



STATE OF WASHINGTON
SENTENCING GUIDELINES COMMISSION

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MINUTES

February 13, 2009

Members Present

Dave Boerner
Ida Ballasiotes
John Clayton (Marya Gingrey)
Jeri Costa
Ned Delmore
Hon. Tari Eitzen
Eldon Vail
Hon. Ellen Fair
Russ Hauge
Ann Heath
Lucy Isaki
Tim Killian
Hon. Dean Lum
Lenell Nussbaum
Sheriff Paul Pastor
Dan Satterberg
Hon. Stephen Warning

Members Absent

Rep. Sherry Appleton
Lynda Ring Erickson
Michael Kawamura
Sen. Adam Kline
Rep. Kirk Pearson
Sen. Pam Roach
Mary Ellen Stone

Staff Present

Jean Soliz-Conklin
Keri-Anne Jetzer
Shoshana Kehoe
Andi May
Stevie Peterson
Gerry Ring-Erickson

Others Present

Hon. Kathleen O'Connor, Spokane Superior Court Judge; Seth Fine, Asst. Chief Criminal Deputy Snohomish County Prosecutor's Office; Dana Hufford, Department of Corrections (DOC); Carl McCurley, Administrative Office of the Courts (AOC); Regina McDougal, (AOC); Brad Meryhew, Washington Association of Defense Lawyers; Lindsey Palmer, King County Sexual Assault Resource Center; Iris Peterson, DOC; Jim Thatcher, DOC.

I. CALL TO ORDER- DISCUSSION

Dave Boerner, Chair, called the meeting to order at 9:13 a.m.

II. WELCOME - DISCUSSION

The Commission welcomed Pierce County Sheriff Paul Pastor as representative for the Washington State Association of Sheriffs and Police Chiefs (WASPC)

III. APPROVAL OF MINUTES - ACTION

The minutes from the January 9, 2009 meeting will be reviewed at a future date.

IV. EXECUTIVE DIRECTOR'S REPORT- DISCUSSION

a. Jean Soliz-Conklin gave a status report on SGC bills.

1. Juvenile Justice Bills

A. Juvenile Decline Bill: The Senate Committee on Human Services and Corrections removed the provision of 15 years old as minimum age for decline and the language for taking out burglary 2 as a qualifying offense. The "Once an Adult" bill retained language that allows the prosecuting attorney and defense counsel to agree to retain juvenile jurisdiction. Bill language has been proposed that permits a juvenile who has been previously declined to request a hearing to have juvenile court retain jurisdiction on a second offense that juvenile court would in normal circumstances automatically retain. This language is making its way to the House.

B. Juvenile Sex Offender Registration – The House was working on an amendment to allow a juvenile automatic relief from the registration and notification requirement unless the prosecutor objects. The House requested SGC weigh in on this. The Commission discussed the following issues:

- Should the automatic relief be tied to the class level of the underlying offense?
- There is concern that juveniles do not take advantage of their right to request relief from registration because they forget. They also do not have right to counsel to assist them.
- There was a recommendation that in lieu of automatic relief, a juvenile eligible for relief undergo an evaluation focusing on whether the court should relieve the youth from registration.
- There was a question as to whether lifetime registration should be eliminated entirely; there could be a "wash out" provision after a certain period of time.

After much discussion, the Commission came to a consensus to defer this issue to the Sex Offender Policy Board and not take a position at this time.

2. Evidence Based Community Plan Bill

Based on input from the Governor's Office and Senator Hargrove, the Commission discussed pulling the Evidence Based Community Plan bill that had been submitted to the House and the Senate, with sponsorship from representative Goodman and Senator Hargrove. They pointed out that the SGC already has the necessary authority and the legislature is very busy on critical budget issues. SGC initially wanted the legislature to pass the bill to get the legislature's stamp of approval on the concept of "evidence-based" community custody and to incentivize stakeholders to come to the table. The

Pew Center for the States called to indicate interest in the process and spoke of offering resources to the process.

MOTION # 1031 The Evidence Based Community Plan bill shall be deferred to the next legislative session. Staff is to request that Senator Hargrove
Moved: Russ Hauge
Seconded: Lenell Nussbaum and others write a letter supporting the bill or that a budget proviso be added to support it.

Amendment (Judge Warning): Unless SGC hears from the Pew Center that it will only offer financial support with legislation or something more formal.

Passed Unanimously

3. Statute of Limitations for Sex Offenses against Minor Victims

Jean Soliz-Conklin explained that Ad Hoc Committee Chair, Senator Adam Kline, had held a meeting with committee members and stakeholders after session began, and developed a bill based on previous discussions with the Commission. Senate Bill 5832 extends the statute of limitations for offenses listed under RCW (A.04.080(1) that involve a minor victim. The victim would have until his or her 28th birthday to report the offense. The policy behind this is that the victim will have been outside the home for an extended period of time and feel more comfortable reporting the offense(s).

SGC members discussed a general support for the bill, but there was also concern that due to the length of time between offense and reporting, the evidence supporting the charge would be thin. The prosecutor's office can be the safety net for evidentiary issues. They have had to explain to families about the inability to go forward on a victim reporting due to evidentiary problems. Jean explained that the bill was a Commission request bill and that the SOPB will increasingly over time be able to weigh in on these issues.

b. Sex Offender Policy Board Update

Jean briefed the Commission on the committees and actions of the Board, reminding the members that the Board is expected to submit recommendations to the legislature on the adult and juvenile sex offender registration and notification system on November 1, 2009.

V. COMMUNITY CUSTODY WORKPLAN – ACTION

Jean provided the SGC with a comprehensive memorandum on the Evidence Based Community Custody Planning work plan that has been under development by the Commission throughout 2008.

The goals of the evidence based system are to:

- Increase public safety through decreased recidivism;
- Produce significant cost saving for the state and local government; and
- Simplify and improve the sentencing reform act relating to the supervision of offenders.

The Commission discussed the pros and cons of this evidence based community custody plan, including:

- It will improve the delivery of services to offenders across the board.
- These evidentiary based programs should reduce recidivism.
- Because very little is offered to jail populations at this time, this plan's recommendations will hopefully improve this population's rehabilitation.

The SGC discussed what representation they would like to see on the Community Custody Planning Committee and what will be expected of the committee members.

1. Who is on the committee?

- There needs to be a stakeholder consultation.
- It would be helpful to have representatives from the Juvenile Offender Evidence Based Development Group, because they already went through the process of developing an evidence-based juvenile justice system plan. The legislature has stated a clear intent to support the rehabilitation of jail offenders. However, there will be a future discussion by the legislature about the prison group as this evidentiary based approach is created.

2. Work group expectations

- Each milestone/decision reached by the Committee will need to be reviewed by the SGC for a vote.
- Committee members will need to reach a consensus at each key point to make this evidence based community custody approach work.

Decision: SGC agreed that Judge O'Connor and Dave Boerner will work on putting together a Committee. The goal will be to have a committee assembled within the next couple weeks.

VI. BILLS TO CONSIDER- ACTION

The following bills were proposed for SGC action:

A. HB 2023

This bill related to ending life imprisonment without the possibility of parole for juveniles under 15 years old. The House will not hear this bill unless SGC supports it. The following discussion included the following points:

- There was concern about eliminating the criminal justice system's discretion in sentencing youth under 15 years old, especially in cases where that youth may have been more culpable than his or her older co-defendant looking at a life sentence. These groups of offenders also make up a very small amount of criminal cases.
- There was an alternative proposed that has no objection that this type of offender could come before ISRB in 15 years to request a sentence modification.
- There was also expressed support for the bill.

MOTION # 1032 To support the HB 2023

Moved: Lenell Nussbaum

Second: No member seconded the motion

Motion: Did not pass.

B. SB 5292

This bill relates to modifying the Persistent Offender Statute by eliminating Robbery in the Second Degree as a listed offense. The following discussion point(s) were made:

- Instead of eliminating Robbery in the Second Degree from the statute, there could be a mechanism in place where those convicted of Robbery in the Second Degree offense as a third strike can have their sentence reviewed for early release consideration.

MOTION: For the SGC to support the SB 5292

Moved: Lenell Nussbaum

Second: No member seconded the motion.

Motion: Did not pass.

C. HB 2077

This bill relates to delayed sentencing for offenders with standard range under one year. There was a lengthy discussion about this bill led by Judge Eitzen.

1. Overview

- At the plea, the defendant would have to have an evaluation – the county wouldn't be responsible for cost; Defendant would have to agree to sign-off on conditions of sentence.
- There would be no formal supervision (these are people that are not receiving supervision anyway); these would have to be people that the judges felt were not a threat to community.
- Defendant violation procedure: warrant issued and then Judge could sentence them.
- Purpose: This bill is to allow Judges to give credit for time served prospectively. Days in treatment would count as credit for time served.
- Violations: The treatment provider would be the person who reports to the Court when a violation happens.

2. Concerns expressed by some members:

- Lack of supervision
- No consistent person designated to report defendant's violations.
- Indigent Defendant may argue they should be entitled to this plea alternative, so someone other than the defendant will have to foot the bill.
- What counts as Credit for Time served?
- Those who expressed concern do want to see more options for local offender sentences, but are concerned this bill has too many problems.
- This will cost more than incarceration because of the amount of resources going into addressing a modification hearing and then the possibility of a full sentence.

3. Advantages to this Plea Alternative:

- The benefit to a delayed sentence is that it gives the defendant incentive to complete the program.
- We are using the minimum of resources to accomplish this.

Recommendation: SGC will not take a position at this time.

VII. Lunch

Commissioners continued their conversation during lunch.

APPROVED AND ADOPTED BY THE SENTENCING GUIDELINES COMMISSION

Dave Boerner

Date

Jean Soliz-Conklin

Date