



STATE OF WASHINGTON

SENTENCING GUIDELINES COMMISSION

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MEETING MINUTES

January 8, 2021 9:00am – 12:00pm

MS Teams

Members Present:

Hon. J. Wesley Saint Clair, Chair
Hon. William Houser
Hon. Stanley Rumbaugh
Councilmember Derek Young
Rep. Lauren Davis
Jennifer Albright
Senator Jeannie Darneille
Councilmember Phillip Lemley
Kimberly Gordon
Greg Link
Kecia Rongen
Tim Wettack
Tony Golik
Sonja Hallum
Kathleen Harvey
Hon. Catherine Shaffer
Rep. Skyler Rude
Chief Cherie Harris
Hon. Josephine Wiggs-Martin

Members Absent:

Senator Mike Padden
Norrie Gregoire
Stephen Sinclair
Jon Tunheim

Staff:

Keri-Anne Jetzer

I. CALL TO ORDER

At the request of new SGC Chair, Judge Saint Clair, Acting Vice-Chair Judge Rumbaugh called the meeting to order.

II. APPROVAL OF MINUTES

MOTION #21-01: APPROVE MINUTES FROM DECEMBER 2020 MEETING

MOVED: Judge Shaffer
SECONDED: Tony Golik
PASSED: Unanimous

MOTION #21-02: APPROVE MINUTES FROM DECEMBER 2020 SPECIAL MEETING

MOVED: Councilmember Young
SECONDED: Councilmember Lemley
PASSED: Unanimous

III. DRAFT LEGISLATION BILLS

S-0018 - Creating a developmentally appropriate response to youth who commit sexual offenses

Vice-Chair Rumbaugh started discussion. George Yeannakis spoke to the bill as he and Katie Hurley had been working on it over the past few months. George said the main part of the bill deals with eliminating registration for juveniles sentenced as sex offenders. He reported that research on registration shows it doesn't protect the people, it doesn't prevent further deviant behavior, that juveniles have a very low rate of recidivism for sex offenses, and the stigma attached to juveniles who register is very damaging. Chair Saint Clair inquired about the change in terminology on the offenses. George responded that they were trying to make a distinction between adults and juveniles who commit Rape of a Child 1. Other states (like Colorado) have already adopted a less-stigmatizing nomenclature for their offenses and it was suggested by the prosecutors on the team working on the bill.

Judge Shaffer, who used to prosecute these cases, believes that the bill is nicely tied to the reality of what happens when juveniles commit sex offenses. Tony Golik agrees with the concept of the crime title change, however, he does not think the particular title used in this bill captures the conduct. Tony added that WAPA does not agree with a blanket removal of juvenile sex offender registration. He and members of WAPA are cognizant of the issues around registration but feel it is more nuanced. Vice-Chair Rumbaugh asked if WAPA would be interested in time-limited registration. Tony replied that WAPA is definitely interested in looking at modifications and is concerned about registration for juveniles the way it sits currently.

Kecia Rongen informed members that around 2008-2009 the Sex Offender Policy Board completed a report on the difference between adult and juvenile sex offenders and made some recommendations+ to the Legislature. She is pleased to see that this is coming around again.

Councilmember Young thought that while there was support for a considerable amount of this, there was concern about complete elimination of the registration as opposed to having some time constraints around registration. He wondered if a way to get support from the SGC would be to support the bill more broadly and let the Legislature to deal with the details.

Judge Shaffer said she would support the bill in principle and not take a position on whether registration should be abolished or limited in time. Kimberly Gordon agreed. Judge Houser wondered if there were any studies on the benefit of registration to the person or to society. George Yeannakis replied that the studies they provided to the Legislature show that sex offender registration does not provide any security to society and does a lot of harm to those who have to register. He offered to supply the members with research completed by Dr. Letourneau from Johns Hopkins and Dr. Caldwell. Greg Link said that he would like a motion vague enough that includes both a review of the length of registration but also the consideration of eliminating registration. Tony Golik made the point that sex offender registration is critical in assisting organizations and groups when vetting volunteers or members.

Chair Saint Clair commented that after he had observed a presentation by Dr. Letourneau, he was convinced of the lack of efficacy of juvenile registration. During his years as a judge, he witnessed the impacts of registration on youth as they tried to exit the system. He is supportive of the elimination of registration for juveniles based on what the research shows.

Katie Hurley, from the King County Department of Public Defense, noted that she put some research conducted by Dr. Letourneau about youth sex offender registration in the chat box (see end of minutes for chat box comments). Dr. Letourneau's studies have shown that the rate of recidivism for youth is around 3%, that registration does not prevent the onset of sexual offending nor does it reduce sexual reoffending, and that it does cause predictable and serious harm to the youth. Kathleen Harvey expressed appreciation that this bill and this discussion were grounded in current research. She reminded members of all that has been learned about juvenile brain development and the need to differentiate between juvenile and adult, especially since some of these laws have been blanketed across the juvenile and adult populations. She went on to add that those working in the juvenile system have seen huge collateral consequences around release from the labeling of risk classifications of the sex offender population to the long term impacts around reintegrating back into the community, going back home, reenrolling at school, and job opportunities.

MOTION #21-03: SUPPORT S-0018

MOVED: Judge Shaffer
SECONDED: Kimberly Gordon
PASSED: Passed (No=1)
ABSTAINED: Chief Harris

Jail Standards Task Force

Senator Darneille explained the purpose of this draft legislation. As the Legislature tried to develop good policy around mental health services, primary health care, dental care, and capacity issues, there was no data from jails on a number of these kinds of issues. This bill establishes a task force to bring that dialogue back again and expand it into good conditions of care.

Judge Shaffer believed this was in SGC's wheelhouse. One reason is because there is a general concern of where and how the sentences are being served, including jail and juvenile facilities. Another reason is due to the focus on therapeutic programs for people who are sentenced and to the extent that this task force is going to be addressing the availability of programs to those in custody. Tony Golik agrees with Judge Shaffer's comments and, since such a study hasn't been completed since the 1980s, he feels it is important to have some state guidelines to help jails that are struggling with old facilities that need to be rebuilt or remodeled as well as looking at what services are available.

**MOTION #21-04: SUPPORT JAIL STANDARDS TASK FORCE DRAFT
LEGISLATION**

MOVED: Judge Shaffer
SECONDED: Kimberly Gordon
PASSED: Unanimous

S-0033 Restitution Interest

Greg Link remarked that the CSTF spent quite a bit of time on this topic and made a similar recommendation. Although the Task Force didn't make a recommendation on an interest rate, there was consensus on restitution owed to insurers and third parties. He feels this is a step forward as it recognizes that restitution owed to people like insurance companies, whose business is premised on the idea of making a profit on the idea that they may have to pay out something at some point, shouldn't necessarily get a windfall out of restitution, too.

Judge Shaffer said she would abstain from the vote. While she is supportive of reducing financial obligations, she would like to hear from someone with knowledge of how the insurance industry would react to this and whether there would be unintended consequences, such as no longer offering coverage to crime victims. Tony Golik indicated those are the same concerns raised by many prosecutors.

Greg Link read the Task Force's Recommendation #40 and expanded on some of the discussions it had on it.

MOTION #21-05: SUPPORT S-0033 ON RESTITUTION INTEREST

MOVED: Greg Link
SECONDED: Councilmember Young
PASSED: Passed* (No=1)
ABSTAINED: Judge Shaffer

* Judge Shaffer noted that she is in favor of the change interest rate. Tony Golik was also in favor of that change. The result is that the SGC is unanimously in support of the change to the interest rate on restitution.

It was reiterated that Legislative members are non-voting members. Sonja Hallum wanted to state for the record that her votes today are not an indication of the official position of the Governor.

S-0062 County of Origin

MOTION #21-06: SUPPORT S-0065 CONCERNING COUNTY OF ORIGIN

MOVED: Chair Saint Clair

SECONDED: Greg Link

PASSED: Passed

S-0099 Concerning the jurisdiction of juvenile court

Senator Darneille briefed members on this draft legislation. She sponsored a bill similar to this last year to trigger a health impact assessment conducted by the Department of Health. The report was published in October 2020 and she offered to provide a link to the report (see end of minutes for chat box comments). She observed that this change has been implemented in Vermont, the Committee of Ministers for the Council of Europe recommended going to 21st birthday, and it's been implemented in several European countries. She added that it will be amended to include a study by WSIPP.

Tony Golik requested that the SGC not vote on this today as he knows WAPA has not yet discussed this bill. While he would like to take a position, he is unable to do so until WAPA has discussed it. Vice-Chair Rumbaugh commented that there was discussion during the break about calling a special meeting of the SGC to target specific bills a week or so before the next SGC meeting, which coincides with the cutoff date for bills coming out of committee. Keri-Anne noted that it is likely this bill will have a hearing before the next meeting. Another option would be to hold a special meeting to discuss just the bills on an agenda.

Chief Harris said WASPC is very concerned about jumping from age 8 to 13 and only including Murder 1 and 2 and not other violent crimes. They see value in other parts of the bill but those parts received the most concern.

There was discussion about the impacts of increasing the age floor from 8 to 12 and what options would be available for a hypothetical 12 year old who committed a serious offense.

MOTION #21-07: MOTION TO TABLE DISCUSSION ON S-0065 CONCERNING THE JURISDICTION OF JUVENILE COURT

MOVED: Tony Golik

SECONDED: Chief Harris

PASSED: Failed (Yes=5; No=9)

MOTION #21-08: SUPPORT S-0065 CONCERNING THE JURISDICTION OF JUVENILE COURT

MOVED: Judge Shaffer
SECONDED: Councilmember Young
PASSED: Passed (No=1)
ABSTAIN: Judge Houser

Vice-Chair Rumbaugh asked how many bills were left to be discussed as time was running short. Keri-Anne noted that she added two additional bills to the list as they had just dropped; SB 5099 and SB 5047 both concern the death penalty. Keri-Anne commented that the SGC had not taken a position on death penalty bills historically. If that is still the case, then she would remove them from the list. Judge Shaffer thought a discussion was moot as the Governor has imposed a moratorium on death penalty executions for the foreseeable future. Sonja Hallum responded that the Governor has issued a moratorium and that there is also a Supreme Court case pending. However, there are some remaining questions after the Supreme Court case that haven't closed the question and she believed that is the reason that legislation is still being pursued.

Kimberly Gordon inquired why the SGC has not taken a position on death penalty bills. Keri-Anne responded that in the past it was decided in the Legislative Committee and by Chair Boerner not to bring it forward to the full Commissions. She wasn't able to elucidate any further.

Some members didn't think discussion was appropriate as those two bills had not been on the agenda and, thus, many hadn't had the opportunity to review the bills. Chair Saint Clair suggested, since time is limited, to schedule a special meeting about two weeks before the February meeting to discuss these bills and any others that come up. Keri-Anne explained the fast pace of the legislative process and suggested that the SGC could not be responsive to legislative hearings if they waited for a few weeks to meet. She further explained that a special meeting of the SGC can be called by the Chair or by three members. Chair Saint Clair asked members if Fridays at noon worked for short special meetings to address legislation with impending hearings.

HB 1078/SB 5086 Restoring voter eligibility

Keri-Anne stated that these two bills are related to restoring voting rights to those who are no longer in total confinement. She noted the SGC has been supportive of restoring voting rights.

MOTION #21-09: SUPPORT HB 1078/SB 5086 CONCERNING RESTORATION OF VOTING RIGHTS

MOVED: Judge Shaffer
SECONDED: Kimberly Gordon
PASSED: Passed

IV. OTHER BUSINESS

Representative Davis announced that she will be leaving the SGC to make room for newly elected Representative Tara Simmons. She expressed gratitude at meeting everyone and said she has learned a lot during her tenure on the SGC. She expects the change will take place after the Legislative session is over in April.

V. ADJOURNMENT

APPROVED AND ADOPTED BY THE SENTENCING GUIDELINES COMMISSION

/ s /

Judge J. Wesley Saint Clair, Chair

Date

Posted in MS Teams Chat Box

Senator Darneille:

All: Here is the link to the Health Impact Review for the bill to raise the age of juvenile court jurisdiction. <https://sboh.wa.gov/Portals/7/Doc/HealthImpactReviews/HIR-2020-15-S-6720.1.pdf?ver=2020-10-06-095727-300>

[1/8 9:47 AM] Hurley, Katherine (Guest)

- Research demonstrates that youth registration and notification laws fail to produce the outcomes intended by registry laws, namely the reduction of sexual recidivism.
 - Registration demonstrates that registering children does nothing to prevent the onset of sexual offending nor to reduce sexual reoffending.
 - The failure to register or accurately provide registration information is not a significant predictor of sexual recidivism.[1]

[1] Letourneau, E. J., Bandyopadhyay, D., Sinha, D., & Armstrong, K. S. (2009)

[1/8 9:48 AM] Hurley, Katherine (Guest)

- The vast majority (about 97%)[1] of children adjudicated for sex offenses do not reoffend with new sex offenses.

[1] A 2016 WSU and WSICJ study measured sexual recidivism rates in juvenile offenders using a two and three-year follow up period. Out of the 2,217 individuals followed, recidivism rates for sex offenses were low, at 2.4 and 3.2 percent respectively. The conviction rate for failure to register as a sex offender using a two and three-year follow up period was 3.9 and 7.5 percent respectively, demonstrating that a significant number of young people face additional criminal consequences as a result of juvenile sex offender registration in Washington State. Hamilton Z., & Pedneault A. *Recidivism rates of juvenile sex offenders in Washington State*. Office of Financial Management: Forecasting and Research Division. Olympia, WA.

[1/8 9:48 AM] Hurley, Katherine (Guest)

- Instead of improving public safety, subjecting children to a lifetime label of "sex offender" causes **predictable and serious harm**.

[1/8 9:48 AM] Hurley, Katherine (Guest)

- Youth registration and notification laws are associated with the **worst possible outcomes for youth**, including:
 - increased suicide attempts (compared to unregistered youth in treatment, registered youth were four times more likely to report having *actually* attempted to die by suicide in the preceding 30 days),

- increased solicitations by adults for sex (five times more likely), and
 - increased sexual assault victimization. (two times more likely). [1]
- Youth subjected to registration will face innumerable barriers to successful prosocial development and face increased risk for other **serious mental health problems, risks to their physical safety, peer problems, and problems at school.**

The **parents of youth** subjected to registration express **emotional distress and fear** for the lives of their children, with good reason according to researchers.

[1] Elizabeth J. Letourneau et. al., Effects of Juvenile Sex Offender Registration on Adolescent Well-Being: An Empirical Examination, 24 Psychol. Pub. Pol'y & L. 105, 114 (2018).