



STATE OF WASHINGTON

SENTENCING GUIDELINES COMMISSION

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May 8, 2009

TO: SGC

FROM: Jean Soliz-Conklin

RE: 2009 Workplan

ACTION REQUESTED: Discussion and possible formation of ad hoc committees.

I. Community Custody Statutes – Review for Constitutionality of Effective Dates

Background: HB 5719 (2008) contains the simplified community custody statutes. These were modified slightly this year in SB 5190 and will become effective August 1, 2009.

Requirement: The SGC is required to conduct a review to ensure the constitutionality of application of effective dates in the new community custody statutory scheme. **Staff**

recommendation: Form an ad hoc committee.

The bill language reads:

Sec. 55. (1) Sections 6 through 58 of this act apply to all sentences imposed or reimposed on or after August 1, 2009, for any crime committed on or after the effective date of this section.

(2) Sections 6 through of this act also apply to all sentences imposed or reimposed on or after August 1, 2009, for crimes committed prior to the effective date of this section, to the extent that such application is constitutionally permissible.

(3) To the extent that application of sections 6 through 58 of this 22 act is not constitutionally permissible with respect to any offender, the sentence for such offender shall be governed by the law as it existed before the effective date of this section, or on such prior date as may be constitutionally required, notwithstanding any amendment 26 or repeal of provisions of such law.

(4) If application of sections 6 through 58 of this act is not constitutionally permissible with respect to any offender, the judgment and sentence shall specify the particular sentencing provisions that will not apply to such offender. Whenever practical, the judgment and sentence shall use the terminology set out in this act.

(5) The sentencing guidelines commission shall prepare a summary of the circumstances under which application of sections 6 through 58 of this act is not constitutionally permissible. The summary should include recommendations of conditions that could be included in judgments and sentences in order to prevent unconstitutional application of the act. This summary shall be incorporated into the Adult Sentencing Guidelines Manual.

(6) Sections 6 through 58 of this act shall not affect the enforcement of any sentence that was imposed prior to August 1, 2009, unless the offender is resentenced after that date.

II. Repeal of Community Custody Ranges

ESSB 5288 replaces community custody ranges with terms, which requires action on the Community Custody ranges adopted by the Commission through the state rulemaking process. **Staff recommendation: see agenda item.**

III. Community Custody Recidivism Study

ESSB 5288 directs the Commission to expand its biennial recidivism report to include impacts of community custody statutes. **Staff recommendation: Seek funding in 2010 and contract with WSIPP.**

The bill language reads:

NEW SECTION. Sec. 15. The legislature directs the sentencing guidelines commission to include in its biennial report to the legislature, as required by RCW 9.94A.850(2)(h)(iii), and due no later than December 1, 2011, an analysis of the impact on recidivism of the following: 1) The supervision of offenders

pursuant to sections 1 and 2 of 7 this act;(2) The department's authority to issue warrants for offenders under its supervision who are sentenced for misdemeanor and gross misdemeanor offenses in superior court; and (3) The community custody terms of supervision pursuant to section 12 of this act.

IV. Periodic Review of Theft Levels

SB 6167 requires the Commission to review the monetary threshold amounts differentiating the various degrees of property crimes in Washington state to determine whether such amounts should be modified. The SGC is required to report to the legislature November 1, 2014 and every five years thereafter.

Staff recommendation: Form an ad hoc committee in 2011.

VI. Assault of a Child Review

EHB 2279 directs the Commission to review a variety of specified issues related to this crime and the resulting sentences. **Staff recommendation: Form an ad hoc committee.**

The bill language reads:

NEW SECTION. Sec. 2. (1) The sentencing guidelines commission shall review the crime of assault of a child in the first degree as it relates to: The elements of the crime, sentencing under the sentencing reform act grid, all provisions providing for exceptional sentences both above and below the standard sentencing ranges, judicial discretion in sentencing, earned early release, and community custody requirements. As part of its review, the commission shall:

- a) Study the relevant provisions of the sentencing reform act 16 relating to assault of a child in the first degree;
- b) Consider the revision of the sentencing range for assault of a child in the first degree which includes, but is not limited to, taking into consideration the violence of the offense, the age of victims, the criminal history of the offender, the mental health capacity of the offender, and the risk of the offender reoffending in the community;
- (c) Consider the use of advisory sentencing guidelines for assault of a child in the first degree;
- (d) Consider the modification of the mandatory minimum term of confinement for an offender convicted of assault of a child in the first degree;
- (e) Consider altering the statutory

provisions surrounding earned early release for an offender convicted of assault of a child in the 11 first degree; (f) Consider restructuring or adjusting the statutory community custody conditions for offenders convicted of assault of a child in the first degree; (g) Consider the use of determinate plus sentencing that provides for a minimum and a maximum term of confinement for an offender convicted of assault of a child in the first degree; and (h) Determine the fiscal impact of any proposed recommendations. (2) The commission shall review and make recommendations regarding the revision or modification of the sentences of offenders convicted of the crime of assault of a child in the first degree.(3) The commission shall submit its findings to the appropriate committees of the legislature no later than December 31, 2009.

VII. Other Issues for Discussion:

1. OFM Proviso On Closing Institutions
2. Sex Offense Statues Of Limitations