



STATE OF WASHINGTON

**SENTENCING GUIDELINES COMMISSION**

*Helen Sommers Building, PO Box 43124 • Olympia, Washington 98504-3124 • (360) 902-0425*

**MEETING MINUTES**

**September 11, 2020 9:00am – 12:00pm**

**MS Teams**

Members Present:

Stephen Sinclair (proxy: Mac Pevey)  
Hon. Stanley Rumbaugh  
Derek Young  
Rep. Lauren Davis  
Tim Wettack  
Hon. Catherine Shaffer  
Sonja Hallum  
Norrie Gregoire  
Jennifer Albright  
Hon. William Houser  
Senator Jeannie Darnielle  
Kathleen Harvey  
Jon Tunheim  
Kecia Rongen  
Phillip Lemley  
Kimberly Gordon  
Sheriff Paul Pastor

Members Absent:

Senator Mike Padden  
Rep. Skyler Rude  
Maia McCoy  
Hon. Roger Rogoff  
Tony Golik  
Greg Link

Staff:

Keri-Anne Jetzer

**I. CALL TO ORDER**

Vice-Chair Rumbaugh called the meeting to order.

**II. APPROVAL OF MINUTES**

Members are asked to approve the August 2020 minutes.

**MOTION #20-13: APPROVE MEETING MINUTES FROM AUGUST 2020**

**MOVED:** Phillip Lemley

**SECONDED:** Judge Shaffer

**PASSED:** Unanimous

### **III. RACIAL EQUITY**

Lauren Knoth, Senior Research Associate with the Washington Institute for Public Policy, presented on Disparity and Disproportionality in the Criminal Justice System. The purpose of the presentation was to provide better understanding of the research available on changes in disparity and disproportionality within the United States criminal justice system, generally, and in Washington state, specifically.

Vice-Chair Rumbaugh thanked Lauren for her presentation. He asked if the law that capped on public defender caseloads has had an impact. Lauren said she wasn't aware of any research on that but would check into it.

Senator Darneille asked Lauren to comment on WSIPP's research in the juvenile justice system as one of the points of contact in the system (prior to the policing point in her illustration) and if the changes in the juvenile justice laws would lead to fewer contacts at points downstream. Lauren replied that there is substantial research that early contact and, especially, early arrest, have an impact on the probability of contact in the adult system.

Jon Tunheim asked if any organization was looking at an extensive analysis of the changes of disparity since the early 2000s and if that is something policy groups like the SGC or CSTF should be starting to push for. Lauren said OFM is looking at a stream analysis, the cumulative effects across the system, but she doesn't know if that is intended to be overlaid with policy changes. She offered to send the 2002 WSIPP study to members.

Councilmember Lemley asked if the research takes into account the racial makeup of the city/state/county/area. Lauren responded that most research looking at racial disparity does take into account the population of the state. She offered rates per 100,000 populations, which equalizes the rates and allows comparisons of different states.

Judge Houser asked if there was any research that looked at economically disadvantaged white areas and economically disadvantaged areas of color. Lauren was aware of some research in the areas of 'concentrated disadvantage.' She added that there is evidence that there are more disparate outcomes in the criminal justice system in communities with high levels of poverty regardless of the demographic characteristics. However, there is a cumulative disadvantage effect where forms of disadvantage, such as gender, race, education, and poverty, stack to create disparate outcomes in the criminal justice system.

### **IV. CRIMINAL SENTENCING TASK FORCE**

Vice-Chair Rumbaugh briefed members on the status of the Task Force discussions. The Sentencing Effectiveness work group continues its work on

determining if sentencing enhancements should be become an aggravating factor, a new crime or stay as is.

Vice-Chair Rumbaugh asked Mac Pevey to brief members on the work of the Reentry and Recidivism work group. Mac reported that many recommendations around enhancing supervision or reentry efforts, reinforcing the importance of programmatic capacity, and housing are coming forth.

Vice-Chair Rumbaugh started the discussion of the Task Force recommendations with the research proposal recommendation. Keri-Anne informed members that the Task Force had discussed this recommendation the day before and approved it so that WSIPP would be able to bring the proposal to its Board of Directors. So far, that is the only recommendation the Task Force has approved.

Vice-Chair Rumbaugh asked members if there were any recommendations they would like to discuss. Senator Darneille inquired if the post-conviction review process recommendation had considered past legislation. Sonja Hallum replied that there was an acknowledgment of prior legislative bills and Jon Tunheim added that since work on this was occurring in other areas, the Task Force had deferred to that on-going work.

Vice-Chair Rumbaugh was interested in the diversion recommendations. He said the discussions included modeling these programs after the juvenile justice system programs.

Councilmember Young remarked about the recommendations that included resentencing and the discussions Task Force members had about how to do that. A resentencing hearing involves a lot of costs and labor, but, yet, is it fair to leave people to languish along for the same crime? He thinks this is going to be a tough conversation. Vice-Chair Rumbaugh noted that resentencing in some of the recommendations would be easier than in others, depending on the nature of the recommendation. Kimberly Gordon commented that there are difficulties in using SB 6164 (prosecutorial discretion to seek resentencing) which was meant to be a release valve on the system. She feels this is a very important discussion because she doesn't see how to address past harms without looking at past cases. She wondered if the the Task Force would welcome input from the SGC on this issue. Keri-Anne noted that Jon Tunheim, who is one of the Task Force co-chairs, could pass that suggestion on to the Task Force for their consideration. Jon commented that the SGC's conversations do help inform the input he and other SGC member provide to the Task Force. He added that the retroactive considerations are being considered issue by issue and he expects a hodgepodge of decisions. Sonja Hallum suggested this is even more reason to support a systematic post-conviction review process.

Jon provided a brief review of the firearm/deadly weapon enhancements per a request from the chat. He said it is likely there will be a legislative bill out next session and there is strong consensus to recommend automatic de-stacking of enhancements. Councilmember Young mentioned that the school zone enhancement seems to have support for either modifying the language or eliminating it altogether.

Members talked about Recommendation #8 which is to provide relief for criminalized survivors. Keri-Anne relayed that the Task Force was supportive of the concept but they hadn't worked out any of the details just yet. Jon Tunheim agreed and thinks the biggest barrier to the recommendations is resources. While she liked the concept, Judge Shaffer thought it would be difficult to get domestic violence victims to get involved with prosecuting their abusers. There was another concern voiced that perpetrators would try to manipulate this by claiming that they are victims. The idea is good, but a balance needs to be found between providing service to those who need it and the service being abused by perpetrators, said Judge Shaffer.

## **V. DOC AGENCY REQUEST LEGISLATION**

### **a. Graduated Reentry Expansion**

Vice-Chair Rumbaugh asked Mac Pevey to provide members with an overview of the proposal. Mac reported that this proposal eliminates the twelve month minimum confinement in a state correctional facility requirement and removes the six month maximum on participation for the Graduated Reentry Program. It would allow certain incarcerated individuals to serve all but 120 days of their sentence in partial confinement on EHM.

Senator Darneille asked how many people would be released if the proposal was passed. Mac offered to provide those numbers to members as he did not have that information on hand. Members discussed the restrictions to crime types, possible impacts to the "county of origin" practice, who would adjudicate EHM violators, and the idea of a justice reinvestment account.

Concerns member had about the proposal:

- If a judicial officer has determined that an alternative sentence (DOSAs, SSOSAs) isn't appropriate for a particular offender, a judge wouldn't want DOC to override that decision.
- What factors are considered when transitioning an individual from total confinement to partial confinement?
- Kecia pointed out that if there are no crime exclusions, then ISRB cases (sex offenders, juvenile board cases, etc.) that utilize the GRE program would require the ISRB to move up their hearings in order to determine if the individual was releasable to this option.

Some members would like to discuss this with their organization members and others would like to get an idea of the fiscal impact before taking a stand.

Kimberly suggested that Keri-Anne forward the comments to DOC and if organizations have any additional feedback, they can direct that to DOC directly. Members liked that approach.

**b. Victim Notification**

Mac Pevey stated that this proposal adds specific crimes to the list of offenses that would get victim witness notification upon release (Assault 3, Unlawful Imprisonment, Vehicular Homicide, Controlled Substance Homicide, and offenses defined as domestic violence per RCW 10.99.020).

Senator Darneille asked what the fiscal impact would be. Mac didn't have the fiscal numbers available but he thought it might be indeterminate because he didn't think they were able to get the number of convictions that would lead to these notifications. He added that, if there was an impact, it would probably be to add staff positions to process the additional notifications. Senator Darneille asked if there was already an automated process for this. Mac replied that that there are two pieces to victim witness notification. The VINE system is automated but that requires the victim to enroll, which needs personnel to be available to answer questions and provide guidance to those seeking witness protections.

**MOTION #20-14: SUPPORT DOC PROPOSED CHANGES TO VICTIM NOTIFICATION**

**MOVED:** Judge Shaffer

**SECONDED:** Judge Houser

**PASSED:** Unanimous

**ABSTAINED:** Sonja Hallum

**(Reminder: Legislative members of the SGC are non-voting members)**

**c. Community Custody Tolling**

Mac informed members that this proposal states community custody terms shall not be tolled while serving a court-ordered alternative in the community and limits tolling of community custody terms to periods where in a secretary's warrant has been issued, a bench warrant has been issued, and an incarcerated individual serving confinement time as part of their original sentence.

Vice-Chair Rumbaugh inquired as to how many individuals this would impact. Mac said he would send the fiscal note to member that would include that data.

Jon noted that previous versions excluded incarceration time served for a new felony conviction. He said that there was Task Force support with that exclusion but wasn't sure if it would be there without that exclusion. Mac said this proposal is different in that it is tied to the 15 percent budget reduction.

**MOTION #20-15: SUPPORT DOC PROPOSED CHANGES TO  
TOLLING**

**MOVED:** Judge Shaffer  
**SECONDED:** No second  
**PASSED:** Motion tabled

Vice-Chair Rumbaugh asked members what their concerns were. Jon said discussions with his colleagues showed support for the proposal with the new felony offense language but, without it, he isn't sure there would be support.

**VI. PRE-TRIAL REFORM**

Party from Arnold Ventures Group will present to the SGC in October

**VII. OTHER BUSINESS**

Keri-Anne reminded members of an email she forwarded from the Reentry Council seeking recommendation suggestions related to reentry that they could include in their report to the Governor. She offered to collect the recommendations and forward them on or members can send them directly to Chris Poulos.

**VIII. ADJOURNMENT**

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

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Judge Stanley Rumbaugh, Acting Vice-Chair

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Date