



STATE OF WASHINGTON

**SENTENCING GUIDELINES COMMISSION**

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

**MEETING MINUTES**

**February 12, 2021 9:00am – 12:00pm**

**MS Teams**

Members Present:

Hon. J. Wesley Saint Clair, Chair  
Hon. William Houser  
Hon. Stanley Rumbaugh  
Councilmember Derek Young  
Councilmember Phillip Lemley  
Kimberly Gordon  
Greg Link  
Tony Golik  
Kathleen Harvey  
Hon. Catherine Shaffer  
Chief Cherie Harris  
Hon. Josephine Wiggs-Martin  
Stephen Sinclair  
Jon Tunheim

Members Absent:

Senator Mike Padden  
Norrie Gregoire  
Rep. Lauren Davis  
Jennifer Albright  
Senator Jeannie Darneille  
Sonja Hallum  
Rep. Skyler Rude  
Kecia Rongen  
Tim Wettack

Staff:

Keri-Anne Jetzer

**I. CALL TO ORDER**

Chair Saint Clair called the meeting to order.

**II. APPROVAL OF MINUTES**

**MOTION #21-37: APPROVE MINUTES FROM JANUARY 29, 2021 SPECIAL MEETING**

**MOVED:** Judge Shaffer  
**SECONDED:** Councilmember Lemley  
**PASSED:** Unanimous  
**ABSTAIN:** Judge Rumbaugh

**MOTION #21-38: APPROVE MINUTES FROM FEBRUARY 5, 2021 SPECIAL MEETING WITH BILL NUMBER CORRECTION**

**MOVED:** Judge Shaffer  
**SECONDED:** Judge Rumbaugh  
**PASSED:** Unanimous

**MOTION #21-39: APPROVE MINUTES FROM JANUARY 8, 2021 MEETING, JANUARY 15, 2021 SPECIAL MEETING AND JANUARY 22, 2021 SPECIAL MEETING**

**MOVED:** Judge Shaffer  
**SECONDED:** Kimberly Gordon  
**PASSED:** Unanimous  
**ABSTAIN:** Judge Rumbaugh (for January 15 and 22, 2021 minutes)

**III. PRETRIAL RELEASE**

Keri-Anne walked members through a document that summarizes the recent work on the pretrial release system from the Pretrial Reform Task Force, the Bail Practices work group, and the Washington State Auditor. She also informed members that during the public hearing for SB 5307, the sponsor recognized that the bill needed quite a bit of work and likely would not pass this year. Chair Saint Clair reported that he was also at the public hearing and, while this is a good start, there was little support at all for the bill as it was written, and more work needs to be done.

Judge Rumbaugh talked about the risk assessment tool that is being created for Pierce County as part of the Arnold Ventures Group work. He added that the current work on the assessment is to remove racial bias and economic bias. It is expected to be completed by the end of the summer.

Chair Saint Clair shared that it was his understanding that the SGC was interested in working on a pretrial project. Keri-Anne spoke about some of the presentations and discussions the membership had on pretrial reform and the deliverable they were interested in creating. Judge Shaffer provided additional background including a meeting in spring of last year when former Chair Hauge was asking the SGC for its priorities moving forward. The SGC has been focused for a while on reducing incarceration, especially for folks of color, non-violent folks and those who would be better routed into therapeutic programs that would prevent recidivism, she said. One of the priorities discussed was pretrial reform because that influences everything else that happens in the system. If the SGC wants to move the dial on sentencing reform, she believes it needs to look at the beginning, which funnels people into the system and influences sentencing outcomes the most.

Greg Link thought that the conversations back in May and June were about waiting to see where the Criminal Sentencing Task Force was headed and, in the interim, where the SGC could turn its attention and priorities. As things have evolved over the course of the year, and as the Task Force's work as moved forward, he doesn't agree that pretrial reform is the place where the SGC can have a most impactful involvement. He

believes there is a lot of work in core sentencing issues that will have as big, if not bigger, of an impact than anything the SGC could do with pretrial reform. Judge Rumbaugh reminded members that they had this debate last spring and approved the SGC to focus on pretrial issues in addition to other sentencing issues. He added that pretrial incarceration is the most disruptive feature of the system making it critically important to address both the in-bound, pretrial side and the out-bound sentencing reform side.

Keri-Anne reflected on the November SGC meeting where she asked members to offer ideas of what deliverable(s) they wanted to come from the discussions on pretrial reform so she knew how to move forward. Those included looking at data that is available and looking at what other models of pretrial are being used around the country with the result being a white paper that could layout a pathway to pretrial reform. As that was her understanding of what the SGC wanted to accomplish with a review of pretrial reform, that was how she briefed Chair Saint Clair on the project. Chair Saint Clair said in light of the new Senate bill and the three studies that have already been completed, he wanted to confirm, given the resources that would be given to this project, if it remains an appropriate activity for the SGC without duplicating work that has already been completed.

Greg Link agreed with Chair Saint Clair that, given the framework that the Legislature already has in mind that is going to be the base of substantial work over the next year or two, there is no sense to duplicate that work. If the SGC wants to be engaged in the work related to the Senate bill, he thought it would be appropriate for the SGC to offer input.

Keri-Anne reminded members that the CSTF recommended the SGC conduct a review of felony penalties throughout the statutes and make recommendations to bring them under the SRA. She hasn't checked with Rep. Goodman as to when he might be making that ask, since the pretrial project would going to take time and the legislative session had just started.

Chief Harris observed that it seems a study is already being currently being completed on pretrial release practices due to Covid.

Jon Tunheim said that he was ambivalent on the pretrial project because Thurston and Pierce Counties have their own projects and the CSTF was working on its sentencing project. He added that the CSTF will be working on the sentencing grid this year and he anticipates there might be conversations the SGC will want to have as well as offer input so that shouldn't be taken off the radar. He suggested the SGC could make recommendations on SB 5307 through the lens of impacts pretrial detention has on sentencing that Judge Rumbaugh mentioned. Both Judges Shaffer and Rumbaugh liked this idea. Judge Houser suggested that it may be helpful in making decisions on what work the SGC does in the future if the SGC can define its deliverables relating to pretrial release. Chair Saint Clair proposed creating a small committee to help define the deliverables using the targeted approach of why it is important and then use that as

a guidepost. Judge Rumbaugh, Jon Tunheim, and Kimberly Gordon volunteered. Secretary Sinclair said he would find someone who could represent DOC on the committee. Keri-Anne will set up a meeting for two weeks from now.

#### **IV. ADDITIONAL PERSPECTIVES ON THE SGC**

Keri-Anne explained the results of the survey where members, voting and non-voting, were again asked to rank the perspectives being suggested for addition to SGC. She noted that Chair Saint Clair was appointed shortly after the last discussion on this topic.

Kimberly Gordon suggested this is one way to accomplish two goals, by increasing diversity but also bringing in background and expertise from groups that should be informing SGC discussions.

Chair Saint Clair asked members how they wished to proceed. Judge Rumbaugh suggested sending a letter to the appointing authority, the Governor, along with the chart explaining there is a concern that minority voices are not being heard on the SGC and that to encourage his consideration of these various categories of individuals.

Members asked for an update on the empty Citizen - Victim Advocate position as it has been vacant for several months and is an important voice to include. Keri-Anne said she would check with the Boards and Commissions Office.

A few members questioned how a representative from Academia would be chosen.

Judge Rumbaugh agreed to draft a letter to the Governor and send it to the Chair. Since it would take a legislative action to change the positions on the SGC, he asked if the letter should also be sent to the Chairs of the Law and Justice Committee and the Public Safety Committee. Keri-Anne offered to send the letter to the Chairs and Ranking Members of each of the criminal justice-related committees in the Legislature. It was agreed that the Legislative members on the SGC should also receive a copy of the letter.

#### **V. DRAFT LEGISLATIVE BILLS**

##### **HB 1499 – Providing behavioral health system responses to individuals with substance use disorder**

Kimberly Gordon suggested that this bill seems to fit with the SGC's general position that more drug offenses are better treated as a public health issue as opposed to a criminal justice issue. Councilmember Young acknowledged that the spirit of the bill is good, however, his concern is how to pay for those resources. The behavioral health system at this level, he said, has largely been localized and additional funding is needed from the state. Keri-Anne commented that Rep. Davis had mentioned at a previous SGC meeting that she planned to fund this through an additional tax on certain alcohol or drug-related manufacturers. She thought the funding mechanism might be in a separate bill.

There was discussion about what changes this would bring to drug courts. Tony Golik was concerned about decriminalization without having the infrastructure in place first.

**MOTION #21-40: SUPPORT HB 1499 ON CONDITION THAT THERE IS ADEQUATE FUNDING AND ADEQUATE STRUCTURAL SUPPORT FOR THE BEHAVIOR HEALTH SYSTEM THAT RESPONDS TO INDIVIDUALS WITH SUBSTANCE USE DISORDERS**

**MOVED:** Judge Shaffer  
**SECONDED:** Kimberly Gordon  
**PASSED:** Passed (Y=13; N=1)

**HB 1384 – Raising seriousness levels of Rape of a Child and Child Molestation**

Kimberly Gordon proposed the levels should not be adjusted while the CSTF is looking at the grid as a whole. One of the reasons behind the CSTF completing an overview is due to the piecemeal increases of seriousness levels that has taken place over the years.

Judge Shaffer observed that this is a mandatory minimum bill in disguise as it increases the bottom of the range for nearly all the offenses, which already fall under ISRB jurisdiction. Based on her experience, she specifically doesn't see the need to increase the penalty for Rape of a Child 3 and Child Molestation 3. Judge Rumbaugh agreed with the mandatory minimum concern but added that the SGC has made a point not to weigh in on the Legislature's prerogative to set the definition of crimes and punishments.

Tony Golik recalled that the SGC has said on several occasions that it does not support individual changes to the grid while the CSFT is taking on grid reform. Jon Tunheim agreed and shared that he has taken a position on other bills that the CSFT should be allowed complete its work before changes are made. He submitted that Rape 1 and Rape of a Child 1 are equivalently viewed from a policy perspective. This bill would make Rape of a Child 1 more serious than Rape 1, which is a serious violent offense, in seriousness levels. This disrupts that balance.

**MOTION #21-41: OPPOSE HB 1384 BECAUSE IT CHANGES THE SERIOUSNESS LEVEL AT A TIME WHEN THE SENTENCING GRID AS A WHOLE IS BEING REVIEWED BY THE CRIMINAL SENTENCING TASK FORCE. THESE PIECEMEAL CHANGES SHOULD BE ADDRESSED THROUGH THE WORK OF THE CRIMINAL SENTENCING TASK FORCE.**

**MOVED:** Kimberly Gordon  
**SECONDED:** Judge Shaffer  
**PASSED:** Passed (Y=13; N=1)

**SHB 1186 – Concerning juvenile rehabilitation**

The SGC had sought information on what the fiscal impact of this proposal would be to local governments. Based on an email she received, Clela Steelhammer reported the Department of Commerce did not see any local fiscal impacts as the costs would be borne by the Department of Children, Youth and Families.

Kathleen Harvey explained that the bill is agency request legislation to look at ways to offer support for least-restrictive settings that are therapeutic in nature and considered trauma-informed care. She shared that, currently, Juvenile Rehabilitation releases 50% of its population with no parole support or supervision. It does do have least-restrictive options, however those are about 20% capacity for young people to step down into a community facility. She went on to report that about 38% of the overall population gets access to a least-restrictive environment. This bill creates a phased approach to increase a supported step-down approach into the community.

Tony reported that WAPA is supportive of the bill but had a concern that, at 50%, youth serving long sentences, 10 years for example, could serve up to 4 years in transitional services. WAPA had suggested that no more than the final 12 months would be served in transitional services.

**MOTION #21-42: SUPPORT SHB 1186**

**MOVED:** Kimberly Gordon  
**SECONDED:** Judge Rumbaugh  
**PASSED:** Passed (Y=12; N=1)  
**ABSTAINED:** Kathleen Harvey

**SSB 5180 – Vacating certain convictions**

Keri-Anne reminded members that during previous discussion of this bill, there was a concern about how it might conflict with HB 1293. She reported that, after watching the policy committee hearing, there were no mentions about a conflict with the other bill. The bill has passed out of the Law & Justice Committee with an amendment that clarifies the prosecutor is not providing legal assistance on behalf of the victim when filing to vacation a conviction and has been referred to the Rules Committee.

**MOTION #21-43: SUPPORT SSB 5180**

**MOVED:** Tony Golik  
**SECONDED:** Judge Shaffer  
**PASSED:** Unanimous

**SB 5047 – Reducing criminal justice expenses by eliminating the death penalty**

**SB 5099 – Concerning death penalty review panel**

Chair Saint Clair said these bills were tabled until a meeting was scheduled. Although they have not been scheduled, he said he wanted to make space for conversation of the

topic, not specifically the bills, if members wished to discuss it, knowing that discussions of the death penalty had not been brought before the SGC in the past.

Judge Rumbaugh noted that there is a moratorium on the imposition of the death penalty and after *State v. Gregory* was decided there is no longer anybody on death row. Given the many other issues the SGC is wrestling with right now, this is emotionally charged and people tend to have fixed and firm ideas about when and whether the death penalty should be imposed. He's not sure why there would be motivation to engage in a discussion now.

Judge Shaffer agreed that this is a political hot potato and believes here is no reason for the SGC to align itself on either side of the issue as there is no one at risk of experiencing the death penalty in the state. If this becomes a live issue, she suggested the SGC could take it up then.

Chair Saint Clair said this helped him get an idea of where the SGC was on the issue. He acknowledged that the sentiment the SGC is not to address this due to the political implications associated with it and the moratorium that is unlikely to go away for the next period of time. There is no action on this topic and the bills remain tabled.

## VI. OTHER BUSINESS

### **HB 5361 – Concerning the resentencing of persons convicted of drug offenses**

Kimberly Gordon recapped that the SGC previously voted to oppose this bill. She was notified yesterday by Senator Darneille's office that an amendment was being put forward that addresses the concern of the increased restriction of offenses from resentencing. The proposed amendment would return the language to be closer to what was in the original bill that passed the Legislature last year.

### **MOTION #21-44: SUPPORT SHB 1186 IF AMENDED AS PROPOSED TO REMOVE THE ADDITIONAL RESTRICTION OF OFFENSES FROM RESENTENCING AS DISCUSSED**

**MOVED:** Kimberly Gordon  
**SECONDED:** Judge Shaffer  
**PASSED:** Passed  
**ABSTAINED:** Judge Houser; Jon Tunheim; Tony Golik

Chair Saint Clair suggested holding a meeting after the Legislative session to discuss a work plan that would include what the SGC wants to achieve and how to operate in concert with CSTF. If members have work plan suggestions or topics, the Chair asked members to send them to Keri-Anne.

Chair Saint Clair expressed appreciation to the members who volunteered to participate on the Pretrial Committee and to Judge Rumbaugh for offering to draft the letter to the Governor.

**VII. ADJOURNMENT**

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



3/12/2021

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Judge J. Wesley Saint Clair, Chair

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Date