



STATE OF WASHINGTON

## SENTENCING GUIDELINES COMMISSION

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

### **SPECIAL MEETING MINUTES** **January 7, 2022 12:00pm – 1:00pm** **Zoom**

Members Present:

Hon. J. Wesley Saint Clair, Chair  
Hon. Stanley Rumbaugh  
Councilmember Phillip Lemley  
Kimberly Gordon (proxy: Greg Link)  
Hon. Josephine Wiggs-Martin  
Jon Tunheim  
Tim Wettack  
Secretary Cheryl Strange  
Kecia Rongen  
Hon. William Houser  
Hon. Sharonda Amamilo  
Kathleen Harvey  
Marc Baldwin  
Norrie Gregoire  
Gina Cardenas  
Greg Link

Members Absent:

Senator Mike Padden  
Rep. Gina Mosbrucker  
Councilmember Derek Young  
Jennifer Albright  
Tony Golik  
Chief Cherie Harris  
Rep. Tarra Simmons  
Senator Claire Wilson

Staff:

Keri-Anne Jetzer

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

Chair Judge Saint Clair called the Special meeting to order

#### **II. DRAFT LEGISLATIVE BILLS**

[HB 1715](#) Concerning membership of the Sentencing Guidelines Commission

##### **MOTION #22-01: SUPPORT HB 1715**

**MOVED:** Judge Houser

**SECONDED:** Tim Wettack

**PASSED:** Unanimous

Keri-Anne mentioned that there was a question about whether the bill sought WSU/UW/WSIPP to recommend their own people for the academic position. She

received clarification from Legislative staff that the additional language only referred to those institutions providing recommendations for a person who would be qualified for that position. Keri-Anne added that a suggestion had been made to make the academic position non-voting to keep research and policy separate. Lauren Knoth, of WSIPP, said they typically view research and policy as being separate in order to maintain research that is unbiased by a particular research or policy outcome. She was unsure if any academic that would be sought for that position would feel comfortable voting on policy recommendations.

Judge Amamilo wondered if other institutions of higher learning with a relevant research department could provide recommendations in addition to those mentioned. Members discussed this and Chair Judge Saint Clair said he would include the suggestions to broaden the institutions used for recommendations and make the academic position a non-voting position during his testimony on the bill.

### [HB 1756](#) Concerning solitary confinement

#### **MOTION #22-02: Take No Position on HB 1756**

**MOVED:** Judge Rumbaugh  
**SECONDED:** John Tunheim  
**PASSED:** Passed  
**ABSTAIN:** Secretary Strange

There was a concern about whether the SGC should take a position on this considering few, if any, of the members have experience in managing a prison population. Another concern was related to when there might be a risk to other inmates based on the behavior of a single person. Separation may sometimes be necessary to protect the general population. Another member felt that how the sentences are served does fall under the SGC's purview.

### [SB 5573](#) Creating DOSA-DUI sentencing alternative

#### **MOTION #22-03: Support concept of DOSA-DUI noting concerns**

**MOVED:** Greg Link  
**SECONDED:** John Rumbaugh  
**PASSED:** Passed  
**ABSTAIN:** Secretary Strange, Marc Baldwin

Greg Link said the defense bar is supportive of this bill as it gives an option for those who find themselves in Superior Court, noting that alcohol treatment is currently only available in Municipal and District Courts. Addiction is not something that is solved once, in many instances, so providing this option is consistent with opportunities provided with other drug-driven behavior. Judge Rumbaugh agreed that treatment is something that needs to be considered, but he expressed concern that this may be a way of delaying consequences for someone who is on their 4<sup>th</sup> DUI in 10 years. Jon Tunheim had similar concerns as Judge Rumbaugh and thought prosecutors might

support a prison-based DOSA for DUI offenses. Treatment in the community can be part of the deferred prosecution, part of probation conditions, some counties have DUI courts, so there are lots of efforts available before someone gets a felony DUI.

**SB 5588 Concerning reentry and discharge planning for incarcerated individuals at DOC**

There was concern whether there would be funding for this change. No motion was made.

**SB 5628 Concerning cyber harassment, addressing concerns in the case of Rynearson v Ferguson, and adding crime of cyberstalking**

Keri-Anne noted that the current Cyberstalking offense is a seriousness level 3 offense as listed in RCW 9.94A.515. The bill changes the name of the offense in RCW 9.61.260 from Cyberstalking to Cyber Harassment but does not change the name of the ranked offense to Cyber Harassment nor the reference subsection nor does it change the RCW tied to Cyberstalking, making it an unranked class C felony offense.

Chair Judge Saint Clair asked if there was another crime that currently encapsulates this behavior. Greg Link reported that the Rynearson case found that Washington's current cyberstalking statute was unconstitutional, and he wasn't entirely sure how this bill fixed that. He thought the behavior covered by the cyberstalking statute is already encapsulated under the harassment statute, the telephone harassment statutes that exist in state and most municipalities, and probably the stalking statute.

Judge Rumbaugh wondered if this was in response to new technology making cyber stalking the same as electronic tracking, which, he added, might be covered under the stalking statute. He, too, couldn't think of any gaps that wouldn't already be criminalized under an existing statute. Greg replied that the bill is, by all accounts, harassment by computer which is still harassment regardless of how it was done.

Judge Wiggs-Martin thought that the SGC may want to abstain and use this as an opportunity to invite some thinking around the issue. She agreed that having separate harassment or stalking charges that could fall underneath one statute creates confusion and potentially disparity depending on how they are ranked. She suggested inviting the Legislature to see if there are other crimes under which this behavior is already captured to minimize the complexity of the code.

**MOTION #22-04: Abstain position on SB 5628 and invite the Legislature to look if there are other crimes that capture this behavior to minimize complexity of the code**

**MOVED:** Judge Wiggs-Martin  
**SECONDED:** Councilmember Lemley  
**PASSED:** Unanimous

[HB 1637](#) Adding mitigating factor for mental health condition

**MOTION #22-05: Support HB 1637**

**MOVED:** Judge Wiggs-Martin

**SECONDED:** Greg Link

**PASSED:** Pass

**ABSTAIN:** Marc Baldwin

Judge Wiggs-Martin supported as it adds a mitigating factor to a nonexclusive list that the judge can consider when appropriate. Judge Saint Clair noted that people may be more attentive to it if it is articulated. Greg Link agreed and said that it been his experience that some judges are reluctant to rely on non-statutory factors even if it is a nonexclusive list.

[HB 1678](#) Creating a domestic violence offender registry

Members started to discuss the bill but realized the discussion would require more than remained in the meeting. The Chair tabled further discussion until the next meeting on January 14, 2022.

**III. ADJOURNMENT**

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



1/14/2022

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Judge J. Wesley Saint Clair, Chair

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Date