



STATE OF WASHINGTON

**SENTENCING GUIDELINES COMMISSION**

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May 6, 2009

**MEMORANDUM**

**TO:** SGC

**FROM:** Shannon Hinchcliffe, SGC staff

**RE:** Status of Rule-Making Petitions

**ACTION REQUESTED: REFILE RULE-MAKING PETITIONS AND ADOPT BYLAWS AS AGENCY POLICY.**

**Introduction**

Initially, staff filed petitions for rule changes on the bylaws, community custody ranges, and public disclosure rules in order to update outdated statutory references and reflect requested changes of Committee members. The public hearing for these changes was originally scheduled for the April 10, 2009 SGC meeting. However, as legislation was introduced, staff felt that it was prudent to withdraw the petitions and wait for session to conclude before making any changes. Several newly effective laws require the SGC to change its rules in Administrative Code.

**Proposed Agency Action – Rule-Making Petitions**

Community Custody Ranges – WAC 437-20-010

Historically, the SGC was in charge of establishing and updating sentencing ranges for community custody pursuant to the authority in RCW 9.94A.850. ESSB 5288 eliminates the SGC's authority to maintain community custody ranges and establishes them in statute effective immediately. This bill was delivered to the Governor and she is scheduled to take action on it on May 5, 2009. Therefore the ranges may need to be repealed.

Public Records—Disclosure – WAC 437-06

Previously, these were re-drafted and submitted to update outdated statutory references.

Bylaws – WAC 437-10

The Sentencing Guidelines Commission bylaws are currently contained in WAC Chapter 437-10. Although the bylaws state that they may be changed by request of a member and simple majority vote, this is currently inaccurate. Because the bylaws are located within administrative code, a change requires a formal rulemaking process that can last, at minimum, four months. There is no requirement that bylaws be contained within the administrative code. In order to be more responsive to changes requested by commission members, the SGC started the process to amend its rules which included removing the bylaws from administrative code and adopting them as SGC policy.

### **Discussion Points regarding potential changes in Bylaws.**

- Staff drafted changes for the meetings section and minutes section to ensure OPMA compliance but reduce the amount of labor required to support the meetings in response to budget reductions.
- Members requested research on changing the Voting Procedures bylaws to allow voting members' designees to vote.

Previously, members suggested changing some of the voting procedures in the bylaws. Pursuant to RCW 9.94A.860, with the exception of ex officio voting members, the voting members of the commission shall be appointed by the governor, subject to confirmation of the senate.

However, the bylaws dictate how voting members may exercise their vote (Voting Procedures 437-10-060.) Currently, no voting designees nor proxy votes are allowed.

There are three alternatives that have been explored. Below is a summary of the three alternatives.

1. Make no changes to existing bylaws, allows no designee or proxy votes.
2. Change the bylaws to allow voting members' designees vote with: 1) written authority from the member; 2) prior notice to the chairperson; 3) notice to other members prior to any vote taken.
3. Change the bylaws to allow voting member's designees vote with verbal notification from the designee to the chairperson; 2) notice to the chairperson and members prior to any vote taken.

These alternatives are not exhaustive, and other suggestions or alternatives may be explored.