



STATE OF WASHINGTON
SENTENCING GUIDELINES COMMISSION
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MINUTES

December 12, 2008

Members Present

Dave Boerner
John Clayton (designee)
Jeri Costa
Ned Delmore
Lynda Ring Erickson
Hon. Ellen Fair
Michael Kawamura
Hon. Dean Lum
Lucy Isaki
Tim Killian
Sen. Adam Kline
Lenell Nussbaum
Dan Satterberg
Mary Ellen Stone
Eldon Vail
Hon. Stephen Warning

Members Absent

Rep. Sherry Appleton
Ida Ballasiotes
Hon. Tari Eitzen
Russ Hauge
Ann Heath
Rep. Kirk Pearson
Sen. Pam Roach

Staff Present

Jean Soliz-Conklin
Shannon Hinchcliffe
Duc Luu
Andi May
Stevie Peterson
Jill Severn

Others Present

Joanna Arlow, Washington Association of Sheriff's & Police Chiefs; Shani Bauer, Senate Human Services & Corrections Committee; Jane Beyer, House Democratic Caucus; Beth Colgan, Columbia Legal Services; Elinor Cromwell, Society of Counsel Representing Accused Persons; Representative Mary Lou Dickerson; John Gower, House of Representatives; Paul Holland, Superior Court Judge's Association; John Lane, Governor's Policy Advisor; Lidia Mori, Coordinator, Senate Judiciary Committee; Hon. Kathleen O'Connor, Spokane County Superior Court; Ginger Richardson, WA. Federation of State Employees (WFSE); Dan Robertson, Juvenile Rehabilitation Administration; Juliana Roe, Human Services & Corrections Committee; Kecia Rongen, Juvenile Rehabilitation Administration (JRA); Michelle Shaw, Private Attorney; Charles Shelan, Community Youth Services-Olympia; Clela Steelhammer, Department of Corrections (DOC); Jennifer Strus, Senior Counsel, Senate Human Services and Corrections Committee; Jim Thatcher, DOC; Fred Wist, Pierce County PA, Juvenile Division; George Yeannakis, Teamchild.

I. CALL TO ORDER:

The Chair, Dave Boerner, called the meeting to order at 9:10 a.m. and welcomed members and guests. The Chairman then asked nonmember attendees to introduce themselves to the Commission.

II. MINUTES

Approval of minutes was postponed.

III. EXECUTIVE DIRECTOR'S REPORT

Jean Soliz-Conklin informed the Commissioners that the Adult Sentencing Manual is now available. She told them she hired outside counsel to check the manual and that it is available for purchase from the Washington State Department of Printing, although, copies are available for members. She said the Judge's Report and the Juvenile Disposition Manual will be published soon.

The Governor's budget will be available no later than December 20, Jean told the Commission. The huge revenue shortfall will lead to massive cuts in state spending, including major sentencing changes and likely agency cuts. Jean explained that she has prepared agency staff for cuts and that research staff have been busy working on numerous sentence change proposals (with DOC) for the Governor's office and legislative staff. The SGC took \$30,000 in efficiency cuts and cancelled a planned remodel, offering up those funds toward the shortfall. Staff also cut SGC meeting expenses by cancelling the continental breakfast, although lunches will be available.

She reported that the Sex Offender Policy board is going very well, and will issue its first annual report to the legislature soon. The Program Director position remains vacant, because the person to whom the position was offered decided she did not have the time while her children are so young.

IV. PROPOSALS FROM THE SGC JUVENILE JUSTICE COMMITTEE

The SGC Juvenile Justice Committee presented proposals on juvenile sentences related to life-without-parole, adult jurisdiction over crimes by juveniles and sex offender registration requirements.

Jean Soliz-Conklin began the discussion by informing the Commission that the members of the Juvenile Justice Committee had worked long and hard on these proposals, and had decided to defer all but one issue on sex offender registration to the Sex Offender Policy Board. She explained that there was not a consensus on some proposals in front of the Commission so various perspectives would be presented by attorneys Beth Colgan (Columbia Legal Services), Fred Wist (Pierce County Prosecutor) and Michelle Shaw (Private Defense Attorney). The presentation was introduced by Juvenile Justice Committee Co-chair and Kitsap County Juvenile Court Administrator Ned Delmore. Ned explained that Rep. Sherry Appleton, his Co-chair, was a primary moving force who inspired these proposals. She regrets that she is injured and unable to attend, and sent her apologies. The Commission was asked to review recommendations and select ideas for SGC-supported legislation.

Beth Colgan began the presentation by pointing out that the SGC Juvenile Justice Committee focused on looking at long-standing laws in light of what we now know about juvenile brain development and amenability to rehabilitation. The document entitled "SGC Juvenile Justice Committee List of Proposals by Issue" dated December 12, 2008 is incorporated by reference herein. **(See Exhibit A)**

Fred introduced the proposal, explaining that there was complete consensus on the committee, and the members believe the section could be deleted referring to misdemeanors in the criminal history.

MOTION # 1019

Moved: Mary Ellen Stone

Seconded: Senator Kline

MODIFY THE EXCLUSIVE ORIGINAL JURISDICTION STATUTE (RCW 13.04.30) TO REMOVE SUBPART (1)(e)(v)(D), WHICH CURRENTLY REQUIRES ORIGINAL ADULT COURT JURISDICTION FOR BURGLARY 1 WITH HISTORY

PASSED: Dan Satterberg opposing

Proposal #A3a): Modify RCW 13.04.030 to eliminate the requirement that a hearing be set for a 15 year old in all Class A felony cases even though seeking adult court jurisdiction is optional. **Please see Exhibit A.**

Beth explained that this proposal was inadvertently left out of the memorandum. Fred explained that the requirement to have a hearing adds additional detention days and extends the speedy trial time, even though prosecutors around the state usually resolve this issue with a “waive and arraign” situation. He told the Commission that the Juvenile Justice Committee was fully supportive of this proposal. Lenell Nussbaum clarified that the usual practice to which Fred referred meant arraign in juvenile court, and Fred concurred. The Commission was assured that the prosecutors retain discretion to seek a hearing if they wish to charge a 15-year-old as an adult, but this avoids unnecessary hearings, time extensions and other costs.

MOTION # 1020

Moved: Lenell Nussbaum

Seconded: Judge Stephen Warning

PASSED: no opposing

votes and Dan Satterberg abstaining.*

MOTION TO NO LONGER REQUIRE A MANDATORY HEARING FOR 15 YEAR OLDS CHARGED WITH CLASS A FELONIES, UNLESS THE PROSECUTOR DECIDES TO CHARGE THE YOUTH IN ADULT COURT.

*Prosecutor Satterberg said he wants to see the actual language before deciding whether or not to support.

Proposal #A3b): Allow the court to waive exclusive original jurisdiction upon agreement of the prosecutor and defense counsel, if the court finds that certain criteria are satisfied. **(See Exhibit A)**

Fred told the group that, currently, the prosecutor may need to charge a lesser offense to avoid a charge that would require the adult jurisdiction even in circumstances where juvenile court seems appropriate. The mechanism to waive adult jurisdiction does not exist in the law, so a practice to bypass has been developed. The Commission must consider whether they want to give additional discretion. Dan Satterberg spoke in favor of this proposal because it avoids the need to create a fiction (different charge) when juvenile court jurisdiction seems appropriate.

Judge Ellen Fair said that the statutes are a little murky as to the transfer back and forth to adult court. She sees there is a provision for court approval in the proposal and said this idea would be a lot simpler because you could work around the statutory anomaly that exists.

MOTION # 1021

MOTION TO ALLOW COURT TO WAIVE EXCLUSIVE ADULT ORIGINAL JURISDICTION BY AGREEMENT OF THE PROSECUTING ATTORNEY AND THE DEFENSE COUNSEL.

Moved: Lenell Nussbaum

Seconded: Judge Warning

PASSED: Lynda Ring Erickson opposing and Dan Satterberg abstaining

Issue B: Definition of Juvenile, Once Adult Court Jurisdiction has been Established

Proposal #B1: Eliminate the “once an adult always an adult” rule in RCW 13.40.020(14). (See Exhibit A)

Beth presented this proposal, describing the current law and making the point that a juvenile tried as an adult will continue to be defined as an adult, even though s/he may have been found not guilty in the charge that was heard in adult court.

Some members pointed out that this the only place in Washington’s law where you could be found not guilty, and still have penalties attach. Fred responded that there is a practice divide in local offices. In Pierce County, if you have not been declined through a hearing, then you would have a declination hearing if there is a subsequent qualifying charge. Some offices do treat the juvenile as the statute, read literally requires, however. So he came up with an alternative proposal as follows:

Alternative Proposal #B1: Provide a decline hearing in circumstances where a youth was transferred to adult court for a prior offense without a hearing under exclusive adult court jurisdiction provisions and the youth commits a second offense which may be transferred to adult court. (See Exhibit A)

The Commissioners discussed this process and sought clarification on numerous issues. Fred said we don’t have evidence that there are these cases out there.

MOTION # 1022

TO TABLE UNTIL JANUARY 2009 TO DISCUSS ELIMINATING THE “ONCE AN ADULT, ALWAYS AN ADULT” RULE.

Moved: Dan Satterberg

Seconded: Jeri Costa

PASSED: Senator Kline Opposing

Judge Lum said he would not want to encourage community custody supervision by multiple agencies (adult and juvenile) and suggests the SGC table this subject until the January meeting.

Senator Kline suggested the Commission adopt the alternative proposal, but the members felt the proposals should be discussed together.

MOTION # 1023

MOTION TO TABLE ALTERNATIVE PROPOSAL #B1: UNTIL THE JANUARY 2009 MEETING

Moved: Jeri Costa

Seconded: Judge Lum

PASSED: Senator Kline Abstaining

Issue C. Juveniles Sentenced to Life without the Possibility of Parole

Proposal #C1: Change the law to eliminate the sentencing of juveniles to JLWOP prospectively and retroactively.

Beth explained that this proposal would prospectively eliminate JLWOP and would allow them to sentence up to a seriousness level 15 with enhancements. The proposal would also require retroactively resentencing the 28 juveniles currently serving life sentences in Washington without the possibility of parole.

The Commissioners and presenters discussed those currently serving this type of sentence. Beth explained that about half were automatically declined to the adult system and that many of the 28 currently incarcerated would still serve many years to come because of enhancements.

Issues raised by the Commissioners included:

- a) procedural issues for applying the retroactive component;
- b) whether there should be a line drawn, applying this change only to those who under age 16; or
- c) the fact that, while clemency is an option for these offenders, they do not receive the programming that would make them eligible for clemency due to departmental policies.

Rep. Mary Lou Dickerson reminded the Commission that a decision needs to be made on January 9th, as the legislative session will begin the next Monday.

MOTION # 1024

Moved: Jeri Costa

Seconded: Judge Lum

PASSED: Unanimous

MOTION TO TABLE UNTIL THE JANUARY 2009

MEETING

Alternative Proposal #C1: Request DOC provide programming to offenders who committed their crime before age 18, regardless of their status as a Level 16 life-sentenced felon.

The prosecutors take a position that clemency is the hope of those serving life sentences, but investigation has shown that some offenders with life sentences cannot take advantage of prison programming and are, thereby, deprived of the opportunity to meet clemency requirements. DOC secretary Eldon Vail said he would look into the feasibility of providing programming to those sentenced as a youth to life without possibility of parole. (No motion needed.)

ISSUE D. Modify the relief from registration requirements for juveniles. (See Exhibit A)

Proposal #D: Require the Washington State Patrol to provide annual notification to juveniles regarding their rights to be relieved from registration and notification requirements; and provide public defender funding so youth can take advantage of the statutory right to be relieved of these requirements.

Attorney Michelle Shaw explained that she is an attorney who practices in King and Snohomish counties and that a substantial part of her clients are juveniles charged or adjudicated with sex offenses. She explained that juveniles cannot take advantage of the statutory relief from registration option because they don't know or remember they can ask the court to remove the requirements; and/or they cannot afford counsel and the polygraph usually required by a judge. She talked about the difficulties a youth encounters when his or her name can be "Googled" by

classmates and found on the registry of sex offenders. She told the Commission she would not support a wholesale repeal of sex offender registration and notification, but that she thinks the system needs review and modification. The proposal in front of the Commission is to assist youth to take advantage of the statute if they can prove they have been following the law.

The members talked about the proposal to pay for defense counsel and whether there is a cost-benefit argument that supports the proposal.

**MOTION # 1025 MOTION TO APPROVE THE CONCEPT OF RELIEF
Moved: Mary Ellen Stone FROM REGISTRATION REQUIREMENTS FOR
Seconded: Lenell Nussbaum JUVENILES
PASSED: Dan Satterberg abstaining**

V. SEX OFFENSE STATUTES OF LIMITATION

This item is moved to later in the agenda.

VI. ATTORNEY GENERAL ROB MCKENNA'S SENTENCING REFORM PROPOSAL FOR REPEAT/SERIAL DOMESTIC VIOLENCE OFFENDERS

This item was pulled from the agenda at the request of the Attorney General.

VIII. COMMUNITY CUSTODY

The Commission reviewed an updated concept paper on the idea of "An Evidence-Based System of Community Custody for Adult Felons Who Do Not Go to Prison". (See **Exhibit B**)

Spokane County Superior Court Judge Kathleen O'Connor began the discussion by telling the Commission that the SGC staff memo represents the Superior Court Judge's Association (SCJA) view that an evidence-based system for community custody should be planned, but the details of what that should look like need to be studied further. Commissioner Lynda Ring-Erickson agreed, explaining that no decisions to transfer anything should be made right now, because the counties are under such tremendous economic pressure.

Chairman Boerner suggested that staff be tasked to come back January 9th with a workplan.

**MOTION # 1026 MOTION TO SUPPORT THE SGC PROPOSAL, AS
Moved: Jeri Costa MODIFIED IN THE DISCUSSION TO ENSURE NO
Seconded: Senator Kline STRUCTURAL DECISIONS ARE MADE AS YET
PASSED: Dan Satterberg abstaining**

V. SEX OFFENSE STATUTES OF LIMITATION

The SGC created an Ad Hoc Committee on Sex Offense Statutes of Limitation in 2008 to review statutes of limitation for sex crimes in which the victim is a child. Jean Soliz-Conklin reported that the Ad Hoc Committee (comprised of five SGC Commissioners: Senator Adam Kline, Lynda Ring-Erickson, Tim Killian, Jeri Costa and Mary Ellen Stone) was recommending that the statutes be extended by seven years. Ms. Soliz-Conklin pointed out that the memo submitted to the commission contained an error (**See Exhibit C**) and that the extension recommendation is that prosecutions make take place up until the victim is 28 years old.

The Ad Hoc Committee held a public meeting which was attended by about 31 persons. Ad Hoc Committee members heard compelling testimony that age 21, a limit applied to many sex offense cases in which a child is a victim, is just too young, as people are still dependent on their families

at that age. The Ad Hoc Committee was told that many sex offenses occur within families or a circle of acquaintances within families. Senator Kline explained that the testimony in support of modifying the statute of limitation came from Spokane, and that those who testified wanted a complete repeal of the statutes of limitation for sex crimes in which the victim is a child. He said the Ad Hoc Committee's recommendation was to retain statutes of limitation because old cases are so very difficult to prosecute and it is also difficult for defendants to come up with witnesses or information needed to defend themselves in cases that may be more than a decade old.

Jean added that the law has no statute of limitation for civil cases, and that prosecutors may now charge against a DNA profile, thereby tolling the statute of limitations as well. The Commission requested that Dan Satterberg be added to the Ad Hoc Committee and that actual bill language be brought back in January for a vote.

VII. COMMUNITY RANGE- FIREARMS AND GANG MEMBERS/ASSOCIATES

Staff reviewed the legislature's direction to develop a new community custody range for an offense involving the unlawful possession of a firearm under RCW 9.41.040, where the offender is a criminal street gang member or associate, pursuant to E2SHB 2712, as codified in RCW 9.94A.715. (See Exhibit D)

Jean Soliz-Conklin proposed to the Commission that revisions to the other SGC portions of the Washington Administrative Code be incorporated in the rulemaking process, which takes at least four months and is procedurally complex. She reported that the Ad Hoc Committee on Community Custody Ranges (Eldon Vail, Russ Hauge and Lenell Nussbaum) chose a range of 9 to 18 months for the specified offense, and suggested rules to update and correct the Commission Public Disclosure rules. She suggested that the Commission delete their bylaws from the WAC's and pass them separately, to ensure compliance with the Open Public Meetings Act and to be more responsive to Commission procedural decisions.

Commissioners were informed that they would be asked to vote on the rules in January and to review them again after public notice and comment periods have passed.

IV. Lunch

Commissioners informally continued their conversation during lunch. John Lane, Senior Policy Analyst to Governor Gregoire, told the Commissioners and guest that the Governor would be releasing her budget Thursday, December 18th and that there would be substantial cuts. He explained that the Governor does not like the budget, but did her best in tough circumstances. He explained that this is the beginning of a conversation, inviting ideas as the process continues. He asked those who wish to comment to first step back and look at the entire budget, so as to have context when looking at the issues.

X. Adjournment 12:05 p.m.

APPROVED AND ADOPTED BY THE SENTENCING GUIDELINES COMMISSION

Dave Boerner

Date

Jean Soliz-Conklin

Date

