



STATE OF WASHINGTON  
SENTENCING GUIDELINES COMMISSION  
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**MINUTES**  
**February 12, 2010**  
9:00 a.m. to Noon  
**Holiday Inn Hotel**  
**17338 International Blvd.**  
**SeaTac, Washington**

**Members Present**

Dave Boerner, Chair  
Hon. Ellen J. Fair, Vice Chair  
Hon. John Meyer  
Eldon Vail  
Sheriff Paul Pastor  
Mike Kawamura  
Judge Lum  
Lenell Nussbaum  
Dan Satterberg  
Tim Killian  
John Clayton  
Russ Hauge

**Members Absent**

Lynne DeLano  
Lynda Ring Erickson  
Edward "Ned" Delmore  
Mary Ellen Stone  
Hon. Stephen Warning  
Lucy Isaki  
Ida Ballasiotes  
Rep. Sherry Appleton  
Sen. Adam Kline  
Rep. Kirk Pearson  
Sen. Pam Roach  
Cities Representative (vacant)

**Staff Present**

Jean Soliz-Conklin  
Shannon Hinchcliffe  
Shoshana Kehoe-Ehlers  
Andi May  
Jennifer Jones

**Others Present**

Ginger Richardson, Washington Federation of State Employees; Judge O'Connor, Spokane Superior Court Judge; Seth Fine, Asst. Chief Criminal Deputy Snohomish County Prosecutor's Office.

**I. CALLED TO ORDER at 9:19 a.m.**

Chair Dave Boerner called the meeting to order and announced that there was a quorum.

**II. APPROVAL OF MINUTES**

Minutes were delayed until next meeting.

**III. EXECUTIVE DIRECTOR'S REPORT**

The Legislative Committee convened in an emergency fashion on Monday to prepare to testify on this bill. It splits and consolidates the functions of the SGC, namely it puts the data and reporting functions in the new "Forecast Council," and the policy functions including the Commission and the Sex Offender Policy Board under the Department of Corrections. I testified in front of the committee and staff has devoted many, many hours to the fiscal note attached to this bill. The Governor has not taken a position on the bill.

As a result of the Caseload Forecast Council meeting, DOC's inmate population went up 500 which is an issue that DOC is dealing with now. This issue was offered to DOC last session and DOC is not interested in having the functions under their umbrella.

**V. (Taken out of order as IV) BILLS OF INTEREST TO THE COMMISSION - ACTION**

The Legislative Committee has taken its job of taking things back to the Commission very seriously, such as with SB 6849 when they called an emergency meeting of the Commission for a position.

SSB 6639/HB 3045-Alternatives to Confinement. Judge O'Connor and Judge Fair made some comments regarding their concerns about implementation. For children who are dependents of the court, there is a different statutory focus. Mr. Vail explained that these would be targeted services for those with targeted issues and at this time it would only affect 27 people. Members discussed the practical application of the bill to an inmate. The Commission will not take a formal position at this time.

SSB 6550/2781-Sanctions for Offenders committing an Assault against an Officer. Legislative Committee did some work on the issue including looking at case law regarding the sanctions. The bill passed the Senate last night. This bill/issue emerged from the Governor's task force. Members discussed the pros and cons of the Act, swift sanctions, due process considerations and others. The Commission will not take a formal position at this time.

Mention of HB3112 Assault of a law enforcement officer with a deadly weapon is elevated to Assault 1, although it has not made it to hearing yet.

Members had a brief discussion of ESHJR 4220 and the legal questions that may arise from the proposed language.

D.V. Bills – Mr. Satterberg supports the bills of misdemeanor cumulative scoring. The Commission will not take a formal position at this time.

**BREAK – reconvened at 10:41**

Mr. Clayton introduced an issue regarding manifest injustice usage of cases coming into JRA and asked if there is a general pattern or feeling about the use of “Manifest Injustice” (MI) sentences. Judge O’Connor commented that it may often be dependent on resources, those jurisdictions lacking in resources may have higher MI dispositions while those who have more resources may have lower MI dispositions. Judge Fair commented that it was more probation department driven. JRA wants to do a study on it because manifest injustice is such an open criteria (instead of aggravating and mitigating factors.) Mr. Satterberg offered the opinion that the juvenile sentencing grid may not be constructed to give enough of a penalty, so judges may make the decision to give an MI disposition to compensate for that.

**INTERSTATE COMPACT- DISCUSSION**

Ms. Soliz-Conklin briefly reviewed the statutory role of the commission as it relates to the Interstate Compact. She referred to the handouts which outline the Commission’s duties, the actual Interstate Compact and federal law.

Scott Blonien, Assistant Secretary of Government, Community Relations, and Regulatory Compliance for the Department of Corrections, reported to the Commission on the status of DOC interactions with the Interstate Compact Commission. The state congressional delegation is seeking rule changes that will enhance public safety in the aftermath of the slaying of four Lakewood police officers.

Mr. Blonien started by explaining the context for the problem and what system was in place before the Compact. There was a patch quilt of agreements and processes between the fifty states, and there were no requirements to notify the state they are travelling to.

Currently, the compact is mandatory. DOC will not send anyone to another state to be supervised unless it is through the Compact. Also, if another state sends us someone, we will accept them. Mr. Clemmons was a mandatory transfer (There are a set of rules that say if a sending state makes an application to a receiving state, they do an investigation, if they find they are a resident of the state or a family member, or a means to live, then it is mandatory.)

Additionally, it is very difficult to send the person back to the sending state. Rules provide that if they commit a new felony, they have to take them back. If they commit three or more significant violations then the sending state has to take them back. However, “significant violations” has not been defined and it has difficult to enforce these provisions.

Explanation of the Proposed Rule Changes:

- 1) Require that the sending state prepare a Transfer package, when the sending state sends a package (Currently, they are only required to send the J&S.) You can have an individual that has psychological reports, extensive juvenile history, etc. Proposed: The sending state must send all of the relevant documents.
- 2) Federal Return: if the returning state makes the determination they can no longer safely supervise, the sending state should be compelled to take them back.
- 3) Being able to issue a warrant to send the offender back (not just the sending state to issue the warrant for return.)
- 4) Abscond situation--the sending state should be required to take them back. They should no longer get the privilege of staying in the state when there is an abscond issue.

Part of the problem is once a transfer occurs there is very little incentive for the sending state to take them back therefore, there needs to be rules that outline this procedure.

There are a few bills that were introduced in the legislature which demonstrated the frustration with the Compact. One is to invoke the emergency rule-making process. They are also working closely with the congressional discretion to work on these issues. They also want to look at the entire system to see if there are any additional issues besides the ones raised. We import about twice as many offenders as we export.

Currently, DOC has been approaching the states that we get most of the offenders from and try to work out supplemental rules in memorandums of understanding to try to negotiate them. (These include such states as Oregon, Idaho, and others.) These attempts have really heightened awareness of key people about how the Compact works.

Ginger Richardson (WFSE) also proposed that offenders pay for their transfers. She gave the example that Oregon offenders pay approximately \$200 for their transfer package.

Chair Boerner ask that this issue be put on the agenda for next the next meeting so the Commission can take a position on the rule proposals. Mr. Blonien will forward the proposed language.

Judge Meyer asked the staff to propose a resolution for adopted language on the rule changes.

**VI. Chair Boerner adjourned at 11:27.**

**VII. LUNCH**

Commissioners continued their conversation during lunch.

**APPROVED AND ADOPTED BY THE SENTENCING GUIDELINES COMMISSION**

\_\_\_\_\_  
Dave Boerner, Chair \_\_\_\_\_ Date

\_\_\_\_\_  
Jean Soliz-Conklin, Executive Director \_\_\_\_\_ Date