



STATE OF WASHINGTON

SENTENCING GUIDELINES COMMISSION

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

MEETING MINUTES

March 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 (proxy: Greg Link)
Greg Link
Tony Golik
Hon. Catherine Shaffer
Chief Cherie Harris
Hon. Josephine Wiggs-Martin
Stephen Sinclair (proxy: Mac Pevey)
Kecia Rongen
Tim Wettack
Jennifer Albright
Sonja Hallum
Norrie Gregoire
Jon Tunheim

Members Absent:

Senator Mike Padden
Rep. Lauren Davis
Senator Jeannie Darneille
Rep. Skyler Rude
Kathleen Harvey

Staff:

Keri-Anne Jetzer

Guests:

Malika Lamont, Public Defender
Association and Director of VOCAL-
WA;
Senator Manka Dhingra;
Representative Roger Goodman;
Anthony Powers, Executive Director of
the American Equity and Justice Group;
Jonica Coweleers;
Judge Sean O'Donnell

I. CALL TO ORDER

Chair Saint Clair called the meeting to order.

II. APPROVAL OF MINUTES

MOTION #21-45: APPROVE MINUTES FROM FEBRUARY 2021 MEETING

MOVED: Judge Rumbaugh

SECONDED: Judge Shaffer

PASSED: Unanimous

III. LEGISLATIVE BILLS

Senator Manka Dhingra briefed members on the work of the Senate in response to the *State v. Blake* decision. She mentioned a bill has been proposed that would put the word “knowingly” back into the statute. She personally preferred a more public health approach and feels that is a direction the state has been moving. At a practical level, she believes the state needs to do something as cities and counties are moving toward criminalizing possession of drugs and that would lead to a confusing patchwork of laws.

The Senator addressed retroactivity of the decision saying that every single person from 1971 will have their drug possession sentence vacated. The Senate is looking at ways to accomplish that. They are also looking at how to address all the legal financial obligations that have been paid on a drug possession conviction. She noted there are many other collateral consequences, such as professional licensing, and emphasized that there is a lot of work ahead.

Greg Link asked if the Legislature is doing anything about the immediate problem of how to get the thousands of folks out of prison, back to court and resentenced? Senator Dhingra replied that people from the Washington Association of Prosecuting Attorneys, the courts, and the counties have been meeting to work on a plan to address this. On the financial side, she will push for the state to take responsibility for a lot of this work.

Jon Tunheim asked how the Legislature plans to deal with juvenile possession drugs. She responded that there seems to be wide agreement to restrict drugs to those under 21, as with marijuana and alcohol. She also agreed that a fix related to juveniles needs to happen this session.

Chair Saint Clair thanked Senator Dhingra for joining the meeting and providing this update to the members.

Representative Roger Goodman joined the meeting and provided a report on the work happening in the House. He reported that the House had been discussing three main potential Legislative responses: 1) immediate assistance for impact on state and local agencies and on budgets in terms of resentencing, vacating records, and returning legal financial obligations, plus the broader collateral impacts on the Office of Superintendent of Public Instruction, public colleges and universities, Health Care Authority, the child welfare system, family law, etc.; 2) continue discussion on potential amendments to the controlled substances statute with regard to possession itself, the threshold between possession and dealing, youth in possession, and if not re-criminalized, then what should be the intervention; and 3) investments into behavioral and mental health.

Rep. Goodman said the House is in a focused dialog phase and not boxed into any particular proposal. They want to be deliberate about their actions which are guided by the principles of public safety, social and racial equity, and not repeating mistakes of the past.

Rep. Goodman also pronounced that most of the sentencing bills have been put on hold.

Chair Saint Clair asked Rep. Goodman how the SGC can be of service to the Legislature. Rep. Goodman thought the SGC could be helpful by going through the deliberative process about the threshold between possession and delivery/distribution, the youth issue, what type of interventions are available (e.g. the Portuguese model), and take a position on whether possession should be recriminalized or not. Chair Saint Clair noted the preemption issue is of concern, too. Rep. Goodman noted that this may not reach a conclusive result in the next month, so they are also considering an interim fix.

Chair Saint Clair thanked Rep. Goodman for joining the meeting and said the briefing was very helpful.

The membership continued discussion of the topic. Judge Shaffer thought there was an opportunity to offer people an assessment and treatment as part of a resentencing. Regarding Rep. Goodman's suggestions on how the SGC can help, Judge Rumbaugh suggested creating a work group to work on some broad outlines and bring it back to the full SGC for further discussion.

Greg Link questioned whether the SGC is the right spot to have this discussion, that perhaps the response to drug use should be separated from the criminal justice system and that the SGC is too far ingrained in the criminal justice system. He was also concerned about building a structure during the need to response quickly that can't be undone.

Tony Golik replied that he believes there is a strong need for the criminal justice system in this analysis, as that push to help get individuals who suffer from drug addiction into treatment. To him, where is the proper place for the justice system is the question. He also noted that there needs to be more than just an amount of drugs in order to charge possession with intent and there needs to be an actual delivery in order to charge possession with intent to deliver. Having an amount as Senator Dhingra indicated would allow prosecutors to keep the criminal justice system in play on possession.

Chief Harris reported that members of her community had contacted her and asked her not to abide by the Supreme Court's order. She informed them that she will abide by the order but noted there is sentiment in the community of fear. There are not enough treatment programs, she went on to say, and unless there is a court order or insurance, there are many programs folks aren't able to get into. Chair Saint Clair said

professionals agree the best time for intervention is when the person is in crisis, however there is not enough on-demand treatment available.

Anthony Powers, the Executive Director of the American Equity and Justice Group, talked about the data tool that was created with the assistance of Microsoft and the Seattle Clemency Project that was presented to the SGC in October 2020. Jonica, a data analyst at Microsoft who has been working with Anthony on the project, discussed how they were able to use the tool to get data on who and how many people have been impacted by the Blake decision and presented pieces of those data.

Malika Lamont, of the Public Defender Association and the Director of VOCAL-WA, presented to members on implications of the Blake decision, including how a response framework must address the whole person and that the response must be accessible. She also discussed how to move forward in addressing the challenges of retrospective relief.

Chair Saint Clair asked members if there were any comments, specifically about Rep. Goodman's suggestion of what the SGC can do and Greg Link's question on whether this is the right place to have this conversation. Councilmember Young liked Greg's idea of not having this in the SGC's hands, but he was reluctant to say full decriminalization without any other work is the right path. He said he's uncomfortable doing that without some transition period. Chair Saint Clair admitted those concerns are felt by others. This decision is a good thing but at the same time is a crisis, but how do we take advantage of this crisis to begin the process of reimagining this, he pondered.

Judge Wiggs-Martin stated that the criminal justice system has not helped people with substance use disorders, otherwise these issues would not still require dealing with. Chair Saint Clair wondered how we know sentences achieve the outcome we expect they will achieve. What was the original rationale that 41 – 51 months is the appropriate sentence for someone who commits a bank robbery?

Jon Tunheim remarked that he believes one of the reasons that we struggle to respond to substance use disorder is that it lies at the intersection of disease and behavior. The criminal justice system is about behavior while the public health arena focuses on disease. Instead of letting each side deal with their focus, create a synergy between the two systems to address both the disease and the behavior. For that reason, he feels the SGC still has a piece of the conversation.

IV. PRETRIAL RELEASE

Chair Saint Clair introduced Judge Sean O'Donnell. Judge O'Donnell was one of the co-chairs of the Pretrial Release Task Force and presented on the report published by the Task Force. He said the Task Force kept focus within the legal framework on areas to improve pretrial practices with three main topic areas: pretrial services, risk assessment, and data collection. He went on to say this work was complimented by the

State Auditor's analysis on how many more Washingtonian's could be safely released into the community when charged pretrial. The Auditor's analysis concluded that with pretrial services, such as reminders to come to court and stay off drugs, that many more people could be safely released.

He said the most involved discussion had to do with risk assessment tools. These tools carry some risks if they employed incorrectly if you don't know the data going into the risk assessment tool. While the Task Force did not make a specific recommendation, it did suggest there are a number of things that need to be considered before adopting a risk assessment tool, like making sure there is transparency, examining disproportionality, and getting the community engaged.

Keri-Anne asked Judge O'Donnell if he knew of issues/areas found that the Task Force was unable to attend to that the SGC might consider working on. Judge O'Donnell responded that one of the most important areas that is hard to get a handle on is what constitutes a robust pretrial service program, which is largely based on funding. The current two options of either jail detention or being unsupervised in the community takes away a judge's ability to evaluate something where the choices aren't so stark. Pretrial services can offer the court a way to have someone in the community, which the rule presumes, and encourages the judge to find a way to do that, he said.

Jon Tunheim mentioned pretrial systems in other states and asked the Judge if the Task Force reviewed that or if he had any thoughts/comments on that. Judge O'Donnell said the Task Force deliberately avoided the discussion of eliminating bail as that would require a constitutional amendment. Instead they chose to focus on issues within the existing framework with recommendations that could have immediate impact. He noted that one aspect of pretrial services is needs assessment evaluations, the work of trying to know who you are dealing with pretrial, what their challenges may be, and knowing that there will be a handoff if there is a conviction. He assumed there isn't a lot of communication between the needs assessment work and the Department of Corrections when someone leaves to serve a prison sentence.

Judge Rumbaugh remarked that he was invited to participate on the Task Force and was involved in the pretrial services review. He said Pierce and Thurston Counties were awarded a grant from the Arnold Ventures Group (AVG) to improve pretrial services. One aspect the grant being worked on is the risk assessment tool. The analysts look at various data points to determine which will best assess risk in light of the legal standard in every jurisdiction. He reminded everyone that it is just one source of information the judge can use to make a determination about release. He also suggested looking at offramps, where people can be sent other than pretrial detention for the purpose of awaiting trial that doesn't involve incarceration which often leads to other disruptive effects.

Judge Saint Clair mentioned that there have been issues about bias in risk assessments. He asked how the Task Force engaged in that conversation. Judge Rumbaugh replied

that the AVG is helping to scrub out bias by looking at metrics other than police contact. They seek to get a wholistic view of individuals and their history to determine if 1) they are likely to commit a violent offense if they're released, 2) if they will show up at the various court appearances, and 3) if they would tamper with evidence or witnesses. He said these are the only reasons justifiable for holding someone in pretrial detention. Judge O'Donnell replied that the Task Force took that head on. It recommended those considering using a risk assessment tool need to be very deliberate about what tool is used and to evaluate it for disproportionate racial impacts. An evaluation can be done against static populations (e.g. comparing judgements made in a prior time period against the judgment that the tool would have produced). Andrew Peterson, with the Administrative Office of the Courts - Center for Court Research, added that there is a lot of variation in risk assessments. He reported studies on status risk assessments have found over time the pretrial population in jail tends to drop and that racial bias either stays the same or decreases. It was agreed that maintaining the status quo was not the goal, however.

Chair Saint Clair thanked Judge O'Donnell for presenting today and for his work on the Pretrial Release Task Force.

V. OTHER BUSINESS

Chair Saint Clair said he had been in contact with the Boards and Commissions Office Director. He discussed with her the vacant position and the letter the SGC submitted in March requesting greater diversity when appointing members. He said the Director would start working with that concept.

Chair Saint Clair referred to an earlier suggestion to create a subcommittee to deal with the Blake decision and asked for volunteers. Volunteers: Councilmember Lemley, Jon Tunheim, Greg Link/Kim Gordon, Judge Houser, and Chair Saint Clair. Mac Pevey said DOC would be happy to participate.

VI. ADJOURNMENT

APPROVED AND ADOPTED BY THE SENTENCING GUIDELINES COMMISSION



5/14/2021

Judge J. Wesley Saint Clair, Chair

Date