

**Sentencing Guidelines Commission
Pre-Trial Reform Information**

From: kim@gordonsaunderslaw.com <kim@gordonsaunderslaw.com>
Sent: Wednesday, July 1, 2020 9:05 PM
Subject: RE: Pretrial reform

Colleagues,

I saw this statement from WSCADV this morning, and it reminded me of Maia's well-spoken points. <https://wscadv.org/news/moment-of-truth-statement-of-commitment-to-black-lives/>.

They note:

- We have failed to listen to Black feminist liberationists and other colleagues of color in the movement who cautioned us against the consequences of choosing increased policing, prosecution, and imprisonment as the primary solution to gender-based violence.
- We have promoted false solutions of reforming systems that are designed to control people, rather than real community-based solutions that support healing and liberation.
- We have invested significantly in the criminal legal system, despite knowing that the vast majority of survivors choose not to engage with it and that those who do are often re-traumatized by it.
- We have held up calls for "victim safety" to justify imprisonment and ignored the fact that prisons hold some of the densest per-capita populations of trauma survivors in the world.
- We have ignored and dismissed transformative justice approaches to healing, accountability, and repair, approaches created by BIPOC leaders and used successfully in BIPOC communities.

They are seeking to:

- **Reframe the idea of "public safety"** – *to promote and utilize emerging community-based practices that resist abuse and oppression and encourage safety, support, and accountability*
- **Remove police from schools** – *and support educational environments that are safe, equitable, and productive for all students*
- **Decriminalize survival** – *and address mandatory arrest, failure to protect, bail (fines and fees), and the criminalization of homelessness and street economies (sex work, drug trades, etc.)*
- **Provide safe housing for everyone** – *to increase affordable, quality housing, particularly for adult and youth survivors of violence, and in disenfranchised communities*
- **Invest in care, not cops** – *to shift the work, resourcing, and responsibility of care into local communities*

Some of these may fall in our wheelhouse, and some may not. Their call to action is clearly applicable to us on the SGC:

The Coronavirus pandemic, unchecked and increased police violence, political and economic upheaval, and stay-at-home isolation have produced the "perfect storm." We have a choice to make: run from the storm or into it. We choose to run into it and through it. We choose to come out the other side better, whole, loving, just, and more human.

Kim

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From: Shaffer, Catherine
Sent: Tuesday, June 23, 2020 9:36 AM
Subject: Re: Pretrial reform

I really appreciate this very thoughtful and insightful email from Maia. We have a lot to talk about and work on, in partnership with other groups seeking thoughtful and consistent approaches to criminal justice reform and juster sentencing.

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From: McCoy, Maia
Sent: Monday, June 22, 2020 5:40:02 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

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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

From: kim@gordonsaunderslaw.com
Sent: Monday, June 22, 2020 11:49 AM
Subject: RE: Pretrial reform

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Judge Rumbaugh,

Thanks for reaching out, especially when things are so hectic. I would welcome a time to talk more. Let me know if there are some times that do work for you. I am sure I can make one work, as my schedule has some flexibility these days.

I appreciate I'm coming to the discussion late, since I was not able to make the last meeting. And I am generally comfortable with the idea of looking at issues beyond "pure" sentencing reform. There are so many points in the process that influence who gets convicted of what, and that often controls the sentence. What happens pretrial is one of them.

My greatest concern at this stage is that, whatever topic we take on as the SGC, we do not redo or undermine the work of the Pre Trial Reform Task Force (or another work group) with our next project. My primary intent in opening an email discussion now was to make sure that the SGC members had that situational awareness.

Kim

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From: Stanley Rumbaugh
Sent: Monday, June 22, 2020 11:24 AM
Subject: RE: Pretrial reform

Hi Kim

At the request of Justice Yu, and Judge O'Donnell who was presiding judge in King County at the time, I chaired the pre trial risk assessment component of the Washington Pre Trial Reform Task Force you reference. I now chair our Pierce County pre trial reform group that is sponsored, in part, by an Arnold Ventures Grant. The pre trial risk assessment you reference has indeed generated considerable turbulence among stakeholders. Part of the concerns raised were attributable to inherent deficiencies in the risk assessment model itself, and part the result of misapprehension about the way the PSA is to be utilized.

I find myself swamped with matters to attend to today, but would welcome a more robust discussion of the SGC's shift in focus from "pure" sentencing reform to a broader view of the pre and post trial procedures that effect the manner in which persons involved

With the criminal justice system are treated throughout the entire run of their involvement with the system.

Thanks

Stan Rumbaugh
Judge
Pierce County Superior Court.

From: Shaffer, Catherine
Sent: Friday, June 19, 2020 11:15 AM
Subject: RE: Pretrial reform

I would strongly second all these suggestions by Kim Gordon, and wonder if we might tentatively plan on asking the Pretrial Reform Task Force to join our August meeting.

I like the idea of working (in support of current efforts, not in conflict) on pretrial reform because it seems most likely to have the biggest impact on reducing disproportionate sentencing. I really do want to respond to this historic moment in a meaningful way by seeking to address disproportionate impacts on people of color in the criminal justice system, ultimately expressed in sentencing outcomes.

Having said that, of course I am not at all opposed to working in other areas besides pretrial reform.

Judge Catherine Shaffer
King County Superior Court, Department 11

From: kim@gordonsaunderslaw.com
Sent: Friday, June 19, 2020 11:01 AM
Subject: RE: Pretrial reform

I appreciate Judge Shaffer sharing this information and regret that I was not able to join our meeting on Friday in which this conversation occurred. Although I understand that, due to recent developments, we

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may not return to this subject until August, I had some additional information to share with the Commission. I apologize if this is redundant in that it was already shared at the last meeting.

I agree that pretrial reform is crucial to reducing systemic racism, disparate effects, mass incarceration, and injustice. However, I have some concerns about whether we should take on the issue ourselves. My concern is not necessarily with the scope of our work as the SGC. Rather, it has been my understanding that Washington is already making a concerted effort at pretrial reform. Washington's Pretrial Reform Task Force includes members of the Washington State Minority and Justice Commission, and Judges' Associations working with diverse stakeholders. They were also partnered with the Pretrial Justice Institute. Their report, just published last year, is attached. Another report on reforming bail practices, and published last year, is also attached. If the SGC moves forward with pretrial reform, I hope that we can determine if and how we can enhance or broaden the important work already being done. I also hope that we can avoid repeating or undermining the work already done by our colleagues.

My understanding is that the sent in the last email (below) is an Arnold Venture website promoting their risk assessment tool, the Public Safety Assessment ("PSA"). My understanding is that the Pretrial Reform Task Force met with the Arnold Venture's representatives as a part of their work. They looked closely at the PSA. It was a controversial endeavor, use of the PSA was strongly opposed by the civil rights community, and ultimately, the PSA is not being used in Seattle. I share this because I assume others in the SGC did not know about this, just as I did not, until I started to look into the subject this week.

This week we have also learned of the extent of the budget deficit – one that will have to affect criminal justice spending, more calls for policing and criminal justice reform, the fact that Coyote Ridge (as of yesterday) had almost 100 inmates suffering from Covid-19 (and one death – an inmate scheduled to be released this summer), and the likelihood of a special legislative session in August. These may also motivate us to choose a different topic for our focus, due to the fact that other well-staffed groups are already working on the issue. In any event, as we decide whether to undertake this issue, I strongly recommend that our first task be to hear from the Pretrial Reform Task Force.

Thank you, and I hope everyone is staying safe and healthy.

Kim

From: Jetzer, Keri-Anne (OFM)
Sent: Thursday, June 18, 2020 7:38 AM
Subject: FW: Pretrial reform

Good morning,

Below is a new website related to pretrial reform.

Keri-Anne Jetzer
(360) 902-0425

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From: Shaffer, Catherine
Sent: Wednesday, June 17, 2020 9:45 AM
To: Jetzer, Keri-Anne (OFM) <Keri-Anne.Jetzer@OFM.WA.GOV>
Subject: Pretrial reform

I realize our discussions of this topic are now delayed for a month until August, but SGC members may be interested in this new website on pretrial reform:

<https://advancingpretrial.org/>

***Judge Catherine Shaffer
King County Superior Court, Department 11***