



STATE OF WASHINGTON

SENTENCING GUIDELINES COMMISSION

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

MEETING MINUTES

October 8, 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
Gina Cardenas
Kathleen Harvey

Members Absent:

Senator Mike Padden
Tony Golik
Norrie Gregoire
Councilmember Derek Young
Jon Tunheim

Staff:

Keri-Anne Jetzer

Guest:

Diane Ashlock, DOC

I. CALL TO ORDER

Chair Saint Clair called the meeting to order.

II. APPROVAL OF MINUTES

MOTION #21-53: APPROVE MINUTES FROM SEPTEMBER 2021 MEETING

MOVED: Judge Amamilo

SECONDED: Kimberly Gordon

PASSED: Unanimous

III. PRETRIAL RELEASE COMMITTEE

Judge Rumbaugh reported on his presentation at the Senate Law & Justice Committee work session. He said among the panelists there was a unified appreciation that the Senate is taking a serious look at pretrial practices. He was surprised that there was not much pushback on the idea of eliminating or sharply moderating the use of money bail. He was unsure if there would be another work session.

Chair Judge Saint Clair reported that he, Judge Rumbaugh, and Judge Shaffer participated in a Zoom meeting with Senator Solomon a while back about a legislative proposal the Senator has related to the Blake decision. Judge Rumbaugh was in favor of the Senator's idea of shifting the emphasis related to drug use/abuse to a civil format. Criminalizing drug use hasn't done anything by way of addressing the real problem, he said.

IV. RACIAL EQUITY TRAINING

Chair Judge Saint Clair stated that he participated in a cultural training through the Criminal Sentencing Task Force back in July. He found it to be very informative and helpful. He thought it would be an appropriate conversation for the SGC to participate in as well since the SGC engages in discussions about how to deal with issues of racial disproportionality that our systems perpetuate. He met with the Director of the Department of Equity, Dr. Karen Johnson, and she is happy to make a presentation to the SGC. The Chair asked members if they would like to use a regularly scheduled meeting date, probably in February or March 2022, or if they would like it to take place outside of a regular meeting. His experience has been that these trainings are best given over two or three days.

Judge Wiggs-Martin suggested the training take place during regular meeting time since it is integral to the work that the SGC does. Sonja Hallum said she is working on setting up the Office of Independent Investigations and part of the authorizing statute requires a full training on racial equity issues. She is reaching out to different experts and looking into different trainings. She can share that information with the SGC. She added she would be happy to speak with Chair Judge Saint Clair if there are any budget asks that need to be considered in the next Legislative session for any costs of training.

V. CRIMINAL SENTENCING TASK FORCE UPDATE

Judge Chair Saint Clair reported that work on the CSTF and its committees has slowed a bit in order to dig deeper into the current topics. He observed that in some ways the CSTF is sometimes operating on the peripherals and not dealing with the issues that speak to the appropriateness of the sentences imposed. Greg Link agreed with the Chair's assessment and shares his frustration that the CSTF at times seems to be focused on the structural pieces of the grid itself without delving into the question of why those numbers are the right numbers to be used. The CSTF has struggled with what should be the driving principles to figure out what those numbers should be; is it punishment or are they seeking to do something else? Greg reported that the WA

Statistical Analysis Center had provided preliminary data on the racial breakdown of sentences with multipliers for violent, serious violent and Burglary 1 offenses. The results were skewed toward Black and Hispanic individuals. That is something that those who have been part of the system for many years already knew to be true. He also mentioned a recent article that had been shared in one of the committees that determined incarceration in and of itself doesn't have any useful impact and, in many instances, has a deleterious effect. The study also found a strong correlation of the deleterious effect on recidivism of pretrial incarceration. Thus, the research is showing that longer sentences do not increase public safety. Chair Judge Saint Clair asked Keri-Anne to share that study with members.

Rep. Simmons concurred that the length of sentences does not contribute to our public safety goals. She believes a big piece of the puzzle is that survivors think they will find healing in the sentence of the person who caused them harm. To achieve the goals of proper rehabilitation and public safety, she said we also need to provide real healing that is not tied to the punishment. Gina Cardenas agreed that involving the survivors in obtaining longer sentences does not help them heal. She added that some survivors consider it part of the process but because of their focus on the criminal justice system, they weren't able to start healing.

VI. RECOMMENDATIONS TO THE LEGISLATURE ON CRIMINAL SENTENCING

Chair Judge Saint Clair surmised that the discussions with DOC's request to discuss the Supreme Court case and the subsequent comments from members that the SGC should be proactive in making recommendations, as well as reactive to work directives.

VII. CRIMINAL CODE REVIEW COMMITTEE

Chair Judge Saint Clair reminded members that they have been tasked with reviewing the 300+ unranked offenses. Judge Wiggs-Martin and other members of the committee have been reviewing them since August. Keri-Anne briefed members on the process the Criminal Code Review committee has taken in its review of the unranked offenses. She noted that many recommendations have been to leave the offense as unranked. Many of the unranked offenses are niche offenses and not found elsewhere. Judge Wiggs-Martin spoke about the broad picture, that this work is part one of a three-part work request. She talked about the discussions the committee had prior to their review, which included whether there should even be unranked offenses. In addition to reviewing each offense individually, the committee has been seeing some patterns that could relate to broader recommendations. Having reviewed all the offenses, she suggested the SGC could then provide its thoughts about unranked offenses in general and offer guidance on how the Legislature might address some of these offenses.

Chair Judge Saint Clair acknowledged that this is tedious, detailed work and is very appreciative of the efforts of this committee to help provide some structure to this request. Unless someone has a suggestion for another way to proceed, the Chair said a

portion of each meeting would be devoted to reviewing a section of the unranked offenses.

Keri-Anne walked members through a list of unranked offense recommendations from the committee.

**MOTION #21-54: ACCEPT COMMITTEE RECOMMENDATION TO
REPEAL RCW 10.66.090(2)**

MOVED: Judge Houser
SECONDED: Kimberly Gordon
ABSTAINED: Chief Harris
PASSED: Approved

Discussion: Chair Judge Saint Clair said he had seen these PADT areas (aka. SODA - Stay Out of Drug Areas) in Seattle used by drug courts to keep individuals out of those heavy drug-use areas. Exceptions had to be created for public transit. It was used more as a violation of supervision terms than as an actual offense.

Kimberly Gordon suggested that people of privilege could travel anywhere outside those specific zones to buy/consume their drugs and do it in an area that is not in view of the public. People who are not of means tend to lack the ability to go somewhere else but yet have the same addictions. Instead of fixing the problem, this statute is adding a further level of punishment to people who have addictions but not privilege.

Sonja Hallum suggested the person could be found in contempt and, thus, removing this as a criminal offense would not eliminate a possibility of accountability. Chief Harris wondered about the ability to actually hold someone in contempt and if that has happened. Chair Judge Saint Clair said that he has responded to people found in violation of a SODA. Judge Wiggs-Martin confirmed that there is a means to hold someone in violation of a court order but added that most of the conditions imposed by the court would not trigger a separate offense.

**MOTION #21- 55: ACCEPT COMMITTEE RECOMMENDATION TO
REPEAL RCW 81.60.080(1) and (2)**

MOVED: Kimberly Gordon
SECONDED: Judge Rumbaugh
PASSED: Approved

**MOTION #21- 56: ACCEPT COMMITTEE RECOMMENDATION TO
REPEAL RCW 9.68.060**

MOVED: Greg Link
SECONDED: Judge Houser
PASSED: Approved

Discussion: Greg Link wondered if the statute was unconstitutional as the judge is required to make the determination of what is erotic material.

**MOTION #21- 57: ACCEPT COMMITTEE RECOMMENDATION TO
REPEAL RCW 9.68.140**

MOVED: Judge Rumbaugh
SECONDED: Kimberly Gordon
PASSED: Approve

Discussion: Judge Rumbaugh wondered if this statute is also unconstitutional.

Chair Judge Saint Clair asked members if this process is working for them. It was noted that, with 300+ unranked offenses, it will take quite a bit of time at this pace. Judge Houser pondered if it would be possible to have a blanket approval and discuss those recommendations where members disagree with it. It was suggested that each month the members would be asked to review 20-30 offenses prior to the upcoming SGC meeting. The onus would be on members to start discussion on recommendations with which they disagree. Meeting minutes would reflect the specific RCWs that are being voted on if a blanket motion is made. When the committee doesn't offer a single recommendation (such as recommending both Repeal or Leave as Unranked Offense), those would be pulled out and discussed separately.

**MOTION #21- 58: ACCEPT COMMITTEE RECOMMENDATION REPEAL
RCW 9.26A.115**

MOVED: Judge Houser
SECONDED: Greg Link
PASSED: Approved

Discussion: Judge Houser suggested, as an alternative, to reclassify it as a class C or gross misdemeanor offense. It is sophisticated behavior but there also hasn't been a conviction since its inception in 2004. That no dollar amount is associated to the offense is problematic for him.

Sonja Hallum thought it was interesting that theft of subscription television services is a gross misdemeanor, whereas using a device to steal telecommunication service is a felony.

Related to RCW 9.81.020, no motion was made on the recommendations to either Repeal or Leave as Unranked Class B felony. Judge Houser remarked that part of the statute talks about things that may be protected under the U.S. Constitution or the State of Washington Constitution.

Related to RCW 9.81.030, there was a question of constitutionality.

There was a suggestion that if any offense had not had a conviction in the past 20 years it should be repealed. Chair Judge Saint Clair supposed that could perhaps be used as a template, that offenses with no convictions in the past 20 years would have the recommendation to repeal. Keri-Anne reminded members that, while we know if there were *convictions* in the past 20 years, we don't know if there were any *charges*

for the offenses that were plead to something else. She added that committee members had discussed the notion of repealing all offenses with zero convictions in the past 20 years but, upon further review, decided that some offenses needed to remain as a deterrent.

VIII. OTHER BUSINESS

DOC requested to bring a recent Supreme Court decision related to the calculation of presentence credits before the SGC for discussion. Diane Ashlock, the Statewide Records Director at DOC, presented information related to *State v Enriquez-Martinez*. There is a conflict between what the judges felt that they were responsible for and what the jails will provide. Diane listed the challenges in obtaining this information and recommended some solutions in her presentation.

There was discussion about adding a space on the Judgment and Sentence (J&S) form and mention of the previous work on trying to create a standard J&S. Some members felt a form would not be a solution to the missing reporting of presentence credit days.

Members discussed the difference between the amount of presentence credit days and the amount of good time credit given while a person is in jail. Diane remarked that in the majority of cases DOC gets the information it needs. In cases where the individual is held in multiple jurisdictions prior to sentencing, DOC doesn't always get information from all the jurisdictions.

Chair Judge Saint Clair posed the question of what the correct forum would be in which to initiate this conversation. Is the SGC that forum? Greg Link thought the solution to issue would point to whether the SGC has a role to play.

Councilmember Lemley suggested this was an opportunity for the SGC to be proactive, as discussed in agenda item 4. Judge Houser felt the statute could be clarified and that further education is needed. Greg Link offered suggested language to clarify the statute: "A defendant is entitled to credit for all the time they were confined on charges prior to sentencing on those charges, regardless of how many charges they were held on." Kim Gordon wondered what the best source of this information is? Should there also be a step taken by the agency that serves the warrant to provide notification to the right entities?

Chair Judge Saint Clair commented that Senator Darneille has been working on jail standards and has created a task force to address this. He thought this may be a place for this as well. He construed from members that this is something the SGC is interested in engaging in. He asked for volunteers to brainstorm a strategy with him on how to broach the issue.

Volunteers:

- Rep. Mosbrucker
- Judge Saint Clair
- Rep. Simmons

- Kim Gordon
- Jennifer Albright
- Diane Ashlock

Chair Judge Saint Clair mentioned DOC's press release regarding the reduced use of segregation for disciplinary purposes. Julie Martin added that over the next year and a half there are more plans that will be put in place to further reduce the number of people who go into restrictive housing as well as the length of time in which someone will serve in restrictive housing. The Chair asked what the racial breakdown was of the utilization of the disciplinary housing practices. Julie offered to provide those data to the SGC.

Chair Judge Saint Clair took a moment to acknowledge the work of Senator Darneille as she is leaving the state Legislature on November 2nd and thus, her post on the SGC, to take a position as the Assistant Secretary of Women's Prison Division at DOC. He said the state's systems have benefitted from her presence, her activity and intensity and commitment, especially to young people.

IX. ADJOURNMENT

APPROVED AND ADOPTED BY THE SENTENCING GUIDELINES COMMISSION



11/12/2021

Judge J. Wesley Saint Clair, Chair

Date