



STATE OF WASHINGTON
SENTENCING GUIDELINES COMMISSION
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MINUTES

JANUARY 9, 2009

Members Present:

Dave Boerner
Ida Ballasiotes
John Clayton
Ned Delmore
Margaret McKinney (Costa)
Hon. Tari Eitzen
Hon. Ellen Fair
Ann Heath
Michael Kawamura
Tim Killian
Sen. Adam Kline
Hon. Dean Lum
Lenell Nussbaum
Dan Satterberg
Eldon Vail

Members Absent:

Rep. Sherry Appleton
Lynda Ring Erickson
Russ Hauge
Lucy Isaki
Rep. Kirk Pearson
Sen. Pam Roach
Mary Ellen Stone
Hon. Stephen Warning

Staff Present:

Jean Soliz-Conklin
Shannon Hinchcliffe
Keri-Anne Jetzer
Andi May
Stevie Peterson

Others Present:

Eric Mentzer, Attorney General's Office; Shani Bauer, Senate Human Services & Corrections Committee; Ronna Cole, Department of Corrections (DOC); Beth Colgan, Columbia Legal Services; Alan Haskins, DOC; Susan Lucas, DOC; Regina McDougal, Administrator of Office of the Courts (AOC); Brad Meryhew, Washington Association of Defense Lawyers; Ginger Richardson, Washington Federation of State Employees (WFSE); George Yeannakis, Teamchild.

I. CALL TO ORDER

Dave Boerner, Chair, opened the meeting at 9:00 a.m.

II. APPROVAL OF MINUTES

MOTION # 1027 APPROVE THE DECEMBER 12, 2008 MINUTES

Moved: Hon. Ellen Fair

Seconded: Dan Satterberg

Passed: Unanimous

III. EXECUTIVE SESSION

The Commission met for short executive session, to hear an update from counsel on pending litigation.

IV. EXECUTIVE DIRECTOR'S REPORT

a. Research Director Hiring

Jean Soliz-Conklin introduced Gerry Ring-Erickson, Ph.D. as the SGC's new interim Research Director. She reviewed Gerry's credentials and explained that he could help carry out the expectations contemplated in the special funding contract from OFM. She mentioned that he is the husband of Commissioner Lynda Ring-Erickson, but that after legal research and consultation with the Department of Personnel, she and Dave had concluded that no nepotism existed. Gerry will assist publishing reports and delving into future research.

b. Statistical Manual

Ms. Conklin informed the Board that the Statistical manual and the Judge's Report are complete and available on the SGC website.

c. Sex Offender Policy Board Legislative Report

The Commission was also informed that the first annual Sex Offender Policy Board report was sent to the legislature last week and that report is also available on the website. Russ Hauge, as Chair, is presenting it in legislative discussions.

d. The Governor's Budget

In discussing the Governor's budget, Ms. Conklin used Secretary Vail's letter, stating that it was the most cogent description of the effects of the budget on the work of the commission. (**See handout**). The Governor had the tough task of balancing the budget to the revenue projections. She focused on community corrections and put limits on community custody for different kind of offenders. She also detailed the medical service cuts and other efficiencies in DOC, including the closing of an institution and reduction in staff. The re-entry budget has been cut in half. DOC is trying to retain evidence-based practices to extent possible but will need to eliminate the "promising practices" programs. DSHS has to take 1.3 billion reduced expenditures and these are tough times, so the juvenile rehabilitation Administration will be much affected. The conversation has begun with this budget proposal. The SGC was treated greatly in the Governor's budget. The budget funds the research director position permanently. It is worth pointing out that in 1999 the SGC had 3 more staff then they have now.

e. Legislative Committee for 2009 Session

Ms. Conklin asked the Chairman to appoint a legislative Committee to function as detailed in the memo. (**See handout**). Dave Boerner told the Commission that he attempts to appoint a group that balances various interests and that the committee is intended to be a stand-in for issues that cannot wait the next meeting during session. On

Rep. Appleton's suggestion, the ad hoc committee will meet by teleconference Thursday mornings after the legislative schedule for the next week is published. The Chair, who will lead the committee, appointed Mike Kawamura, Russ Hauge and Judge Warning.

f. SGC Administrative Code Revisions

Ms. Conklin described the proposed SGC administrative code revisions, asking for an action on this to publish the proposed rules for comment. **(See handouts)**. She explained that the SGC needs to have a new community custody range from the gang bill. Staff is recommending the addition of a new range for the gang-related crimes, as well as cleanup language in the other rules to update the changed Open Public meetings Act and public disclosure laws. Staff is also recommending that the Commission take the bylaws out of code as they are not required to be in rule and it is way too cumbersome to revise them. They can be adopted as a policy.

MOTION # 1028 TO PUBLISH FOR COMMENT

Moved: Russ Hauge

Seconded: Hon. Dean Lum

Passed: Unanimous

V. COMMUNITY CUSTODY

a. SGC 2009 Bill: The commission will review draft legislation and an initial workplan to further the Commission's decision to propose the idea of "An Evidence-Based System of Community Custody for Adult Felons".

Chair Boerner led a discussion of the Initial Community Custody Workplan as detailed in the staff memo. **(See handouts)**. Judge Ellen Fair explained that the Superior Court Judges Association would be meeting in March to consider the workplan as a joint project. The members discussed staffing, a community custody planning process and the contrast between the concepts and legislative proposals to limit community custody. Ms. Conklin explained that we may be able to get the Washington State Institute for Public Policy to assist with the planning process and asked the commission to approve the expenditure of up to \$50,000 from savings if necessary, for purposes of planning. Judge Eitzen asked to defer final discussion on the plan and the draft legislation until the next meeting, so judges and others would have an opportunity to review it in detail.

MOTION # 1029 AUTHORIZE EXPENDITURE OF UP TO \$50,000 FROM SGC SAVINGS TO USE FOR COMMUNITY CUSTODY PLANNING IF NEEDED.

Moved: Mary Ellen Stone

Seconded: Hon. Judge Eitzen

Passed: Unanimous

b. SGC 2008 Community Custody Simplification Bill: The Commission is asked to review a technical corrections bill from the Office of the Code Reviser.

Ms. Conklin told the Commission that the code reviser had developed legislation with technical "clean up" amendments to the community custody simplification legislation, in concert with legislative staff who are trying to ensure the new statutory system goes into effect in August, 2009 without any glitches. The Code reviser seeks the support of the SGC, which drafted and sponsored the initial cleanup bill. **(See handouts)**. Judge Eitzen asked that the item be postponed for action until the next meeting to give more time for review.

VI. "EXAMINING THE TOOLS IN THE TOOLBOX: A REVIEW OF COMMUNITY SUPERVISION OF DANGEROUS MENTALLY ILL OFFENDERS"

King County Prosecutor Dan Satterberg presented a report describing the results of a review recently concluded by a multi-disciplinary team led by him and DOC Secretary Eldon Vail. (See handouts).

VII. PROPOSALS FROM THE SGC JUVENILE JUSTICE COMMITTEE

The SGC continued its discussion regarding the proposals presented on December 12, 2008 by the SGC Juvenile Justice Committee. The Commission reviewed a status report from staff which detailed the juvenile proposals decided by the SGC and those yet to be decided. (See handouts).

Issue B, related to the definition of a juvenile, once adult court jurisdiction had been decided. The Commission considered Proposal #B1.

MOTION # 1030 APPROVE PROPOSAL #B1 ELIMINATE THE "ONCE AN ADULT ALWAYS AN ADULT" RULE IN RCW 13.40.020(14)

Moved: Sherry Appleton

Second: Lenell Nussbaum

Opposed: Dave Boerner, Dan Satterburg, Russ Hauge, Ned Delmore, and Ida Ballasiotes.

Motion: Tie Vote

MOTION # 1031 APPROVE 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.

Moved: Hon. Ellen Fair

Second: Dan Satterburg

Opposed: Lenell Nussbaum, Tim Killian, Michael Kawamura, Ida Ballasiotes, Hon. Tari Eitzen, John Clayton, Hon. Dean Lum.

Motion: Failed

Representative Appleton suggested the Commission revote on Proposal #B1 following the discussion.

MOTION # 1032 APPROVE PROPOSAL #B1 ELIMINATE THE "ONCE AN ADULT ALWAYS AN ADULT" RULE IN RCW 13.40.020(14)

Moved: Sherry Appleton

Seconded: Hon. Dean Lum

Opposed: Dave Boerner, Dan Satterburg, Russ Hauge and Eldon Vail.

Motion: Carried

Issue C, related to juveniles sentenced to life without possibility of parole (JLWOP) Beth Colgan reviewed the proposals and some data related to JLWOP cases in Washington. After discussion, the motion was as follows:

MOTION # 1033 APPROVE PROPOSAL #C1 MODIFIED TO SENTENCE JUVENILES UNDER AGE 16 AT THE TIME OF THE OFFENSE TO SERIOUSNESS LEVEL 15 INSTEAD OF 16, AS A PROSPECTIVE.

Motion: Lenell Nussbaum

Seconded: Sherry Appleton

Abstain: Hon. Tari Eitzen, Hon. Ellen Fair, Hon. Dean Lum

Opposed: Dave Boerner, Dan Satterburg, Russ Hauge, Ida Ballasiotes, John Clayton

Motion: Failed

VIII. SEX OFFENSE STATUTES OF LIMITATION

The SGC Ad Hoc Committee on Sex Offense Statutes of Limitation in 2008, which will present two options to the Commission regarding extension of statutes of limitation for sex crimes in which the victim was a child.

IX. LUNCH

Commissioners may continue their conversation during lunch.

X. ADJOURNMENT

APPROVED AND ADOPTED BY THE SENTENCING GUIDELINES COMMISSION

Dave Boerner

Date

Jean Soliz-Conklin

Date