



STATE OF WASHINGTON

SENTENCING GUIDELINES COMMISSION

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

MEETING MINUTES

September 10, 2021 9:00am – 12:00pm

Zoom

Members Present:

Hon. J. Wesley Saint Clair, Chair
Hon. Stanley Rumbaugh
Councilmember Phillip Lemley
Kimberly Gordon
Chief Cherie Harris
Hon. Josephine Wiggs-Martin
Jennifer Albright
Senator Jeannie Darneille
Secretary Cheryl Strange (proxy: Julie Martin)
Kecia Rongen
Rep. Tarra Simmons
Rep. Gina Mosbrucker
Sonja Hallum
Hon. William Houser
Greg Link
Hon. Sharonda Amamilo
Tim Wettack
Norrie Gregoire
Jon Tunheim
Councilmember Derek Young
Gina Cardenas

Members Absent:

Senator Mike Padden
Tony Golik
Kathleen Harvey

Staff:

Keri-Anne Jetzer

I. CALL TO ORDER

Chair Saint Clair called the meeting to order. He welcomed Judge Sharonda Amamilo and Gina Cardenas to the Commission and asked all members to introduce themselves.

II. APPROVAL OF MINUTES

MOTION #21-52: APPROVE MINUTES FROM JULY 2021 MEETING

MOVED: Judge Rumbaugh
SECONDED: Councilmember Lemley
PASSED: Unanimous

III. PRETRIAL RELEASE COMMITTEE

Judge Saint Clair asked Judge Rumbaugh to report on the workings of the committee. The Judge reported that the committee evaluated SB 5307, which is based on the work of the national Uniform Laws Committee, on which Senator Pedersen serves. This is the first piece of work in the criminal law field for the ULC. Judge Rumbaugh commented on some of the concerns he had with the bill and said he is planning on reporting the SGC's determinations to the Senate Law & Justice Committee when they hold their meeting later in September.

Kimberly Gordon acknowledged the work of defense attorneys Anita Khandelwal and Katie Hurley in the review of the Senate bill. In a nutshell, she said the committee expressed gratitude that Senator Pedersen wanted to involve the SGC in discussions about this legislation, recognized the importance of looking at Washington's pretrial release practices, and determine whether they serve justice, follow best-practices, and are data-based.

The final committee meeting concluded that the projects in Pierce and Thurston Counties on-going and will result in some very valuable information about local practices. But also noted that this is an area of the law that is flux in our state.

Understanding the true intent behind the bill drafters and what they were trying to achieve would have helped the committee in crafting a response. The committee decided that instead of approaching the issue through this legislation, it would be better to gain a sense of what will best achieve justice in the local jurisdictions and then use that information to base model legislation. Anita Khandelwal added that there is also the issue of state court precedence that talks about the issue of fixing bail as belonging to the judiciary. Committee members were not confident that there can be legislation on this unless that case law changes. Unless people are considering an amendment to the Constitution or set up some test litigation to see if the court would overrule this case, this is a thorny area in which to try to legislate.

Chair Judge Saint Clair commented that racial disproportionality is apparent in the criminal legal system and yet this bill doesn't seem to mention anything about it. He wondered how it addressed that. Judge Rumbaugh replied that it does address the economic disproportionality by returning the bail amount after the defendant complied with all pretrial conditions, which, he observed, is a step in the right direction. Section 307 also discussed whether monetary bail should be set and is linked to the monetary circumstances of the person.

Senator Darneille appreciated the deep dive the committee members did on the bill. She asked the group to also highlight the things they like about the concept and about having these kinds of pretrial release and detention policies addressed. She believes this will enhance the conversation.

Jon Tunheim also believes that a uniform bill across states is not possible because pretrial practices, laws, and rules are so different state to state. He agreed with Senator Darneille that producing research around best practices is a more viable way to go and then create a legislative strategy that looks to embrace some of those best practices. Jon considers the major issue to be money bail but recognized that eliminating it is a huge legal undertaking as the entire statutory structure is built around it, as are court rules and some provisions of the state's Constitution. He feels this is the root of much of the racial and economic disparity.

There was discussion about the number of people who are in jail pretrial statewide and for how long. It was mentioned that the data differs based on the county and how the county defines pretrial status but the general consensus was that the majority of persons in jail are there pretrial.

Senator Darneille asked if there were studies that showed what the outcomes were for those who were detained pretrial opposed to those who were not. Anita Khandelwal mentioned that the decision to detain someone can be very outcome-determinative. People who are in custody are more likely to plead out, especially if they have a credit-for-time-served offer on the table. She said they won't want to wait in jail to go to trial in two months if they can plead and get out today. The decision to plead is more about not wanting to stay in jail as opposed to guilt or innocence.

Judge Houser submitted that it is ultimately a judge's decision to release someone with or without conditions. Court Rule 3.2 provides judges structure in which to make those decisions. Even with that structure, he said, it is important to remember that each judge still has an implicit bias. He feels judges are working towards making sure this doesn't impact. There is also institutional bias. Before significant inroads can be made to problematic pretrial detention, things that help relieve the stresses related to judges' pretrial detention decisions, like post-conviction services and community service, need to be addressed. He added that the presumption of Court Rule 3.2 is for people to be released without conditions but doubts that happens very often.

Chair Judge Saint Clair asked the members how this should be conveyed to the Senate committee. Jon Tunheim reiterated that he feels that the use of money bail is the game-changing issue for pretrial practice that the Legislature should start taking on. He recognized that would be a multi-year process. Judge Rumbaugh agreed. He feels the pretrial release decision should be binary; if there is a concern of any of the elements of CrR 3.2 then the decision is to detain, otherwise the consideration is to release with appropriate conditions. He heard some consensus around this idea and will include it in his presentation to the Senate committee.

Judge Rumbaugh told a story of a person who sought vacation of a class B felony so she could apply for a specific job. Unfortunately, the Judge was not able to give the person the relief she requested and that he felt she deserved. He said there is a point where the felony conviction is going to plague you for reasons that far outweigh the gravity of the offense. He believes there needs to be a more serious look at the collateral consequences of a felony conviction as it prevents people from doing the very thing we want them to do to.

Judge Rumbaugh said he would report that there seems to be a real appetite for change in the direction proposed by the Act and then note the concerns that have been brought up by Commission members; eliminate cash bail, reduction of pretrial detention and the associated person hardships created by incarceration are shared goals as long as they are consistent with public safety. Jon Tunheim thought the state should consider finding a way to support more robust pretrial release services. In his experience, once Thurston County started investing in such services, it made a huge difference in how they addressed pretrial release.

Representative Simmons was confused why the Legislature was taking this on considering the Supreme Court case. Jon Tunheim replied that he thought the Supreme Court was being very protective of judicial discretion as it relates to setting conditions of release. He expected any attempts by the Legislature to tamper with that would be struck down on a separation of powers challenge. That being said, he thought money bail as a condition of release is found in statute. Judge Rumbaugh clarified that bail is mandated by Article 1 Section 20, which would require a Constitutional change.

Keri-Anne asked if members would like to have the draft document that included feedback on the Legislative bill sent to the Senate Law & Justice Committee. Members decided to wait and learn what the Senate committee's response is to the work session testimony. Then, a more cohesive document could be created that would more directly address the direction the Senate committee would like to take.

IV. CRIMINAL CODE REVIEW COMMITTEE

Chair Judge Saint Clair asked Keri-Anne and Judge Wiggs-Martin to consider a way to address the unranked offenses in an organized way.

V. CRIMINAL SENTENCING TASK FORCE

Jon Tunheim provided a brief history of the work of the Task Force for the new members. He stated that members had originally hoped to have grid recommendations completed by the end of 2021, but they have come to realize it will take longer.

VI. OTHER BUSINESS

The Chair mentioned that Clela Steelhammer, from the Caseload Forecast Council, had emailed a request for participation in a work group to review the adult and juvenile sentencing manuals. He inquired if she was still seeking input. Clela replied that, yes, she is still interested. She elaborated that she is looking for anyone who is willing to help review the sentencing manuals. She expected there will be about (2)

two-hour meetings, so not a huge commitment. For those who aren't able to meet but still wish to assist, she offered to send a draft of the manual so they can provide feedback that way. She hasn't heard back from the defender's association and would appreciate participation from a defender. Judge Saint Clair reminded members that they are welcomed to invite members of their network to participate in such projects as many of us are quite busy. Judge Amamilo offered her assistance.

VII. ADJOURNMENT

APPROVED AND ADOPTED BY THE SENTENCING GUIDELINES COMMISSION



Judge J. Wesley Saint Clair, Chair

Date