

MEMORANDUM

TO: Sentencing Guidelines Commission

FROM: Maia McCoy, MSW

DATE: September 11, 2020

SUBJECT: Direction of the Commission

My appointment ended as of August 2nd, and earlier this week I sent an email to my colleagues in the victim and survivor advocacy community. My hope is that the next Victim Advocate Citizen Member will be a person of color, who can strongly advocate for victims and survivors, particularly those of color, and for a more racially just system. I immediately received responses and am hopeful that a new Citizen Member will be appointed forthcoming and can offer fresh perspective and energy to the Sentencing Guidelines Commission (SGC).

Representation (who is in power) matters. Senator Darneille has raised the need for the Commission to be more inclusive of persons of color, as we are a predominately white membership. I second this need. As a Commission we wield a great amount of power in making recommendations to the Legislature and should be representative of both our communities and those disproportionately impacted by the criminal legal system. If we were a more racially just society, we would value the contributions of persons of color and our composition would reflect that. We have briefly discussed quotas in the past and adding citizen member posts, but I believe a more thorough discussion is necessary so a solution can be identified and implemented. Changing our makeup may mean individually giving up our power.

Victims and survivors of color matter. When envisaging reform of the criminal legal system, we jump to discussions of overincarceration and disproportionality in our jails and prisons – and, as well we should. However, I don't want us to ignore the complexities of what protesters are asking for, which is police accountability and the acknowledgement of victims of color. Say their names. We are not immune to the national problem of fatal force. A *Washington Post* database confirms that we have had 157 fatal shootings by on-duty officers since 2015. Since I initially emailed the full Commission in late June (please see attached), the office I work for has charged at least one officer for the death of a 26-year-old, Cambodian man in South King County. Jesse Sarey. The Governor's Task Force on Independent Investigations of Police Use of Force has also convened in that time and is beginning to address the intractable issues before us. Though use of force may be outside of the purview of the SGC, the SGC can still effect change for victims and survivors of color and can work alongside the Task Force to help address equity in law enforcement.

State violence directed at communities of color has insidious impacts. Many survivors of color think before calling police fearful of fatality for their partner or themselves, and fearful for their own arrests due to mandatory arrest laws. Counties have made inroads in addressing the arrest of Black survivors, such as the Survivors First program in King County that diverts survivors of color to culturally appropriate domestic violence services in lieu of criminal charging, however not all counties have such an approach. The SGC can look at the efficacy of mandatory arrest laws and how we can better serve survivors of color across the State. The reality is that when we ignore State violence and racist policy, we erode the trust of communities of color and their participation in the legal system altogether.

We are dealing with racist policy. Many criminal justice practices seem neutral on their face; however, we now understand their implementation to disproportionately impact communities of color. In late August several Justices participated in *A Conversation with the Washington Supreme Court About Racial Justice*. I believe it was Justice Steven Gonzalez, who recommended that prosecutors thoughtfully review those crimes which are disproportionately charged and/or sentenced. However, relying solely on prosecutorial discretion has left and will leave a patchwork justice system, in which counties and municipalities function very differently. My hope is that the SGC will adopt this work moving forward for a more uniform and racially just approach to charging and sentencing across Washington State.

Dismantling the War on Drugs. Some time ago Judge Schaffer asked for the data to support review of re-entry drug and property offenders with DOC sentences, and I was surprised by those currently serving time for drug, property and nonviolent offenses, and the number of prison terms for possession (781 as of 2018), with a similar number for manufacturing, delivering, or intent to deliver (634 as of 2018). I believe we are not only morally obligated to address substance misuse through evidence-based public health models, but our economy and current budgets cannot sustain continuing to incarcerate what is really a public health crisis. Just as our treatment of juveniles changed with evolving neuroscience, reflected in the decisions of *Roper*, *Graham*, and *Miller*, our treatment of possession must drastically change, as we understand substance misuse to stem from disruptions in neurobiology caused by drugs. The existing drug policy framework has been repeatedly used to control and over-police communities of color and to sustain white comfort under the guise of ensuring public safety.

Given our current budgetary constraints, the SGC has hard decisions ahead. The reality is that when we look at case clearance rates across the country, we see that much violent crime goes unsolved or uncharged. The best data I was able to find is regional data maintained by the FBI as part of Uniform Crime Reporting. For the Pacific region including Washington, we have a clearance rate of 45% for violent crimes – so under half of all violent incidents end in arrest and case closure, with a smaller percentage resulting in criminal conviction. Knowing this, it is hard to justify continuing to handle drug, property, and non-violent offenses as we currently are, when we could apply our limited resources where we may all agree they are needed – toward violent crime, including murder, sexual assault, domestic violence, assault, and the crimes that most seriously depress our communities and economy.

While as a body we have not always achieved consensus, I have greatly appreciated that we have not lost the complexity of these situations in our discussions. I wish you all the best in continuing to address those complexities, so that persons of color – victims, survivors, and defendants, may access justice and be given the chance to thrive.

From: McCoy, Maia

Sent: Monday, June 22, 2020 5:40 PM

Subject: RE: Pretrial reform

Good afternoon,

Moving forward, what I hope is not lost when addressing racial inequities in our system, is that we not forget the victims – George Floyd, Breonna Taylor, Sandra Bland (from my home state), Eric Garner, and numerous others, who have been denied adequate justice. We are so racist as a country that I think it is challenging for us to even perceive of Black Americans as victims. This shows up in different ways – disparate treatment of victims of color in our courtrooms; community distrust in law enforcement and prosecution which erodes participation in the process; reduced access to criminal and civil remedies to achieve safety and justice; and in its worst form, in the denial of adequate prosecution, accountability, or even ceremony for the murder of Black Americans.

Let's not exclude victims and survivors of color. In rushing to address disproportionality (something we should rush to do), I don't want us to miss the outcries of grief over those (most literal) victims of our system and the call for police accountability. It is a more complex conversation, but I think one we are equipped to have. I don't want our discussion of systems-involved persons to exclude those victims and survivors of color who are further disenfranchised within the system, or to skip over how our laws could be applied in a more uniform and racially just manner.

Let's meaningfully address representation on the SGC. Ibram X. Kendi reframes systemic racism as racist policy. We are dealing with racist policy, not something within our criminal legal system that we cannot see or weed out. Racist policy can only be changed by those in power, and we wield that precious power in making recommendations to the legislature. While we are diverse in our roles within the legal system and citizenry, we are not racially diverse. Senator Darneille has raised how problematic a mostly white membership is, and I want to affirm that we should reconsider the racial makeup of this Commission.

We need numbers – on racial disproportionality in the system and on current budgets. As Kim reminds us we are dealing with huge budget shortfalls, and it would be helpful to have the numbers in assessing the damage and how to move forward. I have already seen victim advocacy positions go unfilled or be eliminated within law enforcement agencies and DOC. Ancillary services are being cut, and I don't think that is what protesters are calling for when asking to defund police. Ideally, we may want to see more trauma recovery and advocacy services to help communities rebuild. While agency budgets may not be within our purview, we can certainly help to promulgate best practices and set priorities.

We cannot do it all, nor should we. I've mentioned before that I don't believe continuing to charge for Violations of the Uniform Controlled Substances Act is an appropriate way to budget our human and monetary resources, when we now understand addiction to be of neurochemical etiology -- a public health crisis deserving of treatment within the healthcare system. We also know that overwhelmingly whites are more likely to use substances but Black Americans more likely to be ensnared in the system as a result of use. There are possibly other charges that may reduce law enforcement interactions with community members and be better handled by other systems. We should look for ways to craft a more ethical and fiscally prudent system.

I have an impossible task in trying to be the voice of a diverse body of crime victims and survivors: I must try to balance the needs of survivors who will forever be plagued by the traumatic grief of homicide, and others who have been through a simple assault and are insistent on their perpetrator getting help. I often feel conflicted by this impossible task. In reflection, I don't think we can justify our laws by the exception or worst-case scenario.

I obviously support the shift away from "pure" sentencing reforms and look forward to our discussions.

Maia



Maia McCoy, MSW

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