



STATE OF WASHINGTON
SENTENCING GUIDELINES COMMISSION
PO Box 40927 • Olympia, Washington 98504-0927
(360)407-1050 • FAX (360) 407-1043

MINUTES
October 9, 2009
9:00 a.m. to Noon
Holiday Inn Hotel
17338 International Blvd.
SeaTac, Washington

Members Present

Dave Boerner
John Clayton
Hon. Ellen J. Fair
Hon. Tari Eitzen
Russ Hauge
Ann Heath
Betsy Hollingsworth
Lucy Isaki
Michael Kawamura
Tim Killian
Sen. Adam Kline
Hon. Dean Lum
Lenell Nussbaum
Sheriff Paul Pastor
Rep. Kirk Pearson
Dan Satterberg
Mary Ellen Stone
Eldon Vail
Hon. Stephen Warning

Members Absent

Rep. Sherry Appleton
Ida Ballasiotes
Lynda Ring Erickson
Ned Delmore
Sen. Pam Roach
Cities Representative (vacant)

Staff Present

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

Others Present

Bob Cooper, Washington Association of Defense Lawyers; Carol Estes, Friends Committee on Washington Public Policy; Seth Fine, Asst. Chief Criminal Deputy Snohomish County Prosecutor's Office; Roxanne Lieb, Washington Institute for Public Policy; John Gower, House of Representatives staff; Lidia Mori, House of Representatives; Rashad Morris, Senate Democratic Caucus; Terry Price, House of Representatives; Ginger Richardson, Washington Federation of State Employees; Juliana Roe, Human Services & Corrections Committee; Clela Steelhammer, Department of Corrections; Jim Thatcher, Department of Corrections.

- I. **CALL TO ORDER** – by Chair Boerner at 9:07.
- II. **PUBLIC HEARING ON RULEMAKING PETITIONS** –Asked for commentary on rules at 9:09. A member commented that it’s a great idea to take the bylaws from the rulemaking process when they don’t need to be in there. No public comments were made.

MOTION # 1036 TO ADOPT CHANGES TO BYLAWS

Moved: Russ Hauge

Seconded: Hon. Ellen Fair

Vote: Unanimously passed (no oppositions or abstentions).

Members requested that bylaws be brought for the November meeting to be adopted as policy.

- III. **APPROVAL OF MINUTES - ACTION**

MOTION # 1037 APPROVAL OF SEPTEMBER 11, 2009 MINUTES

Motion: Lenell Nussbaum

Seconded: Hon. Teri Eitzen

Vote: Unanimously passed (no oppositions or abstentions).

- IV. **SENTENCING CHANGES (Taken out of order at Chair Boerner’s pleasure)** **refer to Washington State Sentencing Guidelines Commission Materials for October 9, 2009 meeting Notebook.*

Ms. Soliz-Conklin introduced the proposed sentencing changes by giving the overall budget context. She mentioned there is reduced revenue, increased caseloads, and some stimulus money disappearing. There is no answer to how much or if more cuts will take place.

When looking at sentencing changes, there were two questions:

- 1) Is there something we can do toward the budget problem, i.e. if legislators and the Governor want to make cuts, should we identify some solutions based on evidence; and
- 2) Does the Commission want to propose a new sentencing grid? Which would *not* be for the purpose of saving money but to impose tougher sentences for career criminals, increase the ranges for judge discretion, and by necessity to change some sentences down to increase sentences from 9+.

In the packet, there are temporary post-sentence reductions to address the first question and grid proposals to answer the second question. The binder includes a sentencing trend analysis and the old sentencing grid for members’ comparison and information. Ms. Soliz-Conklin offered the data compiled by SGC staff in the notebook for discussion by the members.

Members asked if there was a specific number of reductions for DOC to see actual savings. Members discussed operating expenses, economies of scale and what it takes to realize savings. Reducing bed demand is not enough to save on administrative costs. An independent study is being conducted to recommend which facilities, if any, should be closed. Judge Eitzen commented that it is important to talk about the impact on local jails, not just prisons.

Members discussed a 1994 statute which requires deportation of offenders who are subject to deportation *before* they serve their time. DOC has come up with a policy to try to effectuate this law and it would apply to approximately 300 eligible. DOC explained that there are many different strategies that they are using to reduce populations and facilities. Representative Pearson expressed his concern with the cuts to supervision and sentencing grid changes.

Discussion of proposed Sentencing Grid:

Members expressed concern with potential jail increases and local government costs as a result of the proposed sentencing grid by shifting the ranges down. The SGC paid careful attention in the model to take those potential cost-shifts into account. A member suggested that another thing to take into account, is that some offenders that get sentenced to prison are spending a long time in jails awaiting trial or sentencing. Therefore, reduction of prison sentences in the grid could potentially trickle down to and represent a savings in the jail.

Members also wanted to make it clear that they are separating money-saving proposals from policy changes. Ms. Soliz-Conklin reminded members that a new proposed sentencing grid came out of the SGC several years ago and it was picked up by the legislature in the 2009 session as a way to save money. The purpose of discussing the changes now is to determine if the SGC still believes the proposed grid is good policy. After it was not passed during this year's session, staff modified it based on research based on recidivism evidence.

Cost Reduction Options:

Ms. Soliz-Conklin explained that if you choose to take a percentage reduction, you are giving the worst offender (those with the higher criminal history) the highest reduction. If you take days off, it is uniform but the lowest score offenders receive more days off. The analysis takes into account the 50% earned release time sunset-ing (current law) and keeping the 50% earned time (would require a change in current law.) The current proposals reflect the impacts from 30 days, 45 days, or 60 days off prospectively. The retroactive part is not included in the bed impacts because DOC has the information.

There was discussion among members about whether any of these reductions would achieve the type of cost reductions that are needed. Members requested that staff compile the data which would show retroactive reductions on the 30, 45, and 60 days off.

Members discussed whether they wanted to take an active approach about recommending these changes or to just have the data available if asked.

Some concerns discussed included if offender stays such a short time will they be able to comply with a release plan and if offenders are held beyond their release date (because they can't put together a plan) they have a cause of action. The administrative burden of making the changes must be considered, otherwise implementation could cut significantly into the cost savings.

The Commission came to consensus that they favored a reduction of days over a percentage reduction.

Ms. Soliz Conklin asked members if they wanted to eliminate or narrow down the options. If so, staff will work with DOC to produce the retroactive numbers. Members requested that staff provide all the considerations, pros and cons, and data about the cuts, including retroactive effects in order to fulfill the policy function of the Board. They suggested a one page explanation summarizing the research and the data.

Members re-visited the Sentencing Grid proposal:

During the 2009 session, staff did a fiscal note on this grid which had been originally proposed in 2006 and determined that it significantly increased the cost by adding the 10+ column. As follow-up to that session, staff used evidence-based principles and applied those to the grid to alter the grid cells to compensate for the expense of the 10+ column which is the proposal you are looking at now.

The new 10+ puts some potentially up to the statutory max and gives judges even more discretion in this column. Staff has lowered the sentences for offenders with less criminal history. The discussion centered around multiple current offenses vs. successive offenses and how they should count in the 10+ column.

Put the 10+grid on hold (Chapter 2). Members had brief conversation about Chapters 5 and the different ideas that members had requested staff provide data on.

BREAK

Members returned to the discussion of the sentencing grid and decided to put the issue on hold at this time. Chair Boerner asked whether the members wanted to take a position on whether or not to extend the 50% earned release time and members decided not to take a position at this time.

V. REPORT FROM THE ASSAULT OF A CHILD AD HOC COMMITTEE DISCUSSION **Refer to Sept. 16, 2009 Memorandum by Dan Satterberg "Commission Review of the crime of Assault of a Child in The First Degree."*

Mr. Satterberg gave a background of the work that the committee did and the things they found in the current system. The committee proposes several potential recommendations.

- 1) Amend the statute to change the *mens rea* required for committing the crime of Assault of a Child in the First Degree from a recklessness standard to a criminal negligence standard when an offender is accused of intentionally assaulting a child that results in “great bodily harm.”
- 2) The commission could clarify the third alternative means of committing the crime of Assault of a Child in the First Degree by defining, eliminating or modifying “torture.”
- 3) Amend the statute so that it applies to 16 and 17 year old offenders in order to eliminate a gap in the application of the statute that does not exist in other serious violent offenses committed against children.
- 4) Amend the Sentencing Reform Act (SRA) to move the crime of Assault of a Child in the First Degree from a Level XII offense for purposes of calculating a defendant’s Offender Score to a Level XIII offense.
- 5) Amend RCW 9.94A.703 to require a condition of community custody that prohibits a person convicted of the crime of Assault of a Child in the First Degree, or any felony offense committed against a child under 13 years of age or younger, from having any unsupervised contact with minors.

There were discussions among members regarding the proposal to change the *mens rea* element of the crime. Who they are and the nature of the harm (infants and children) makes a difference.

Members agree to hold over for action on the issue until the November meeting, staff will get the judgment and sentence, a description of the facts and any other data available on the issues discussed among members from the memorandum.

VI. SEX OFFENDER POLICY BOARD-DISCUSSION

Mary Ellen Stone presented a background of the Board’s work including their committee work 1) Benchmarks, 2) Sex offenders in the Community and 3) Registration and Notification. There is a report due by December which will detail all the work they have done. The Registration and Community Notification has taken on a lot of the legislative assignments and the Board will be looking at their recommendations in response to the assignment and voting on those recommendations.

VII. LUNCH

VIII. **ADJOURNMENT** adjourned at 11:48 by Judge Fair.

APPROVED AND ADOPTED BY THE SENTENCING GUIDELINES COMMISSION

Judge Ellen J. Fair, Vice Chair

Date

Jean Soliz-Conklin, Executive Director

Date