



STATE OF WASHINGTON

OFFICE OF FINANCIAL MANAGEMENT

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**SENTENCING GUIDELINES COMMISSION
MINUTES**

August 11, 2017 9:00am – 12:00pm
Criminal Justice Training Commission
19010 1st Avenue South Room C-202
Burien, WA 98148

Members Present:

Russ Hauge
Jon Tunheim
Kathleen Kyle (Kimberly Gordon proxy)
Hon. Maryann Moreno
Hon. Catherine Shaffer
Hon. Roger Rogoff
Sonja Hallum
Kecia Rongen
Stephen Sinclair (Alex MacBrain proxy)
Kimberly Gordon
Rep. Eric Pettigrew
Tony Golik
Marybeth Queral
Sheriff Paul Pastor

Members Absent:

Senator Kevin Van De Wege
Rep. Brad Klippert
Jennifer Albright
Rev. Terri Steward
Hon. Stanley Rumbaugh
Tim Wettack
Phillip Lemley
Senator Mike Padden

Staff:

Keri-Anne Jetzer

Guests:

Shani Bauer Senate Committee Services; Ned Newline, WASPC; Clela Steelhammer, DOC; Jackson Maynard, Senate; David Boerner; Erika Rusher, WA Appellate Project; Juliana Roe, WSAC; Ed Vukich, CFC; Darrel Riley

I. CALL TO ORDER

Chair Hauge asked members to introduce themselves. As this meeting was being recorded by TVW for future airplay, he reminded everyone to speak into the microphones.

II. APPROVAL OF MINUTES

MOTION #17-19: MOTION TO APPROVE MEETING MINUTES FROM JULY 2017

MOVED: Judge Moreno
SECONDED: Judge Rogoff
PASSED: Unanimous

III. SRA REVIEW

Updates from Work Groups

- a. Corrections – Alex MacBain reported that they have not had any additional meetings.
- b. Judges – Judge Moreno reported that they are working on finding a time that works for everyone to meet.
- c. Prosecuting Attorneys – Jon Tunheim noted that they had their legislative committee meeting. He said the outcomes were similar to what was reported last month and are the general feeling of the members. They are supportive of general principles related to the Commission completing a holistic review of the Sentencing Reform Act, simplification of the grid, and expansion of discretion within the grid. There was also interest in continuing to look at the roll of community supervision, perhaps expanding the crimes that get supervision, supporting DOC's effort to improve supervision especially in using the Risk/Need/Responsivity model, and the idea of some type of earned time away from supervision.

Chair Hauge inquired if they discussed post-sentence review. Jon said the prosecutors have a strong consensus-based position that the clemency process should be strengthened.
- d. Defense Attorneys – Kimberly Gordon said that she felt things may have shifted a bit after the last meeting and she wanted to get a better sense of where the Commission was going before contacting the organizations she's been in touch with.

Chair Hauge explained to member his thinking when drafting the Youthful Offender Grid proposal. The population of offenders between 16 and 26 were chosen because age 16 is the youngest age an individual can be brought to adult court by operation of law. Age 26 is referenced frequently in the research on adolescent brain development when an individual's brain is fully developed and, as illustrated in the data provided by Keri-Anne, it represents the bulk of the caseload that comes before the Superior Courts for sentencing. He stated the age range is not cast in stone but rather a starting point for discussion.

Chair Hauge also explained how he arrived at the cell ranges in the grid included in the draft proposal. He simply took the bottom and top of the entire

range for the collapsed offender score and seriousness levels, divided by three and used that to set the new ranges.

In addition to the draft proposal, Chair Hauge feels the Commission needs to continue discussions about post-conviction sentence review.

He encouraged members to keep the discussion of the draft proposal at a high level and not develop a position.

Members discussed the draft proposal and noted the following comments:

- Adding in evidence-based sentencing alternatives
- Do we still want supervision? If so, who should do it and what role should judges have, if any, in enforcing their own sentences.
- The need of a tool to help guide judicial discretion, perhaps a report that shows how other judges have sentenced.

Kimberly Gordon informed members that she received many concerned calls and emails from her stakeholders regarding the draft proposal. She talked about the State Supreme Court decisions regarding the discretion of judges related to juvenile offenders. She felt the proposed grid would be subject to constitutional challenges. Her suggestion was to start with the fundamentals: What are we trying to do for juveniles? What do we need to accomplish to comply with what the Supreme Court has decided? Chair Hauge reiterated that the proposal was just a draft meant to create discussion. Judge Shaffer suggested the use of presumptive ranges. She went on to say that if there were tools in place to guide discretion it would solve much of the angst the defenders have raised and would address the constitutional mandate.

Alex MacBain reminded members that the wider the sentencing ranges are the less predictability there is for the legislative branch to understand the changes in policy they are going to make and the impact it would have on DOC capacity.

Judge Rogoff thought that making the ranges as wide as possible would help move the unpredictability into the hands of judges who are elected and their decision are public and can be subject to public comment.

Jon Tunheim said, while he appreciates the effort to create a proposal that incorporates ideas the Commission has consensus on, the proposal feels like it's still building the SRA by piecemeal and adding complexity. His stakeholders would be more supportive of looking at ways to incorporate evidence-based factors into the standard grid.

Sonja Hallum believed a large scale change would not be accomplished in one legislative session. Since the bill to fund the full-scale review of the SRA did not pass, she hoped to see an overarching framework that identified work that

needs to be done. She went on to say that if the Commission can come up with a bigger picture perspective, it could start an education process for the legislature that would be the foundation for holistic change. If that can happen this session, the Commission could submit a request for the additional work that needs to be done over the next year.

Chair Hauge agreed that the Commission needs to decide if they want to develop a discreet proposal or do a review of the entire SRA. Do members want to continue to look at the entire SRA, identify the 'ideal' that they as practitioners would like to see in place and devote themselves to figuring out how to execute that strategy? He noted that it can be hard to sustain that kind of vision without funding or direction from the legislature. He asked members to brain storm how the Commission might approach a comprehensive review over the next few months.

Jon Tunheim suggested spending the next four months creating a more specific framework as to how they would approach this – and specific goals they would look at – and use it to push for the funding so the legislature knows what they would be getting for their money. He referenced the list of topics that the Commission created several meetings ago as a place to start.

Alex MacBain noted that, while the draft proposal does account for many issues members have determined as important (judicial discretion, evidence based practice, etc), it does not really address the complexities of sentencing. It would take more than one proposal to address that.

Judge Rogoff suggested having federal counterparts come to a meeting to speak about how advisory guidelines work in the federal system.

Kimberly Gordon also suggested getting input from the federal bar (judge, US attorney, defense, pre-trial services/probation) on how the advisory system works there so Commission members are all working with the same information. Chair Hauge asked Kimberly and Judge Rogoff to contact potential speakers from the federal bar for the September meeting.

Representative Pettigrew suggested the Commission consider a staffing proposal for the 2018 or 2019 session. Chair Hauge agreed but said he must remain sensitive to the potential for the perception of trying to rebuild the Commission. Jon Tunheim added that the Commission really is the only organization that does this kind of work.

Chair Hauge commented that there are a few areas the members have not discussed as deeply as other areas, such as:

- Presumptive sentencing
- Where does the probation function lie?
- Simplification

Chair Hauge asked Kimberly Gordon and Marybeth Queral to coordinate on getting a speaker on juvenile brain development.

Judge Shaffer thought it would also be helpful to have someone speak to members on juvenile evidence-based practices. Marybeth said she would be able to reach out to someone in the juvenile courts.

Chair Hauge said he would like to develop a work plan at the next meeting. He feels it is important to submit to the legislature concrete steps that need to be taken that reflect what has been discussed thus far if there is have any hope of strengthening the ability to conduct a more general review.

Chair Hauge summarized that the next meetings will need:

- Presentations on judicial discretion and adolescent brain development
- A work plan and what the Commission is working toward while still keeping simplification in mind
- Work on a marketable product/proposal

IV. OTHER BUSINESS

Chair Hauge informed members that a formal action is necessary to identify Mac Pevey as the new administrator to the Interstate Compact.

MOTION #17-18: MOTION TO APPOINT MAC PEVEY AS THE NEW INTERSTATE COMPACT ADMINISTRATOR FOR WASHINGTON

MOVED: Alex MacBain
SECONDED: Kecia Rongen
PASSED: Unanimous

Citizen Darryl Riley requested to speak to the Commission. He asked if the Commission would consider looking at whether sentencing guidelines could be used to lower the number of appeals. He hoped that if there is predictability in judicial discretion that it could be used to model for the legislature the reduction of cost in the legal system and in the DOC. If judicial discretion is increased, that the number of appeals will decrease.

V. ADJOURNMENT

APPROVED AND ADOPTED BY THE SENTENCING GUIDELINES COMMISSION

/ s /

Russ Hauge, Chair

Date