



STATE OF WASHINGTON

SENTENCING GUIDELINES COMMISSION

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MINUTES

SENTENCING GUIDELINES COMMISSION

January 18, 2008

ROLL CALL Members Present:

Dave Boerner
Ida Ballasiotes
Jeri Costa
Ned Delmore
Dr. Lynda Ring Erickson
Hon. Ellen Fair
Russ Hauge
Ann Heath
Hon. Ronald Kessler
Hon. Dean Lum
Lenell Nussbaum
Eldon Vail

Members Absent

Rep. Sherry Appleton
Michael Brasfield
John Clayton
Michael Kawamura
Adam Kline
Hon. Tari Eitzen
Lucy Isaki
Tim Killian
Pam Roach
Jay Rodne
Mary Ellen Stone

Staff Present

Jean Soliz-Conklin
Razak Garoui
Stevie Lucas
Andi May
Teresa Waller

Others Present:

Elizabeth Drake, Washington State Institute for Public Policy; Brad Meryhew, Washington Association of Criminal Defense Lawyers; Lindsey Palmer, King County Sexual Assault Resource Center; Tom Sahlberg, Indeterminate Sentencing Review Board; Peggy Smith, Indeterminate Sentencing Review Board; Jim Thatcher, Department of Corrections.

I. CALL TO ORDER:

Vice Chair, Judge Ellen Fair, called the meeting to order at 9:25 a.m. She welcomed members and guests and explained that many people were delayed due to a major accident on I-5.

Jean Soliz-Conklin introduced Razak Garoui, PhD, as the SGC's Senior Research Director. Dr. Garoui has a M.S. and a Ph.D. in statistics. He was a Senior Fulbright Research Scholar and Associate Professor at New Mexico State University and has published in numerous well-respected journals. Most recently he has been conducting research for OSPI for seven years and previously worked for the Workforce Training Board and ESD. He comes to us very highly recommended.

Agenda items were taken out of order for late arrivals due to an I-5 Accident

IV. Update on the SGC Legislation:

Jean Soliz-Conklin briefly reported on the status of the SGC Supervision Simplification Bill. She told the commissioners that:

- Legislative members like the term "Custody" as the term that will be used (combining "supervision" "custody" and "placement").
- The bill is not quite policy neutral because the current statute includes slightly different conditions for custody, supervision, and placement but Seth Fine spent long hours with legislative staff and they agreed that simplification really requires combining the three types of community status into one generic term. Jean said they figured the different conditions of custody would affect only a few people, those who committed their crimes before July 1, 2000 and who are sentenced after the simplification bill takes effect. Judge Kessler pointed out that it would also potentially affect some others for whom arrest warrants were issued.

The Grid Expansion bill was heard in the Senate Judiciary Committee. Jean-Soliz-Conklin testified and said that the commission supports this bill. Jean reported that Tom McBride also testified in support on behalf of the prosecutors.

III. Washington State Criminal Records Audit for Adult Felonies

Elizabeth Drake, Research Associate for the Washington State Institute for Public Policy, presented a power point on the audit and reported the recent findings. The commission discussed identification numbers, date of birth and other items retrieved from other agencies.

Recommendations were as follows:

- Recommending SID #'s be the official identifier
- Transmit information electronically
- Discuss methods to have SID signed off by judges-how to guarantee the SID is on the form
- Life scan devices (capture fingerprints in court room)
- WSP flagging positive SID #'s

Chairman Dave Boerner arrived during this presentation and asked who follows up on recommendations. Beth said she and others ask the same question. It was pointed out that the 39 counties have different Judgment and Sentence forms, making electronic data capture impossible. Russ Hauge explained that the prosecutors make up the forms, but they are continuously

changing in response to case law and new legislation. Counties differ on implementation of these events. Jean-Soliz-Conklin spoke of planning and activities by SGC staff to ensure data integrity and told Commissioners she would soon present a report on the SGC database and performance measures related to updating the database.

V. Legislative Committee and Session Communication Plan

Jean reported that in accordance with the protocol agreed to in December the Chairman has appointed a SGC 2008 Legislative Committee. Members of the committee include Ronald Kessler, Russ Hauge, Ned Delmore, Ann Heath, Lenell Nussbaum and Dave Boerner. The members agreed to teleconference every Wednesday at 7:30 a.m. and to keep members informed so they can have a voice.

Members then discussed the following bills:

SB 6362: An act relating to the Sentencing Guidelines Commission review of statutes of limitation regarding sex offenses in the Revised Code of Washington, and amending RCW 9.94A.850. The members agreed that the SGC assignment in this bill fit within their interests, expertise, and legislative mandate.

HB 2570: An act relating to repealing minimum sentences for juveniles who commit offenses related to motor vehicle theft. The members discussed the fact that this bill cleans up a too-broad omnibus bill that swept juveniles up in the wrong way.

MOTION # 1002 TO SUPPORT HB 2570

Moved: Lenell Nussbaum

Seconded: Ronald Kessler

PASSED: Unanimously

SB 6184: An act relating to most serious offenses. The definition of “most serious offense” is amended to include any out-of-state conviction for a felony offense with a finding of sexual motivation if the minimum sentence imposed was ten years or more.

Discussions included:

- The bill would make out of state convictions with sexual motivation a most serious, although not all states have sex motivation findings, so the language needs tightening. In past bills, the language reached too far, putting a sex modifier won’t catch everything but would get the most serious offenses.
- Some members feel amendments to the definitions need more discussion and that there have been too many amendments as well as drafting errors.

MOTION # 1003 TO OPPOSE SB 6184

Moved: Lenell Nussbaum

Seconded: Ronald Kessler

PASSED: Unanimously with Jeri Costa taking no position

Judge Lum suggested that rather than the SGC opposing the bill members should vote against the motion based on technical issues.

MOTION # 1004 AMEND MOTION 1003 TO SAY AGAINST SB 6184 FOR TECHNICAL REASONS

Moved: Jeri Costa

Seconded: Dean Lum

PASSED: Unanimously with Lenell Nussbaum abstaining

HB 2712: An act relating to criminal street gangs. This bill calls for the Governor’s Juvenile Justice Advisory Committee to issue a request for proposal to implement five pilot projects throughout the state that focus on combating criminal street gangs and violence. There are funds for local law enforcement to take some immediate actions and the bill includes a civil injunction statute, creates a crime of “criminal street gang recruiting”, as well as amendments to malicious mischief crimes. An aggravating factor would be added to the SRA related to committing crimes for the benefit of a street gang.

Ned Delmore gave some background, reminding the commission that there are three key prongs to approaching gangs: prevention, intervention and suppression. He said he and many other juvenile court administrators have been working on these prongs for years. He and many others participated in the task force that developed this approach, but he and others have concerns with this bill. There are differing philosophies. Many are concerned that the civil injunction authority would result in some law enforcement personnel tagging youth by dress or race and that it will increase racial disproportionality.

Secretary Vail said that DOC was still considering its position, and that it was clear that funds were not in the Governor’s budget. He is wondering how this will help. DOC has good data now about felon gang membership. He acknowledged the bill as responding to important issues.

Lenell Nussbaum said that that the sentencing multipliers are not a good idea and that they would also add a *Blakely* element. Several members commented on the practicality of the new definitions. Judge Fair said the civil injunction looked impossible to put into effect. Russ Hauge suggested that the SGC take no position at this time as the commission have just become aware and has significant concerns. The members agreed and are willing to work with it.

MOTION # 1005 SGC TAKES NO POSITION ON HB 2712 AT THIS TIME

Moved: Jeri Costa

Seconded: Lynda Ring-Erickson
PASSED: Unanimously

HB 2621: An act relating to requiring certain sentences for vehicular homicide and vehicular assault to run consecutively. The Commissioners discussed scoring issues and the mandatory nature of this language. This bill seems to be created in response to one case.

Discussion included comparing the implementation of this penalty in relation to those serious violent offenses. Members decided to oppose this bill due to harshness, complexity, confusion and the lack of discretion.

MOTION # 1006 TO OPPOSE HB 2621
Moved: Ronald Kessler
Seconded: Lenell Nussbaum
PASSED: Unanimously

HB 2704: An act relating to considering vehicular assault and vehicular homicide convictions from other jurisdictions, under the felony drunk driving law. Members discussed the fact that this was a clean-up bill and consistent.

MOTION # 1007 TO SUPPORT HB 2704
Moved: Ronald Kessler
Seconded: Jeri Costa
PASSED: Unanimously

HB 2705: An act relating to the sentencing enhancement for vehicular homicide; amending RCW 9.94A.533; and creating a new section. Teresa Waller answered Commissioners' questions by checking the manual and said this bill has the same language as firearms. They discussed scoring implications and the members decided to watch this bill with interest.

II. Approval of Minutes for December 14, 2008.

Members voted to approve the minutes from the December 14th meeting. Judge Fair requested an amendment ...

MOTION # 1008 TO APPROVE THE DECEMBER 14TH
Moved: Judge Kessler **MINUTES AMENDING JUDGE FAIR AS**
Seconded: Jeri Costa **PRESIDING OVER CRIMINAL DOCKETS & NOT**
PASSED: Unanimously AS PRESIDING JUDGE.

STAFF REPORT:

Jean Soliz-Conklin gave a few updates, including hiring Dave Fallen on a contract training new staff on fiscal notes and working with Razak and Duc. She reported that the

SGC “met the burden of proof” and just signed an interagency agreement with OFM to receive an additional \$250,000 held by them pending improvements to the agencies fiscal note capacity and to upgrade the database.

ADJOURNMENT

The meeting was adjourned at 12:00 p.m.

APPROVED AND ADOPTED BY THE SENTENCING GUIDELINES COMMISSION

Dave Boerner

Date

Jean Soliz-Conklin

Date