



STATE OF WASHINGTON

OFFICE OF FINANCIAL MANAGEMENT

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SENTENCING GUIDELINES COMMISSION

MINUTES

December 16, 2011

8am – 9am

Teleconference

Toll free Telephone: 1-855-203-0771

Participant pin number: 3375525

Members Present:

Dave Boerner
Dan Satterberg
Hon. Dean Lum
Hon. Ellen Fair
Hon. John Meyer
John Lane
Lenell Nussbaum
Russ Hauge
Hon. Stephen Warning
Timothy Killian
Bernie Warner

Staff:

Keri-Anne Jetzer

Members Absent:

Rep. Sherry Appleton
John Clayton
Lynne DeLano
Senator Adam Kline
Lynda Ring-Erickson
Michael Kawamura
Sheriff Paul Pastor
Rep. Kirk Pearson
Senator Pam Roach

Guest:

Sandy DF Mullins, DOC

Members of the public were present on the teleconference.

I. CALL TO ORDER

Dave Boerner, Chair, called the meeting to order at 8:02am.

II. ROLL CALL

Keri-Anne Jetzer will call the roll of members. There was a quorum at the time of roll call.

III. STATUS OF SENTENCING GUIDELINES COMMISSION

Chair Boerner briefed the members on the new status of the Sentencing Guidelines Commission (SGC) and the Sex Offender Policy Board (SOPB) under the Office of Financial Management per the passage of legislative bill ESSB 5891 (exhibit A). He indicated that the Caseload Forecast Council now has the sentencing data previously track by the Sentencing Guidelines Commission as well as the responsibility of the fiscal note process.

John Steiger, of the Caseload Forecast Council (CFC), mentioned that they have split fiscal note responsibility with the Department of Corrections (DOC). The CFC will provide fiscal notes with prospective changes while the DOC will provide fiscal notes proposing changes to existing populations. This was based on which agency had the better data to address the proposed legislative change. John also mentioned that the 2011 Adult Sentencing Manual is almost complete. It will eventually be available online and in printed form. He hopes it will be available online by the end of the year on the CFC website. Keri-Anne mentioned that the SGC website will also note that it can be found there.

Dave mentioned that there were a few members whose terms had expired. He emphasized that those whose terms have expired still serve as members until their replacement has been found. Keri-Anne informed the members that the issue was current being addressed.

IV. DISCUSS SGC 2012 MEETING SCHEDULE

Under the new status of the SGC, meetings for the upcoming calendar year were discussed. Dave indicated that teleconference calls worked well since there were no projects currently assigned to the SGC. The teleconference calls will take place the second Friday of every month starting at 8am. These dates would be as follows:

| | |
|-------------|--------------|
| January 13 | July 13 |
| February 10 | August 10 |
| March 9 | September 14 |
| April 13 | October 12 |
| May 11 | November 9 |
| June 8 | December 14 |

V. LEGISLATIVE SUB-COMMITTEE

Dave Boerner reminded member that the SGC creates a four-person legislative sub-committee to review bills of interest weekly during the legislative session. Policy has been that if all four members agree, the SGC can take a position. If they do not agree, then the SGC would be called into a special meeting or the bill address during a regular meeting. Special meetings need to be posted 24 hours in advance under the Public Meetings Act. Volunteers for this sub-committee are Dave Boerner, Lenell Nussbaum, Russ Hauge and Judge Stephen Warning. Staff will provide briefings on bills of interest to sub-committee members.

VI. DEPARTMENT OF CORRECTIONS PROPOSED BUDGET CUTS

Sandy Mullins, DOC's Acting Assistant Secretary Policy Support Division, briefed the members on the proposed budget cuts to DOC. House Bill 2144 proposes to credit offenders with a 150-day reduction toward his/her release date (exhibits B and C). Low and moderate risk level sex offenders would receive a secondary screening with the Static 99 tool. The impact of this bill would be a cut of 88 FTEs and a reduction of \$14M, including the closure of MSU at the Penitentiary and repurposing the Reformatory at Monroe from medium to minimum security.

House Bill 2143 (exhibit D) proposes reengineering of community custody similar to the HOPE program model. It has 3 primary components.

- 1) It distinguishes between high and low level violation behavior. The response to low level violation behavior would be a 1-3 day confinement sanction. The response to high level violation behavior would be capped at 30 days confinement.
- 2) No hearings process for the 3-day confinement period. Offenders will be notified beforehand of specific behaviors that will result in a 3-day sanction.
- 3) Process change when new crimes committed. Instead of processing as a violation, DOC will notify law enforcement of evidence of new crime committed by offender and that DOC is detaining offender for 72 hours with expectation that it will be treated as a new crime by law enforcement. This will have impact on the counties.

The projected impact is \$36M with \$9M being reinvested for a total savings to the state of \$27M. The reinvestment would frontload evidence-based programs to community custody making programming and treatment available to offenders, not as a punishment for violation but as indicated by the needs assessment. The reinvestment piece is in the fiscal note assumptions, not in the bill. Sandy added that DOC will be moving on many of these elements regardless of the legislation.

Dave Boerner asked if the new crime information would be sent to law enforcement or prosecutors. Sandy replied that there are varying protocols per county and DOC would likely adjust to whatever is local practice. DOC would like to the Commission or an advisory group to weigh in on those pieces of the

legislation. While this is well-researched policy, since it didn't move during the special session, there is now more time to work with stakeholders.

Lenell asked for examples of high and low risk violation behavior. Sandy explained that the current process is a very discretionary system. In the proposal, they would add to the WAC a proscriptive list of examples of low (failure to report, positive urinalysis) and high (firearm, contact with victim) risk behavior as found in the Behavior Accountability Guide. She provided a chart outlining the Governor's proposals to DOC's fiscal year 2012 supplemental budget (exhibit D). She will provide a copy of the behavioral guide, which also has proscriptive aggravating and mitigation factors, to staff for distribution. DOC will also create a review process to replace hearings process to review how low risk sanctions are being applied.

Dan Satterberg asked about the status of the NIC groups and partnerships with local law enforcement. Sandy replied that they are highly valued and they are aware of those partnerships. Bernie indicated that there is nothing in the proposal to eliminate them. They are a key part of the process and the intent is to keep them.

Chair Boerner queried if various organizations have taken a position on this proposal. Lenell indicated that WACDL has not; Judge Warning indicated that the Superior Court Judges' Association has not; Russ Hauge stated that WAPA has not looked at it carefully yet.

Among the other various budget cuts, Sandy thought the \$5M chemical dependency programming cuts would also be of interest. She said the thinking would be that if much of it comes from the community custody programming, the programs could be funded with the investment money in HB 2143 which would allow a better job of targeting who are receiving the services with the help of DOC's Quality Assurance unit.

Seth Fine asked if any action will happen in regard to the SGC's Evidence Based Community Custody workgroup. Sandy said she was not sure but many of the principles from the EBCC are being utilized here. David Boerner notified members that there were no new resources and a lack of staff to proceed with that at this time. After the session, another look maybe made to reinstitute things, if that is the decision of the members.

Lenell Nussbaum asked if the risk assessment tool has been made available to prosecutors or judges for use at the time of sentencing. Judge Stephen Warning reported that due to funding allocated to JSC, by March the adult risk assessment would be available to all counties with the goal as providing one more tool to be used in making bail determinations. They are using the STRONG 2 tool which eliminates all the DOC violation data and streamlines the process. Currently there are five counties involved in the implementation of the tool. By mid-January

those counties will be using the tool at which point they will learn if expectations of the tool are being met.

Dave Boerner suggested discussing these bills again at the January 13, 2012, SGC meeting.

VII. SEX OFFENDER POLICY BOARD REQUEST

Dave Boerner informed the members that The Senate Human Services & Corrections Committee has requested the Sex Offender Policy Board review Washington State's policy on sex offense statute of limitations in the context of best practices and effectiveness. Keri-Anne reminded members that the SGC completed a review of the sex offense statute of limitations in 2008. She will be forwarding that information to the SOPB.

John Lane pointed out that there continues to be interest by certain legislators about eliminating the statute of limitations on sex offenses. He said Senator Hargrove doesn't have any particular timeline but would like to have someone review what was done in 2008 and see if anything has changed since then.

VIII. ADJOURNMENT

Chair Boerner adjourned the meeting at 8:42am.

Next full Commission meeting will be on January 13, 2012, via teleconference at 8am.

APPROVED AND ADOPTED BY THE SENTENCING GUIDELINES COMMISSION

Dave Boerner, Chair

Date