



STATE OF WASHINGTON

SENTENCING GUIDELINES COMMISSION

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MINUTES

SENTENCING GUIDELINES COMMISSION

December 14, 2007

ROLL CALL Members Present:

Dave Boerner
Rep. Sherry Appleton
Ida Ballasiotes
Michael Brasfield
John Clayton
Jeri Costa
Hon. Tari Eitzen
Hon. Ellen Fair
Russ Hauge
Ann Heath
Lucy Isaki
Hon. Ronald Kessler
Tim Killian
Hon. Dean Lum
Lenell Nussbaum
Pam Roach
Eldon Vail

Members Absent

Ned Delmore
Michael Kawamura
Lynda Ring Erickson
Adam Kline
Jay Rodne
Mary Ellen Stone

Staff Present

Jean Soliz-Conklin
Stevie Lucas
Teresa Waller
Duc Luu
Andi May

Others Present:

Lynn Alfasso, Department of Corrections; Joanna Arlow, Senate Democratic Caucus; Genevieve Davis, Senate Republican Caucus; Sheila Gall, Association of Washington Cities; Evelyn Larsen, Washington Coalition of Sexual Assault Programs; Chris Johnson, King County Sexual Assault Resource Center; Jim Thatcher, Department of Corrections; Jennifer Strus, Senate Human Services & Corrections Committee; Seth Fine, Asst. Chief Criminal deputy Snohomish County Prosecutor's Office; Victoria Roberts, Indeterminate Sentencing Review Board; Peggy Smith, Indeterminate Sentencing Review Board; Teresa Mathis, Executive Director of Washington Association of Criminal Defense Lawyers; Jamila Thomas-Roberts, House Democratic Caucus; Jim Morishima, House of Representatives staff; Brad Meryhew, Washington Association of Criminal Defense Lawyers; Bobbi Cussins, House Republican Caucus.

I. CALL TO ORDER:

Chairman Dave Boerner called the meeting to order at 9:15 a.m. He welcomed members and guests.

II. Approval of Minutes for September 14, 2007 and October 12, 2007

MOTION # 998 **TO APPROVE THE SEPTEMBER 14TH &**
Moved: Michael Brasfield **OCTOBER 12, 2007 MINUTES**
Seconded: Jeri Costa

PASSED: Unanimously

Items III and IV were taken in reverse order, to await certain parties to the discussion.

IV. Governor's Sex Offender Task Force Report

Commissioner Russ Hauge, Kitsap County Prosecutor and Dave Boerner, Chair, summarized proposed changes to the criminal justice system related to sex offenders that were recommended by the Governor's Sex Offender Task Force Report and the SGC Sex Offender Discussion Group that followed.

The Commission discussed a proposal to modify the Determinate Plus system, as follows:

Sentence all sex offenders to the ISRB as "Determinate-Plus" offenders if the offender has any prior conviction for an adult or juvenile sex offense or kidnapping. (Cost offsets are in B. 3)

- Courts would make a "special finding" about the existence of a prior sex offense, as they do now in finding that a crime was committed with a sexual motivation.
- The special finding would then convert the sex offense to a Class A felony, with a lifetime maximum.

Impact:

- Persons convicted of an adult sex offense not now sentenced to determinate plus would be sentenced to determinate plus IF the court finds they had a prior adult sex offense, a conviction for kidnapping or a conviction for a juvenile sex offense.
- Persons now sentenced to determinate plus under a maximum less than life would be sentenced to a life maximum IF the court finds they had a prior adult sex offense, a conviction for kidnapping or a conviction for a juvenile sex offense.
- Focus resources on offenders most likely to recidivate by allowing local courts to release offenders from lifetime supervision upon the recommendation of the ISRB and DOC after appropriate monitoring and risk assessment. Any release decision will require a court hearing with notice to victims and other affected community members so they can participate in the hearing.

Comments included a discussion of whether a suspended sentence might also be useful related to a "Determinate-Plus" sentence. The Commission postponed further discussion of these concepts to the January 18 meeting.

Another proposal from the Sex Offender Discussion Group was to ask the legislature to establish joint rule-making authority between ISRB and DOC to develop and implement protocols for:

- a) assessment,
- b) information sharing in relation to release decisions, and
- c) supervision of sex offenders.

Further discussion examined whether a name change is appropriate at this time for the Indeterminate Sentence Review Board. The Commission agreed to consider these issues during the January 18th meeting as well.

Russ Hauge next introduced the proposal to create a Sex Offender Policy Council overseen by the Sentencing Guidelines Commission (or some independent entity). Professional staff would convene and staff a group of locally-based experts to:

- Stay apprised of research and best practices related to risk assessment, treatment, and sex offender management.
- Develop and report on benchmarks that measure performance across the whole sex offender response system.
- Assess best practices or upcoming trends in other jurisdictions to determine their applicability to WA. State.
- Provide a forum for discussion of issues that require inter-agency communication, coordination and collaboration
- Improve community education and the distribution of information about all parts of the sex offender management system to all interested parties.
- Convene experts to respond to new issues, such as the federal Adam Walsh Act.*
- Support and enhance existing community based prevention programs.
- By utilizing the Washington States system of Community Sexual Assault programs in each county ensure victim voices are heard throughout the system.
- Work with local law enforcement to support sex offender registration and monitoring in the community

In the discussion that followed, Judge Fair requested that formalization of the “case review” function ensure that judges were insulated in a way that does not jeopardize fair trials of defendants. Comments were made regarding the need for a body independent of the SGC, and the need for coordination. Jeri Costa spoke of how the lifetime supervision model is in its infancy and that the ISRB and DOC could use help from experts across the continuum in planning what that might look like. Russ Hauge supported the accountability function and Secretary Vail supported the idea of connectivity and up-front conversations about issues related to sex offenders. Commissioner Heath suggested that a legislatively created body would have the most impact, and that the legislation should be clear about the duties of such an entity. Sheriff Brasfield pointed out that a Sex Offender Policy Council could have some necessary discussions and free up time for discussion of other important crimes.

Please see handouts.

MOTION # 999

Moved: Judge Fair

Seconded: Michael Brasfield

PASSED: Unanimously

**TO SUPPORT THE CONCEPT OF A SEX
OFFENDER POLICY COUNCIL**

III. Report from the Simplification Supervision Committee

Chairman Boerner introduced the item with thanks to Judge Ellen Fair, for her leadership of the Simplification Committee and Seth Fine, Snohomish County Asst. Criminal Chief Prosecutor, who did the bill drafting and detailed research. Dave stated that supporting this bill is not an endorsement of all policies currently in statute. This year the legislation will get the structure clear and pave the way for policy amendments.

Seth presented the results of the SGC work-group, which includes a summary, a section-by-section analysis, a table of contents and a draft bill. He reminded the Commission of their decision that the first step is a policy neutral reorganization of the statutes related to offender supervision. Once the structure is simplified policy changes can be discussed.

The current SRA supervision statutes are confusing in that there is little order to provisions related to sentencing, the imposition of conditions, and violations. The Supervision Simplification Bill combines the existing law into a readable order, as follows:

- PART A. COMMUNITY SUPERVISION
- PART B. SANCTIONS FOR SENTENCE VIOLATIONS
- PART C. TERMINOLOGY CHANGES AND TECHNICAL AMENDMENTS - CHAPTER 9.94A RCW
- PART D. TERMINOLOGY CHANGES AND TECHNICAL AMENDMENTS - OTHER CHAPTERS
- PART E. RECODIFICATION OF OBSOLETE PROVISIONS
- PART F. EFFECTIVE DATES AND TRANSITIONAL PROVISIONS

The Commission discussed various complexities with the current statutory scheme. Judge Fair and Judge Eitzen supported the new approach as a great first step based on their experience in presiding over criminal dockets. Jim Thatcher from DOC provided language to clarify the financial obligations of the state and counties. After a discussion the Commission decided to postpone that issue, as it is not feasible to make the changes without a policy impact.

Please see handouts.

MOTION # 1000

Moved: Russ Hauge

Seconded: Michael Brasfield

TO APPROVE THE SGC's REQUEST

BILL TO SIMPLIFY THE SUPERVISION

STATUTES

PASSED: Unanimously

V. Revisiting SB 6497 "Revising Felony Sentencing Ranges"

The Commission discussed the 2006 bill requested by the SGC to expand the sentencing ranges that was, in part, in response to the *Blakeley* case. The members shared their views and discussed whether or not the Commission should resubmit the bill. Senator Kline reported that the Superior Court Judges Association would oppose the bill with the statutory intent section as written. A motion was made to remove this section. Dave Boerner explained the proposed changes, which expand the ranges on the sentencing grid. He reported this proposal as being revenue neutral.

MOTION # 1001

Moved: Lucy Isaki

Seconded: Ronald Kessler

**TO APPROVE THE SGC's REQUEST ON
SB 6497 AND REMOVING SECTION 1**

PASSED: Unanimously

VI. Legislative Committee and Session Communication Plan

Dave Boerner explained the process the Commission has taken during the legislative sessions in the past. The SGC uses an ad hoc legislative committee, comprised of the varying interest groups represented on the Commission. Mr. Boerner suggested a communications protocol for the legislative session, which will ensure inclusive decision-making and prompt response to legislative proposals. This committee will be appointed by the chairman and will have the authority to speak to the legislators for the Commission if a position has not been adopted previously and can call a special meeting with 24 hours' notice if one is needed. He proposed having teleconferences in the mornings so the members could discuss the issues. Staff was asked to check whether telephonic participation would be allowed during a special meeting.

VII. Status Report on Washington State Institute for Public Policy Criminal Records Audit

Keri-Anne Jetzer, SGC Research Investigator, briefed the Commission on criminal records used by various agencies. By request from the Office of Financial Management the Washington State Institute for Public Policy recently conducted an audit of the state's criminal history records. The objective was to improve the quality, timeliness, and accessibility of criminal history records. The Washington State Institute for Public Policy will discuss the audit with the Commission in January.

VIII. Status Report on formation of the Juvenile Justice Issues Committee

Jean Soliz-Conklin reported on the preliminary plans developed by Committee members Ned Delmore, Director of Services, Kitsap County Juvenile Department and Rep. Sherry Appleton, who met with Justice Bobbe Bridge and Mike Curtis from the Center for Youth Justice. The Committee will review the SGC's obligations under statute and will re-look at SGC recidivism reports. The Committee will report to the Commission on the analysis of juvenile justice issues. In response to questions from Representative Appleton, the Commission supported her position that the Committee may invite outside experts to join and that the next meeting would be in March, after the legislative session. In response to her request for more members, Commissioners John Clayton, Dave Boerner, Ellen Fair, and Lenell Nussbaum volunteered. Russ Hauge will delegate a staff-person as well.

Status Report on formation of the Subcommittee on SGC Outreach/Communication

Tim Killian, eVenture Communications & Citizen Member, reported that he, Jean Soliz-Conklin and Jeri Costa had volunteered to monitor how the Commission communicates and will hire a consultant to make a plan for improved outreach.

STAFF REPORT:

These items were postponed until the next meeting.

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