



STATE OF WASHINGTON
SENTENCING GUIDELINES COMMISSION
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MINUTES
January 8, 2010
9:00 a.m. to Noon
Holiday Inn Hotel
17338 International Blvd.
SeaTac, Washington

Members Present

David Boerner, Chair
Hon. Ellen J. Fair, Vice Chair
Marya Gingrey for
 John Clayton (without voting auth.)
Lynne DeLano
Lucy Isaki
Dan Satterberg
Lynda Ring Erickson
Michael Kawamura
Hon. John Meyer
Hon. Dean Lum
Lenell Nussbaum
Ida Ballasiotes
Eldon Vail
Hon. Stephen Warning
Sen. Adam Kline
Rep. Kirk Pearson
Sen. Pam Roach

Others Present

Seth Fine, Snohomish County Prosecutor; Ginger Richardson, Washington Federation of State Employees; Jim Thatcher, Washington State Department of Corrections; Candice Bock, Association of Washington Cities.

Members Absent

Russ Hauge
Timothy Killian
Sheriff Paul Pastor
Edward "Ned" Delmore
Ann Cox Heath
Mary Ellen Stone
Rep. Sherry Appleton
Cities Representative (vacant)

Staff Present

Shannon Hinchcliffe
Shoshana Kehoe-Ehlers
Andi May

I. CALL TO ORDER - DISCUSSION

Chair Dave Boerner called the meeting to order at 9:22 a.m. and commented that a quorum had been established.

Chair introduced new member Lynne DeLano. Ms. Delano is the new Chair of the Indeterminate Sentence Review Board and is joining as a Commissioner today.

II. APPROVAL OF MINUTES

MOTION# 10-1, APPROVE NOVEMBER, JUNE, MARCH, AND JANUARY 2009; AND NOVEMBER, OCTOBER, AND JULY 2008 MINUTES

Moved: Hon. John Meyer

Seconded: Hon. Ellen J. Fair

Vote: Unanimously passed (no oppositions or abstentions).

The Commission approved the minutes from November, June, March, and January 2009 as well as November, October and July 2008. October and December 2009 minutes will be presented at the February 2010 meeting for approval.

III. EXECUTIVE DIRECTOR'S REPORT- DISCUSSION

Chair Boerner explained that Ms. Soliz-Conklin could not be present today and that Ms. Hinchcliffe, SGC Policy Counsel would fill-in.

A. SGC Report

The members received a copy of the Fiscal Year 2009 Statistical Summary of Adult Felony Sentencing. Ms. Hinchcliffe briefly introduced this report to the Commission. The members briefly discussed the numbers in the summary. Members noted the reduction in drug possession convictions, but increase in delivery offenses.

B. Session Readiness

Staff reviewed the preparation activities for the 2010 legislation session. Ms. Hinchcliffe explained that staff has already been busy with fiscal note requests even though session does not start until January 11, 2010. Currently, the SGC has been asked to attend four legislative hearings, one on Juvenile Racial Disproportionality at the House Human Services committee on January 13, 2010 at 8:30 a.m., and three hearings in front of various committees on bail practices and the Interstate Compact Act. Chair Boerner and Ms. Soliz-Conklin will be attending all meetings and are on the agendas to give testimony.

C. Legislative Committee

Chair Boerner reminded members that at the December meeting they discussed the makeup of the 2010 legislative committee, which will include Judge Warning, Lenell Nussbaum and Russ Hauge as well as Dave Boerner.

The Chair invited anyone who is interested in be on the legislative committee to notify him. Ms. Hinchcliffe announced that the first legislative committee teleconference is scheduled for January 14, 2009, at 7:30 a.m.

Chair Boerner requested to add another agenda item for brief discussion. He explained that there is currently a Domestic Violence bill that is pending and asked members if it is a subject that they would want to explore and take a position on.

Mr. Satterberg briefed the Commission on proposed Domestic Violence legislation that will target individuals who are charged with a felony DV offense and have multiple DV misdemeanor convictions. After some discussion on the issue, there was consensus that this issue should be brought back for the February meeting.

Some of the discussion included the time for phase-in since many jurisdictions do not currently plead and prove the DV designation, how many other crimes use misdemeanors as sentencing multipliers, and whether the existing aggravating factor for domestic violence was adequate for penalizing the criminal behavior.

Looking at the statistical summary provided today, it showed that in Fiscal Year 2009 the aggravated factor for domestic violence was used five times.

Chair Boerner reminded members that the legislative committee may need to call a special meeting on this or other issues that come up and that it may be facilitated by teleconference with adequate notice.

IV. SGC BYLAWS

The Commission adopted new administrative rules in October. The new rules removed the SGC bylaws and the commission agreed to adopt them as a policy instead of through the rules process, to facilitate amendments. The bylaws were adopted in the December meeting. Staff was asked to draft amendatory language regarding procedures for use of designees, and options will also be provided related to determination of a quorum.

Ms. Hinchcliffe presented on this agenda item and referred to the adopted bylaws in December and the memorandum on proposed language included in the today's packets.

The members discussed the pros and cons as to whether member designees should have the same voting rights as the actual appointed member.

The Chair clarified that the only non-voting members are the legislators. Ex-officio members are voting members. Robert's Rules of Orders do not have rules on voting vs. non-voting members.

There was a comment made that the SGC already approved bylaw changes for authorized designees at the December 2009. At this point, the discussion is about procedure for notifying the Commission about when a member sends a designee to a meeting.

MOTION# 10-2, TO ADOPT THE LANGUAGE ON PAGES 2 AND 3 OF THE MEMORANDUM TO INCLUDE VOTING PROCEDURES UNDER ARTICLE V. AND ALLOW DESIGNEES TO BE COUNTED IN THE QUORUM.

Moved: Lenell Nussbaum

Seconded: Lucy Isaki

Judge Lum clarified that this motion included designees in the quorum count. Judge Fair also ask that written authority be accepted by e-mail.

REVISED MOTION# 10-2, TO ADOPT THE LANGUAGE ON PAGES 2 AND 3 OF THE MEMORANDUM TO INCLUDE VOTING PROCEDURES UNDER ARTICLE V, ALLOW DESIGNEES TO BE COUNTED IN THE QUORUM AND SPECIFICALLY INCLUDE EMAIL AS AN ACCEPTABLE FORMAT TO SEND WRITTEN AUTHORITY REGARDING DESIGNEE.

Vote:

Approve: David Boerner, Chair, Lynne DeLano, Hon. Ellen J. Fair, Lucy Isaki, Dan Satterberg, Michael Kawamura, Hon. John Meyer, Hon. Dean Lum, Lenell Nussbaum, Ida Ballasiotes, Eldon Vail, Hon. Stephen Warning.

Oppose: Lynda Ring-Erickson

Abstentions: None

MOTION PASSED

MOTION# 10-3, ADD LANGUAGE TO ARTICLE V “A MOTION OR RESOLUTION MAY BE MADE BY A VOTING COMMISSION MEMBER ONLY.”

Moved: Judge John Meyer

Seconded: Lenell Nussbaum

Friendly amendments were made to the original motion:

MOTION# 10-4, ADD LANGUAGE TO ARTICLE V “A MOTION OR RESOLUTION MAY BE MADE BY A VOTING COMMISSION MEMBER ONLY.” AND STRIKE ARTICLE V PARAGRAPH (1).

Moved: Judge Ellen J. Fair

Seconded: Lynda Ring-Erickson

Vote on MOTION# 10-4: Unanimously passed (no oppositions or abstentions).

V. INTERSTATE COMPACT AND BAIL PRACTICES SURVEY – DISCUSSION

Ms. Hinchcliffe introduced the topic by directing members to copies of the bail practice survey and informal recommendations from a multi-disciplinary workgroup that Judge Warning was a part of which were included in the distributed materials. These issues are under review in Olympia following the murder of four police officers in Lakewood. SGC is conducting a survey and developing a depiction of bail practices throughout the state. Commissioners may want to include some perspectives in the report that goes to the

Legislature. The results/comments will be compiled at the end of day Monday, January 11th and emailed to the members on Wednesday or Thursday.

Chair Boerner introduced the Interstate Compact portion of the discussion and asked Mr. Vail to discuss the issues.

- It's a problem that if Washington receives someone, they should have full authority to determine if the supervisee can enter Washington, same with the full authority to send the supervisee back to the state where they violated parole. That is not the way the interstate compact works at this time.
- Mr. Vail said amending the Interstate Compact process will be very complicated.
- He then briefed the Commission on what took place between Washington and Arkansas on the Clemmons case. He stated that there are a lot of procedural rules that need to be figured out and possibly amended.
- Mr. Vail said that if DOC had all the information on Mr. Clemmons that they have now, that his risk assessment score would have been higher. DOC's report on this will be completed on January 11, 2009.

Members had approximately a 45 minute discussion on bail issues and the Interstate Compact Act.

- If Washington steps out of the interstate compact, Washington will not be notified when a supervisee enters the State.
- The question was posed, "What does posting more bail have anything to do with dangerousness?" Washington State does not allow for dangerousness to be considered, because everyone has a right to bail, there is a Constitutional presumption and court rule. Federal Courts can factor that in because they are allowed to deny bail.
- There has been some discussion outside the SGC to amend the constitution to set no bail for third strikers.
- Concern was expressed about the lack of standards for bail companies. Some companies take risks on bailees that they ordinarily should not take. There is sometimes a disconnect between the bail that the judge sets and what the bailee must actually post based on which bail company posts the bail.
- Senator Kline has no problem adding life without parole charges to same bail standards as a capital cases. He proposed the Commission support a study of the bail/no bail system.
- Judge Warning thinks this should be given to a task force, not the commission. Senator Kline is working with Senator Carrell on using a task force to address whether there should be a constitutional amendment regarding bail.
- Commission agreed that they should certainly be a resource for the discussion on Interstate Compact issues since this body has oversight. However, members formed a consensus about not handling the bail issues or hosting the task force if created.
- The Commission briefly discussed the concern that there may be a separation of powers issue if the Legislature acts on bail practices. Chair Boerner provided a history of who originally had authority to set bail practices.

- There was some discussion about increasing/penalty sanction for the crime of Rendering Criminal Assistance. This was discussed in light of Pierce County charging some of Mr. Clemmons family members with offenses related to their alleged role in helping him evade the police and providing him medical assistance. There was general agreement that the SGC play a role in any legislation regarding amending the rendering criminal assistance statute and that it may be an issue to bring back in February.

VII. ADJOURNMENT

Chair Boerner adjourned the meeting at 11:02 a.m.

VIII. LUNCH

Commissioners may continue their conversation during lunch.

APPROVED AND ADOPTED BY THE SENTENCING GUIDELINES COMMISSION

Dave Boerner, Chair _____ Date

Jean Soliz-Conklin, Executive Director _____ Date