



STATE OF WASHINGTON

## SENTENCING GUIDELINES COMMISSION

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

### **SPECIAL MEETING MINUTES**

**April 2, 2021 12:00Pm – 1:00pm**

#### **MS Teams**

Members Present:

Hon. J. Wesley Saint Clair, Chair  
Councilmember Derek Young (proxy:  
Juliana Row)  
Councilmember Phillip Lemley  
Kimberly Gordon  
Greg Link (proxy: Kimberly Gordon)  
Hon. Catherine Shaffer  
Chief Cherie Harris  
Hon. Josephine Wiggs-Martin  
Stephen Sinclair (proxy: Mac Pevey)  
Kecia Rongen  
Tim Wettack (proxy: Kimberly  
Gordon)  
Norrie Gregoire  
Jon Tunheim  
Senator Jeannie Darneille  
Kathleen Harvey

Members Absent:

Senator Mike Padden  
Rep. Lauren Davis  
Rep. Skyler Rude  
Jennifer Albright  
Sonja Hallum  
Hon. William Houser  
Hon. Stanley Rumbaugh  
Tony Golik

Staff:

Keri-Anne Jetzer

Guest:

Representative Tarra Simmons

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

Chair Saint Clair called the meeting to order.

#### **II. [SB 5476](#) – ADDRESSING THE STATE V. BLAKE DECISION**

Chair Saint Clair briefed members on the bill that recriminalizes possession of controlled substances. He reported that in his participation in community meetings, there was a desire to not recriminalize possession but when he spoke with elected officials, there is strong support to recriminalize it. He asked other members for their thoughts.

Judge Shaffer said she sees this as an opportunity to look at the way the state manages people who are in possession of drugs for personal use. There is much evidence to indicate that a public health approach built into possession offenses would be effective. She added that this bill does not address the huge workload the Blake decision has thrown onto the courts in addition to the backlog that already exists due to the pandemic.

Representative Simmons commented that she is on the Blake leadership team for the Legislature. She said both the public health approach and resentencing and vacating of records were taken into consideration in both the House and the Senate budgets.

Juliana Row said the Counties would be testifying as PRO, not necessarily because of recriminalizing or fixing the statute as they try to stay away from policy making, but more toward support for creating an account for a funding source to pay for a lot of the costs. She had heard that there may be interest in adding more funding by the Senate but how much more is unknown at this time. She noted the money allocated by the House budget was only for the courts, not for prosecution or defense, and she didn't think the amount was sufficient to deal with the legal financial obligations that would need to be paid back. There was discussion about how much funding would be adequate.

Chair Saint Clair reminded members that the decisions of the SGC should be made by policies and not politics, and politics are driving this particular response. He went on to say it is known the criminal legal system has been inadequate in addressing this issue; we have not been successful in incarcerating our way out of this issue. Science informs us that using incarceration as a behavior modification tool does not work, he said. Refocusing our efforts through policy should be based on science. The current model has also disproportionately affected BIPOC communities and poor people.

Kim Gordon noted that there wasn't a mechanism to waive the \$125 fee in the case of indigency and added that the harm that LFOs cause is something the SGC has been attentive to in the past.

Judge Shaffer said she didn't want the SGC to support this bill. The view of the SGC for a while has been that substance use has been a public health issue. She believes the SGC can comment on the concerns of the bill without indicating a position; 1) devote adequate resources to treatment on demand and to treatment resources for people who are addicts and in the criminal justice system; 2) point out the incredibly disproportional impact of legislation that criminalizes drug use on the BIPOC population, 3) talk about the disproportionate impact of LFOs; 4) fund needed to fix the existing problems created by the Blake decision.

**MOTION #21-45: MOTION TO TAKE THE POSITION OF OTHER WITH  
THE FOLLOWING CONCERNS ON SB 5476;**

- 1) Oppose the bill as written**
- 2) Devote adequate resources to treatment on demand**

- 3) Devote adequate resources to mandated treatment
- 4) Document impact BIPOC persons
- 5) Make LFOs as minimal as possible (see impact on BIPOC persons)
- 6) Advocate for resources for Blake ‘clean up’
- 7) Criminal response is not appropriate for youth (mandatory diversion?)
- 8) Fund reentry as many individuals will be put back into community quickly
- 9) Make sure forensic navigators are not taken away from original funded purpose and should be based in behavioral health system, not law enforcement

**MOVED:** Judge Shaffer  
**SECONDED:** Councilmember Lemley  
**PASSED:** Unanimous  
**ABSTAINED:** Jon Tunheim

Senator Darneille stated that her primary complaint of the bill is the effect on juveniles. The movement over the past twenty years toward a brain science-based response system in juvenile cases is thrown out in this draft. She reported the bill creates a new gross misdemeanor for youthful possession. Many youth-serving organizations have provided input to her and she suggested the SGC could make a recommendation for mandatory diversions or some sort of process that would build upon the work that has been done in the juvenile system.

Kim Gordon agreed with Senator Darneille’s suggestion for diversion-only for juveniles. She suggested that the SGC specifically articulate the need to fund reentry for people suddenly returning to the community, that forensic navigators not be taken away from the work they were originally funded to do and that they should be embedded in the mental health system and not under law enforcement. Finally, she would like to see the SGC make a statement that it opposes recriminalization and that a fix would include the items that have been discussed. Judge Shaffer agreed that she preferred to see juveniles diverted and supported the idea of opposing recriminalization.

Chair Saint Clair offered to testify on the SGC’s position if members were interested. Judge Wiggs-Martin thought the SGC needed to take a position one way or another, that either it’s a public health issue that needs to be handled accordingly or agree to keep criminalizing people with substance use disorders. She felt strongly that the SGC should resist every move to return to the status quo of criminalizing people who have drug addiction.

Judge Shaffer talked about the need to include all the items discussed and changed her motion to “OPPOSE with the following concerns”. Councilmember Lemley agreed to the change.

Jon Tunheim reported that WAPA will be discussing the bill that afternoon. He thought they may end up taking a neutral position and some offering ideas. He said the

first four bullets in the motion are items on which the prosecutors have been supportive. He understood that the bill made possession by a juvenile a gross misdemeanor, which he thought was eligible for mandatory diversion in the juvenile system. He noted that in order to have diversion there has to be some criminal consequence to be diverted from and that it didn't make sense to regulate alcohol, tobacco, and vaping but not regulate controlled substances when it comes to youth, particularly given the high risk to harm to youth from use.

Representative Simmons offered some suggestions on how the SGC could sign up and testify for this bill. She suggested taking the position of OTHER in case Chair Saint Clair wasn't able to testify due to the volume of registrants. A position of OPPOSE without an explanation might give a different impression. Mac Pevey also suggested providing the list of concerns in writing in the case that Chair Saint Clair isn't able to testify in person.

Mac informed the members that DOC has set up a working group in the last few weeks that has focused on making resources available to individuals who are releasing, including transportation, housing, increased gate money, cell phones, etc. to help put them in the best position to succeed.

Chair Saint Clair thanked the members for such a great response to this bill given the short notice. He said it shows the seriousness of this membership to address these huge issues.

### III. ADJOURNMENT

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



5/14/2021

\_\_\_\_\_  
Judge J. Wesley Saint Clair, Chair

\_\_\_\_\_  
Date