



STATE OF WASHINGTON

## SENTENCING GUIDELINES COMMISSION

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

### **SPECIAL MEETING MINUTES January 15, 2021 12:00pm – 1:00pm MS Teams**

Members Present:

Hon. J. Wesley Saint Clair, Chair  
Hon. Stanley Rumbaugh  
Councilmember Phillip Lemley  
Kimberly Gordon  
Greg Link  
Hon. Catherine Shaffer  
Chief Cherie Harris  
Hon. Josephine Wiggs-Martin  
Stephen Sinclair  
Jon Tunheim

Staff:

Keri-Anne Jetzer

Members Absent:

Senator Mike Padden  
Norrie Gregoire  
Hon. William Houser  
Councilmember Derek Young  
Rep. Lauren Davis  
Jennifer Albright  
Senator Jeannie Darneille  
Kecia Rongen  
Tim Wettack  
Tony Golik  
Sonja Hallum  
Kathleen Harvey  
Rep. Skyler Rude

#### **I. CALL TO ORDER**

Chair Saint Clair called the Special meeting to order

#### **II. DRAFT LEGISLATIVE BILLS**

##### **SB 5120 Criminal Sentencing of Youth and Young Adults**

Kimberly Gordon suggested hearing from Katie Hurley, who is with the King County Department of Public Defense, as she had worked on this bill. Chair Saint Clair invited Katie to speak about the bill. Katie explained that this legislation codifies the decisions of the Washington State Supreme Court finding that when people are being sentenced in adult court for behaviors that happened when they were under age 18, the judge needs to take into account the fact that the person was a child at the time of the offense and recognizing that the judge has the discretion to craft an appropriate sentence for that person, understanding the mitigating qualities of youth.

Judge Shaffer and Judge Rumbaugh both agree that this is codification of the current law. Judge Rumbaugh wondered, though, when he is resentencing someone, is he resentencing the person as they are now or as they were at the time the offense was

committed. Chief Harris suggested it would be more amicable for some language that has the judge taking into account the actual crime and whether there was premeditation or any letters submitted by victims. Judge Shaffer reassured Chief Harris that those things are taken into consideration during these resentencings and that this bill would not change that.

Kimberly Gordon wondered if there was any language that could be added to SB 5120 that would make SB 6164 (passed last year) easier to implement, as there is a debate whether SB 6164 allows the courts to consider the mitigating qualities of youth and how that youth has changed in the years.

**MOTION #21-10: SUPPORT SB 5120**

**MOVED:** Judge Shaffer  
**SECONDED:** Judge Rumbaugh  
**PASSED:** Unanimous  
**ABSTAIN:** Jon Tunheim

**S-0188 Failure to Register**

Judge Rumbaugh believes that this is a compliance issue, not a sex offense. Jon Tunheim said that this was a recommendation from the Criminal Sentencing Task Force. He added that he saw an email stating that the sponsor, Senator Dhingra, was planning to withdraw this bill based on concerns for some unintended consequences expressed to her by the deputy prosecutors who work with these cases.

Judge Shaffer commented that noncompliance with this statute is definitely correlated with lots of other things that get people reinolved with their dynamic for sex offending. Judge Rumbaugh added, in his experience, many of these cases involve people who are homeless or have no permanent address, who missed a weekly registration requirement, people who have moved and failed to change their registration address.

**MOTION #21-11: SUPPORT S-0188**

**MOVED:** Judge Rumbaugh  
**SECONDED:** Secretary Sinclair  
**PASSED:** Passed (Yes=9; No=1)

Chair Saint Clair decided to change the order of the agenda and focus on bills with upcoming hearings.

**HB 5054 Impaired Driving and HB 1038 Possession of Firearms**

Greg Link commented that these bills both redefine elements of crimes, which tangentially touches on sentencing. What is or is not criminal is not under the SGC's purview; the response to those crimes and convictions as a matter of sentencing is.

**MOTION #21-12: TAKE NO POSITION ON SB 5054 AND HB 1038**

**MOVED:** Judge Shaffer  
**SECONDED:** Judge Rumbaugh  
**PASSED:** Passed (Yes=9; No=1)

**HB 1044 Prison to Postsecondary Education**

Judge Shaffer asked Secretary Sinclair to share what DOC's position is on this bill. Secretary Sinclair responded that DOC is in support of anything that has the potential of reducing recidivism. This is evidence-based as providing more education reduces the likelihood for reoffense. He added that the federal government has voted to allow incarcerated individuals to receive Pell grants.

Jon Tunheim noted that a modification to county of origin is included in the bill. He asked Secretary Sinclair if he foresaw any issues with it that the SGC might need to know about. Secretary Sinclair didn't know of any and said the person who initially sponsored the bill for county of origin probably wouldn't be opposed to this modification.

**MOTION #21-13: SUPPORT HB 1044**

**MOVED:** Secretary Sinclair  
**SECONDED:** Kimberly Gordon  
**PASSED:** Unanimous

**HB 1071 Bias-based Criminal Offenses**

Greg Link thought there were a few areas of the bill that could be problematic. It adds to the list of aggravating factors at a time when the Criminal Sentencing Task Force is reviewing them, which adds more work. It also creates another class of people who gets supervision regardless of risk. He went on to remark that the SGC recommended in its SRA Review report that supervision should be based on Risk Need Responsivity and not on the offense. He also noted that when comparing the proposed aggravating factor to the language of the existing hate crime statute, it seemed that the aggravating factor eliminates any requirement of intent or malice, which he thought was there for First Amendment purposes.

Jon Tunheim declared that he's never been completely satisfied with Washington's statutory response to hate crimes. Coincidentally, he had conversation with a colleague recently about this on a current case, alleging under the Supreme Court authority that says the aggravating factor list isn't exclusive and arguing that it was a proper aggravating factor for case law to adopt.

**MOTION #21-14: SUPPORT HB 1071**

**MOVED:** Judge Shaffer  
**SECONDED:** Jon Tunheim  
**PASSED:** Passed (Yes=8; No=2)

**SB 5047 Concerning Death Penalty**

Judge Shaffer asked Keri-Anne if she found any information on why the SGC historically has not weighed in on bills concerning the death penalty. Keri-Anne replied that there is no official record on why there has not been discussions on death penalty bills.

Secretary Sinclair said that it was an average of 17 years that people would sit in prison before the death penalty would be carried out. He told a story about when an execution was scheduled and the victim's family had traveled from the Midwest to Washington thinking they were going to get the final justice of the sentence handed down 16 years previously. Seven hours prior, the execution was stayed for a legal reason and the family had to travel back home. If a person was sentenced to Life Without Parole, the family would receive their final justice then.

Chief Harris observed that this month is the 10-year anniversary of Jayme Biendl's murder. For police officers, corrections officers and victims, she would vote against removing the death penalty.

Jon Tunheim admitted that, personally, he has a lot of conflict on this issue and he tends to lean towards seeing the efficacies of eliminating the death penalty that Secretary Sinclair talked about. He has worked with hundreds of families impacted by violent crime and has even gone through the decision on whether to seek the death penalty or not. He believes surviving family members in these kinds of cases know exactly what they are signing up for and a lot of them are ready to do what they have to do to get that sense of justice they are looking for. He added that he doesn't like presuming what is best for surviving family members in terms of their emotional response or needs. He will abstain from the vote as WAPA has decided not to take a position on the death penalty since they are the executor of the decision when the death penalty is an option.

Judge Shaffer said, as a member of the SCJA, she was hesitant to speak for the organization. This is not an area of judicial discretion; the prosecutor makes the difficult decision whether to move forward with a capital case and a jury is responsible for assessing the aggravating and mitigating factors. The judge's job is simply to sign off once a jury has made a determination. Additionally, she noted that Governor Inslee has suspended this. She believes the SGC shouldn't get involved in this. As a judge, she is not willing to take a position on it either in support or oppose.

Judge Rumbaugh said his concern is the grossly arbitrary nature of the imposition of the death penalty.

Kimberly Gordon appreciated the comments from the people who have had firsthand experience with these cases. She, too, has had firsthand experience with these cases but from the other side. She also appreciated that there may be some members of the SGC who do not want to weigh in, such as the judges, but the SGC is tasked with advising the Legislature and the Governor on what is good sentencing policy. She did not know of any changes that have been made to make this such a good sentencing policy that they should recommend that it continue. She said this is based on what is now known about the lack of deterrence, the costs and the cost-benefit ratio, the disparity in imposition both geographically and racially, the arbitrariness that goes hand-in-hand with the disparity, and what is known about the number of cases in which innocence has later been proven. She asked that members take a step back and think about what is sentencing policy instead of focusing the debate on the tragedy that is involved, because that is without question.

Chair Saint Clair commented that the death penalty has manifested a great deal of disparity and, of course, the tragedy that individuals have suffered as a result of it. He questioned does it operate within the principles we would like it to operate as a deterrence and noted it is not rehabilitative whatsoever. He believes it falls under the purview of the SGC as they try to figure out how to make this a systemically fairer process. He acknowledged that prosecutors have their own challenges, some of them are bias based, some of them are economic based as some counties have said they can't afford to pay for appeals so we are not going to ask for the death penalty.

**MOTION #21-15: SUPPORT SB 5047**

**MOVED:** Secretary Sinclair  
**SECONDED:** Kimberly Gordon  
**PASSED:** Tabled

**MOTION #21-16: TABLE DISCUSSION ON SB 5047 UNTIL A LEGISLATIVE HEARING IS SCHEDULED**

**MOVED:** Judge Shaffer  
**SECONDED:** Councilmember Lemley  
**PASSED:** Passed (Yes=8; No=2)

Point of clarification: This will be removed from the table if a legislative hearing scheduled.

Chair Saint Clair scheduled another special meeting for the following Friday at noon.

**III. ADJOURNMENT**

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



2/12/2021

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Judge J. Wesley Saint Clair, Chair

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Date