



STATE OF WASHINGTON  
**SENTENCING GUIDELINES COMMISSION**

PO BOX 40927, OLYMPIA, WA 98504-0927  
(360) 407-1050

**Minutes**

**July 10, 2009**

9:00 a.m. to Noon

**Holiday Inn Hotel**  
**17338 International Blvd.**  
**SeaTac, Washington**

**Members Present**

Dave Boerner  
Ned Delmore  
Hon. Ellen Fair  
Michael Kawamura  
Tim Killian  
Sen. Adam Kline  
Hon. Dean Lum  
Lenell Nussbaum  
Rep. Kirk Pearson  
Dan Satterberg  
Eldon Vail  
Hon. Stephen Warning

**Members Absent**

Rep. Sherry Appleton  
Ida Ballasiotes  
John Clayton  
Jeri Costa  
Hon. Tari Eitzen  
Lynda Ring Erickson  
Russ Hauge  
Ann Heath  
Lucy Isaki  
Sheriff Paul Pastor  
Sen. Pam Roach  
Mary Ellen Stone

**Staff Present**

Jean Soliz-Conklin  
Keri-Anne Jetzer  
Duc Luu  
Andi May  
Stevie Peterson  
Shoshana Kehoe  
Shannon Hinchcliffe

**Others Present**

Steve Aos, Washington Institute for Public Policy; Shani Bauer, Senate Committee Services; Elizabeth Drake, Washington State Institute for Public Policy; Seth Fine, Asst. Chief Criminal Deputy Snohomish County Prosecutor's Office; Brian Enslow, Washington Association of Counties; Marya Gingrey, Juvenile Rehabilitation Administration; John Gower, House of Representatives staff; Nathan Johnson, Senate Republican Caucus; Roxanne Lieb, Washington Institute for Public Policy; Lidia Mori, Coordinator, Senate Judiciary Committee; Rashad Morris, Senate Democratic Caucus; Hon. Kathleen O'Connor, Spokane Superior Court Judge; Andrea Piper, Washington Association of Sexual Assault Programs; Ginger Richardson, Washington Federation of State Employees (WFSE); Juliana Roe, Human Services & Corrections Committee; Mike West, King County Adult & Juvenile Detention; Jim Thatcher, Department of Corrections.

Attendees were provided with a morning beverage and lunch.



## **I. CALL TO ORDER - DISCUSSION**

Dave Boerner, Chair

Chair Dave Boerner called the meeting to order 9:17 a.m.

## **II. APPROVAL OF MINUTES - ACTION**

This item was postponed.

## **III. Executive Director's Report**

- a. Budget for FY 2010 – Update – Ms Soliz-Conklin discussed a letter received by the Governor asking for more budget cuts. It is hard for the SGC to absorb these cuts because the agency is so small. SGC staff will have to take some layoffs or furloughs.
- b. SGC Interim 2009 Workplan – Update – Ms. Soliz-Conklin reminded the members about the EHB 2279 assignment regarding the review of the offense Assault of a Child in the First Degree. Jeri Costa and Judge Fair volunteered to be on this review. The ad-hoc committee will look at a staff analysis of the history of the crime (numbers and lengths of sentences) in light of the issues in the legislation, and come back to the Commission with recommendations. Mr. Satterberg asked about the history of the bill, and Representative Pearson gave some background regarding the specific crime that spurred the bill/study. Prosecutor Satterberg also volunteered for the committee.

## **IV. SGC WORKPLAN: SENTENCING GRID – DISCUSSION**

The Commission voted to look at the Sentencing Grid as part of its workplan for 2009.

In June, the Commission discussed three elements of change to the grid:

1. Increased discretion for judges;
2. Increased sentence ranges for high-scoring offenders; and
3. Reducing some sentences in response to research related to recidivism and the cost-benefits to tax payers.

Staff was asked to analyze different approaches to increased and reduced sentences.

Ms. Soliz-Conklin referred the members to the Sentencing Guidelines Commission Briefing Paper on Adult Felony Sentencing Trends (*see handout*). This may come up in the context of the conversation about the grid today. JSC referred to last year's data on first page is titled "Adult Sex Offenses Fiscal Year 2008" (*see handout*) Pages 2 and 3 describe property and other sentences.

In response to members' requests, staff looked at pulling the different offenses out and collapsing the grid by category of offense. By using separate grids, you allow for more judge discretion and you also save money just by virtue of collapsing them.

There was discussion among members regarding collapsing the grids and whether or not sentencing within the range would stay the same. Adult Felony Sentencing Trends show that the ranges are fairly consistent, regardless of offense.

Representative Pearson inquired about whether evidence-based studies were taken into consideration when collapsing the grid. Ms. Soliz-Conklin explained how they were incorporated in some places. For example, on the proposed property grid, the SGC looked at WSIPP studies and then 1) created a version with a pure collapse and 2) tried to respond to that

WSIPP research on the second property grid. Staff lowered the low risk and increased the higher risk corner to take into account incapacitation and recidivism rates.

Mr. Aos (WSIPP) explained that if you lower the incarceration rate, you're going to raise the crime rate, so you have to be cautious. The Commissioners may want to ask if there is a balance or combination of changes that you can make that would alter the incarceration rate for some but maybe raise it for others. We may end up with lower serious crimes if we put more violent people in prison. Like the drug grid, initial analysis was that it was good, it lowered the daily population, which raised crime rate but the savings actually partially went into drug treatment which then on average, the state ends up with a lower crime rate. You have to look at it as doing two things at once.

Ms. Soliz-Conklin referred the Commissioners to Property Offense Sentencing Grid V2. Members discussed whether there are rehabilitative programs for property crimes like there are for drugs? Property crimes are often committed by those with substance abuse problems and also they can be addressed with Cognitive Behavioral Therapy programs.

Members asked if there has been any cost-benefit analysis for these types of offenders. Mr. Aos (WSIPP) explained the type of analyses they have done and the different factors they have looked at for these types of offenders.

In the collapsed grid, members noted that you save the money and do the least harm or most good. Judge Warning commented that the notion of separate grids really makes sense if following the evidence-based concept. The approach should be different for property crimes, vs. violent crimes, vs. sex crimes, following evidence-based principles. Separate grids allow the Commission to specifically focus on certain crimes.

Concerns regarding the availability of money for the rehabilitative programs and potential cost-shifting to local governments if they are affected by more arrests and prosecutions were discussed.

Ms. Soliz-Conklin suggested that members look at the document Prison Sentence Reduction of 30 Days, (*see handout.*) This policy would let people out 30 days early after Earned Early Release Time is calculated.

She then directed them to the next handout with the 5%, 10% and 15% sentence reductions (*see handout.*) Mandatory First Time Offender Waiver (*see handout*) if you use it you could save quite a bit of money. There is a disincentive to the offender for a FTOW plea. Only 16% are using it because the community supervision ends up making it so long. Mr. Satterberg and Ms. Nussbaum explained why this is a disincentive for defendants.

Judge Lum posed a question about the methodology of the jail bed savings. He pointed out that, as a practical matter, there may be less savings that we think because of the credit for time served practice.

## **Break**

The meeting re-convened with Mr. Aos drawing a diagram to illustrate concept of evidence-based leverage. As an example, he mentioned the policy in front of the Commission that lowers the average daily population (in prison or jail) for six months. Mr Aos pointed out that as soon as you do that (this is not a real number/hypothetical) this will add 6 crimes to Washington. Also, this Act is going to save \$10,000 in prison or jail and we take \$5,000 and give it to the general fund, we take the other \$5,000 and we put into an evidence-based treatment. This money/treatment could be for the person that is let out early or someone else in the community.

It could be the case that the net effect is that it reduces the crime in the community. So you may have a zero crime impact but it still saves money. If you can find lower risk people that you can do this for (release) and you apply the saved money to higher risk people, you may save even more on the crime rate.

Members discussed and agreed how it is important to educate the public, not just stakeholders because media reports are not exactly accurate.

The next proposal analyzes the impacts of taking 30 days off sentences (*see handout*). Ms. Soliz-Conklin reported that these projections are based on the assumption that the early sunset *will not happen*. Members commented that this might be drastic. However, it is a direct response to the fiscal crisis. They also commented that it would be helpful to look at 45 or 60 days.

Some members commented that a one-time cut may solve an immediate fiscal issue but it precludes the opportunity to talk and educate about attempts to re-shape the criminal justice system, rather than saying there are smarter ways and better ways to do this. Other members commented that the two don't have to be mutually exclusive but you would also want to take DOSA sentencing into account within this calculation (such as make it an exception.)

DOC Secretary Eldon Vail updated the Commission on the budget and policy status of changes to the department. In response to SB 5288, we are experiencing the following: the jury is still out about the caseload predictions and whether they are accurate. Prison solutions were much more complicated, the budget assumes 1,580 offender reductions. We know now that we will not achieve all of those reductions. The DOSA beds will be in place (in lieu of prison) the voucher bill was a little more aggressive than what we can achieve. The emergency medical placement didn't change much. The forecast council continues to predict a lower population. Now we must put 2% reductions in place since the last round. We may or may not go back to the early deportation bill; we are trying to do some currently. We may look at tolling. The 30-60 reduction seems to be the most palatable to send up. Women offenders – we're trying to look at the opportunities, 70% of male population is incarcerated, the women is exactly the opposite, they are 70% non-violent and research suggests that intensive treatment would be the best thing. Is it an option that the judges would impose, DOC would impose and apply retroactively and prospectively. California has had it in law and it hasn't been challenged.

Ms. Nussbaum commented the grid is set up to be based on the crime that is committed, not personal characteristics, and now the analysis is based on personal characteristics (the collision of philosophies are coming together.) The 30, 60, 90 is a quick fix, we also want to do something else in addition that reflects the new evidence.

Ms. Soliz-Conklin directed members to the Removal of Sunset Provision for Earned Release Time (*see handout*.) She also asked members to refer to the memorandum on "Proposed impact of additional offender score columns to the sentencing grid." (*See handout*)

Members suggested staff find out what would happen if you separate the columns out into 10-12, 13-15, and 16+. Ms. Soliz-Conklin explained that some of that analysis was done with SB 6160 when the fiscal note was attached for a column of 10+. Senator Kline suggested one of the options might be an asymmetrical widening of each of the cells/grids. He cautioned that you wouldn't want to decrease the SE corner too much because you want offenders with DOSAs to complete treatment.

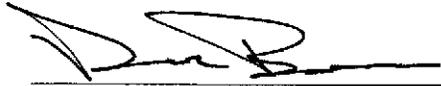
**V. Lunch**

Commissioners may continue their conversation during lunch.

**VI. Adjournment**

The meeting was adjourned at 12:06.

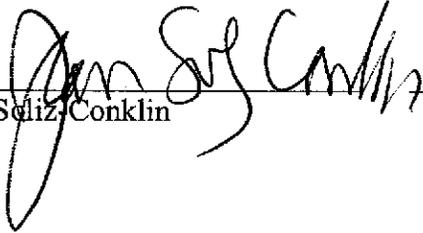
**APPROVED AND ADOPTED BY THE SENTENCING GUIDELINES COMMISSION**



Dave Boerner

9/11/09

Date



Jean Seliz Conklin

9/11/09

Date