



STATE OF WASHINGTON

SENTENCING GUIDELINES COMMISSION
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MINUTES

NOVEMBER 13, 2009

Members Present:

Chair, Dave Boerner
Rep. Sherry Appleton
Lenell Nussbaum
Betsy Hollingsworth
Ann Heath
Sheriff Paul Pastor
Mike Kawamura
Kecia Rongen (John Clayton)
Russ Hauge
Ida Ballasiotes
Ned Delmore
Hon. Stephen Warning
Sen. Adam Kline
Lynda Ring-Erickson
Eldon Vail
Hon. Ellen Fair
Lucy Isaki

Members Absent:

Dan Satterberg
Hon. Dean Lum
John Clayton
Hon. John Meyer
Mary Ellen Stone
Sen. Pam Roach
Rep. Kirk Pearson
Tim Killian

Staff Present:

Jean Soliz-Conklin
Shannon Hinchcliffe
Stevie Peterson
Duc Luu
Jennifer Jones
Keri-Anne Jetzer

Others Present:

Rashad Morris, Senate Democratic Caucus; Brian Enslow, Washington Association of Counties; Shani Bauer, Senate Committee Services; John Gower, House of Representative Staff; Hon. Kathleen O'Connor, Spokane Superior Court Judge

I. CALL TO ORDER

The meeting was called to order by chairman, Dave Boerner at 9:10 a.m.

II. APPROVAL OF MINUTES

Moved to the next meeting.

III. EXECUTIVE DIRECTOR'S REPORT

- a. **State Budget** - Ms. Soliz-Conklin discussed the state of Washington's budget with the Commission, using a handout developed by the Governor's office. (**See Handout**). The Governor, by law, will publish a balanced budget based on the next revenue forecast. As the members know, her staff has received a lot of information about the workings of and accomplishments of the SGC.
- b. **SGC Reports** – Members were informed that the Supplement to the 2008 Online Sentencing Manual is available online and provided today.
- c. **Health Status** - Ms. Soliz-Conklin's reported that her health is good, and she will keep the Commission updated.
- d. **Miscellaneous** - The members join Ms. Soliz-Conklin in thanking Stevie Peterson for her services. She is retiring after many years of service.

IV. REPORT FROM THE ASSAULT OF A CHILD AD HOC COMMITTEE

Ms. Hinchcliffe gave an outline of all the documents currently and previously received by the Commission, including a summary of the facts of the Eryk Woodruff case, the Judgment and Sentence of Mr. Christiensen and some additional research that was requested. (**See handouts.**)

Members commented that it was resolved with a guilty plea and the prosecutor agreed to the bottom of the range. Members asked to send the committee's work (Mr. Satterberg's memorandum as the work of the Commission) with the qualification that it is not a recommendation. Ms. Soliz-Conklin asked what form of report do members want to give to the legislature for December 1, 2009.

MOTION # 1038 TO AGREE THAT THE REPORT IS AN ANALYSIS TO AID LEGISLATIVE DISCUSSION, WITH NO RECOMMENDATION.

Moved: Lenell Nussbaum

Second: Rep. Sherry Appleton

Opposed: Russ Hauge, Dan Satterberg and Ida Ballasiotes

Motion: Passed

Members thanked Prosecutor Satterberg and Judge Fair for their work on this issue.

V. SENTENCING CHANGES

Ms. Soliz-Conklin reminded the commission that they had narrowed down the package of potential sentence reductions for purposes of budget reductions if necessary, and directed to the table of contents within the green folder/binder. **(See handouts.)**

Representative Pearson asked to distribute a news article, which was passed out.

Ms. Steelhammer from DOC walked the Commission through the budget analysis of sentence reductions. She explained that the dollar amounts include marginal costs (not staffing, etc) it includes offender expenses so the dollars change when whole units are closed. She also pointed out that, with different types of populations, it is hard to determine what kind of costs you would save. To get a closer analysis you have to be able to look at the custody level and the bed.

Judge Warning asked about the notion of knocking off days got a first run in front of the legislature, what was the reaction to the concept. Rep. Appleton said that she didn't see any particular reaction one way or the other. Ms. Soliz-Conklin says the problem is so big, they don't know yet where to start and they are recessed, so the conversations have not really begun.

Mr. Vail explained that while sentence reductions will allow DOC to still take away the conduct time on most cases, earlier releases would be very messy on the front end because there are still obligations to do earned release and case plans.

Mr. Hauge asked whether this release becomes a vested right. Meaning you make the law change and then you rescind it, do those that were incarcerated before the change and after, get to claim that right. The consensus was that no vested right would develop.

Ms. Steelhammer reiterated that there is about a 6 month phase out and then if this is rescinded, you would need to have this in effect for awhile in order to experience the savings because if you take it out a few years later, then you will have to ramp up for a year and would get all of those costs again.

Ms. Soliz-Conklin asked members what they want to send to the legislature. Members acknowledged the budget and all of the options presented. They agreed, informally, that the research should be ready and available for the legislature and that a suggested answer to a budget shortfall should not be confused with a policy decision. Ms. Soliz-Conklin explained that she would draft a letter and bring it back to the December meeting.

VI. REPORT FROM THE EBCC

“Refer to Evidence-Based Community Custody December 2009,” Mr. Boerner introduced the report for consideration. (See **handouts**.) Judge O’Connor acknowledged staff and committee members for their work on the report. She acknowledged the budget is going in the opposite direction, whatever system we’d like to see is an ongoing process to provide a permanent solution. When you read this report, it is basically a structural proposal for a different approach for a different group of offenders for the purpose of reducing recidivism.

Judge O’ Connor explained that the target group in this report is those in local jails. The Committee borrowed from the experience in the juvenile system acknowledging some of the differences between adults and juveniles. However, the juvenile model has been successful and we have learned a lot from the 10 years in juvenile court. For instance, program fidelity is a huge issue in juvenile court. She explained that the issue of risk-assessment is critical to this process, its already a process in statute now through ESSB 5288, the tool is currently in place, the major issue is that it is important for individuals to have all the information available (such as juvenile court information, violation information and criminal conviction information.) It is the intent to improve and the process.

The key required elements of an evidence-based system are: 1) Risk Assessment, 2) Needs Assessment, 3) Programming, 4) Supervision and 5) Quality Assurance. The statutory scheme section is to give some ideas of potential statutory changes but they are not meant as recommended.

Funding and workload are questions that will be difficult and need to be answered in the context of what you want to implement. The recommendation of this report is to look at a first phase of a minimum 3 year process, maybe longer, to work with this concept, determine its implementation, and forecast for the legislature about reduction of recidivism rate.

Prosecutor Satterberg explained that this is a conceptual model that doesn’t exist today and isn’t going to be created anytime soon. There are still many issues under discussion where there is still disagreement, for example, there is a disagreement about how violations should be heard either by the court or through the already existing structure of DOC. However, this is worthy of further study to continue to refine the process.

There were questions and discussion among members. Steve Aos from the Washington State Institute for Public Policy was asked to respond to question about the risk assessment tool. This tool is validated and it’s is about half way between flipping a coin and being right every time. The LSI-R was about a third of the way between, so it has been improved. Consistency of application is important.

Mr. Fine explained that a lot of these questions will be explored as they plan the implementation piece, but how to use the risk level assignment must be a research-based decision. The group that approves programs will be identifying the characteristics of the offenders that the program is going to serve. Many things are yet to be worked out, such as who puts an offender into a program. One model is that the judge would be gatekeepers and put them in the program another is that a judge would declare the person “eligible” and the next agency, such as DOC would make the determination of the program. Also, the issue of tort liability was brought up and is still subject to discussion.

Mr. Boerner commented that it would have a constant research component to keep analyzing data and results and they still need a way for new “promising programs” to get on the list.

Sheriff Pastor commented on the continual research and quality improvement approach and added that the plan needs to include a fallback plan. If we look at alternatives to incarceration, there have to be teeth for the people who fail, before we do an alternative we have to make sure we can afford those who fail.

Judge Fair commented that it is important to remind the legislature that the reason we are focusing on the 0-12 month sentenced population is because that is 70% of the felony sentences. She also mentioned that there are going to be differences between juveniles and adults and you must acknowledge those differences in planning.

Mr. Hauge pointed out that a pro forma analysis will be needed up from to review the number of people that would be in the offender target group and then make some assumptions about the programs we would apply, factor in the reduction in recidivism and see if it really does save money or if we are going on faith.

Mr. AOs commented that this is an important consideration. If we do these things, where do we end up? Do we have to spend \$10 million to get a 2.5 million return? The EBCC proposal is a reconfiguration of the portfolio. Because the risk assessment is so critical, your overall effectiveness is a percentage. If you could implement this in a way that was perfect, to come up with so many variables, you are going to skew the resources.

VII. LUNCH

Commissioners may continue their conversation during lunch.

VIII. ADJOURNMENT

The Chairman adjourned the meeting at 12:05

APPROVED AND ADOPTED BY THE SENTENCING GUIDELINES COMMISSION

Dave Boerner

Date

Jean Soliz-Conklin

Date