consideration. The subcommittee generally consisted of four to five members who met weekly.

Kimberly Gordon, who served on the subcommittee under former Chair Boerner, replied that she felt it was very useful. Greg Link added that he felt it did help monitor legislation that the SGC would be interested in.

Vice-Chair Rumbaugh asked Keri-Anne to set up a special meeting in the next week or two to further discuss this idea.

VIII. ADJOURNMENT

Next meeting: 9:00a – 12:00p on Friday, December 11, 2020.

APPROVED AND ADOPTED BY THE SENTENCING GUIDELINES COMMISSION

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Judge Stanley Rumbaugh, Acting Vice-Chair _____
Date