



STATE OF WASHINGTON

## SENTENCING GUIDELINES COMMISSION

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

### **SPECIAL MEETING MINUTES**

**January 21, 2022 12:00pm – 1:00pm**

**Zoom**

Members Present:

Hon. J. Wesley Saint Clair, Chair  
Hon. Stanley Rumbaugh  
Councilmember Phillip Lemley  
Kimberly Gordon (proxy: David Trieweiler)  
Hon. Josephine Wiggs-Martin  
Jon Tunheim  
Tim Wettack (proxy: Judge Saint Clair)  
Secretary Cheryl Strange  
Kecia Rongen  
Hon. Sharonda Amamilo  
Kathleen Harvey  
Marc Baldwin  
Norrie Gregoire  
Greg Link (proxy: David Trieweiler)  
Rep. Gina Mosbrucker  
Councilmember Derek Young  
Senator Claire Wilson

Members Absent:

Senator Mike Padden  
Jennifer Albright  
Tony Golik  
Chief Cherie Harris  
Rep. Tarra Simmons  
Gina Cardenas  
Hon. William Houser

Staff:

Keri-Anne Jetzer

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

Chair Judge Saint Clair called the Special meeting to order

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

##### **SB 5572– Implementing recommendation of WA State Internet Crimes Against Children Task Force**

Keri-Anne reported that she had asked Senator Dhingra about the motivation for adding the juvenile offenses to the adult sentencing grid. Her reply was that there were concerns about delayed charging for 17- and 18-year-olds, but due to the on-going work the Criminal Sentencing Task Force, she will be making them unranked offenses, which would keep them scored as juvenile offenses. The SGC's position was that there was opposition to ranking them on the adult grid. Keri-Anne said she would

flush out the substitute bill language and bring it back to the SGC in case there would be a change in its position.

**HB 1678– Creating a domestic violence offender registry**

Judge Rumbaugh reported the SCJA Criminal Law and Practice Procedure Committee, on which he sits, discussed this bill. During that discussion he remarked that he is leery of registries and there is a potential that a person could find themselves trapped in registration purgatory. The information is publicly available by design and may forestall reoffense on unsuspecting victims, which is good policy. It may also impose yet another barrier to reentry. Removal processes can also create byzantine and/or expensive pathways to extricate oneself from the registry. This was the general tone of the comments received by many of the other judges, the Judge said.

Kathleen Harvey said that from an adolescent brain science perspective and some of the decisions that have been made around youthfulness, she completely supports Judge Rumbaugh’s interpretation of the legal aspect. She said this registry bill seems to mirror the sex offender registry. She wondered what the long-term intent is of this registry. She was also concerned about reentry barriers that it would impose and the intent of true rehabilitation and support for resources that are needed by young people to be successful.

Norrie Gregoire added that in the juvenile justice field, domestic violence adjudications are often quite different than they are for adults. Often times, he said, they are against a parent or care giver, or in a mutually combative situation, as opposed to an intimate partner. He views the registry as imposing another hurdle for a youth who is in a dysfunctional family situation. Judge Saint Clair added that it can also be against a sibling.

Jon Tunheim reported that WAPA has started discussing this bill but has not yet taken a position. He thought this bill touches on a complex area that needs considerable thought. Based on the volume of these kinds of cases, he also thought the registry would be a massive system to set up and operate and expects it will include a sizeable fiscal note.

David Trieweiler agreed with other members that the registry does not advance public safety and it hurts families due to collateral consequence.

**MOTION #22-13: OPPOSE HB 1678**

**MOVED:** Councilmember Lemley

**SECONDED:** Judge Wiggs-Martin

**ABSTAIN:** Marc Baldwin, Jon Tunheim, Secretary Strange

**PASSED:** Passed

Rep. Mosbrucker reported that the sponsor expects the bill to be heard but doesn’t expect it to move. She offered to provide other bills that she knows of that won’t be moving. Senator Wilson also offered some insight into bills that likely would not be

scheduled for a hearing. Judge Saint Clair greatly appreciated the Representative and Senator sharing that information.

**HB 1758– Increasing the penalty for hazing**

This bill adds a class C felony at seriousness level 3. Keri-Anne asked members if that placement put it alongside commensurate offenses in that seriousness level.

There was discussion of the definition of hazing. Judge Wiggs-Martin commented that causing bodily harm to a person is already a crime under Assault. She wondered why another crime would be created if the behavior is already contained in another crime.

David Trieweiler talked about the fear of physical harm that falls within the definition and the increase of the penalty. He questioned the timing of this bill.

Judge Wiggs-Martin observed that if a person who is attending college or university assaults someone causing bodily harm, they get charged with a misdemeanor. Whereas, if someone who is not in college commits the same crime, they are in the Assault rubric. There is already an existing offense for this behavior; one shouldn't get a discount because one is a student. These satellite crimes treat people differently. That is the problem when creating multiple crimes that cross over and she felt the SGC should be discouraging the Legislature from doing that. An assault is an assault and it should be punished accordingly, she added.

Norrie Gregoire agreed with Judge Wiggs-Martin. He said this was a lens that the Criminal Code Review Committee looked through while reviewing the unranked offenses. This is almost like a white-collar carve out for those in fraternities and sororities. He guessed the intention was to operationalize the offense so that Deans or housing folks could raise awareness and use it as an educational tool. He wasn't sure the entire hazing statute needs to exist.

Jon Tunheim saws Judge Wiggs-Martin's point but said his interpretation was that the statute covers behavior that wouldn't necessarily be an Assault. As a prosecutor, if a crime met those elements, he said he would charge Assault over Hazing, even if there was a possibility of it being both. Assault is a gross misdemeanor and Hazing is a misdemeanor, so he wondered if the change was to align that. If committing Assault and inflicting bodily harm, it would be an Assault 2, and he again wondered if this was to bring them into alignment.

Judge Saint Clair speculated if this is perpetuating racial disparities. He went on to say the reality is that youth of color often times find themselves not in a sorority or fraternity and if there is a differential of assault behavior with hazing needing the public institution to define the behavior, then it's keeping the distinction of like a white-collar model that is offered to folks who find themselves with the financial wherewithal to be in an institution of higher learning versus the same behavior in the community as a whole.

Judge Wiggs-Martin said she is torn about this as she generally doesn't advocate for more punishment. But she feels this is an opportunity for the SGC to make a statement that there is concern about disparate treatment and the creation of different crimes assigned different seriousness levels of essentially similar conduct. That people are not treated differently. This bill ranks Hazing causing bodily harm at a lower level than if someone got into a fight and inflicted bodily harm on someone. Someone would be treated differently solely because that didn't happen on your college campus. It's treating people who commit the same conduct differently. That is the kind of thing that contributes to the gross disparities and mistreatment of certain populations that we see. She felt that the SGC should take every opportunity to speak out against that.

David Trieweiler provided the example of a young African American man with a misdemeanor Assault conviction and a young white man from a fraternity with a Hazing conviction, and the behaviors are the same. He felt certain that an employer would not consider the man with the Assault conviction and look at the Hazing conviction as 'boys will be boys' and not have a problem with it.

He added that making a statement is not as powerful as being opposed to the bill. Judge Wiggs-Martin replied that opposing it doesn't reflect the concern. She noted as Jon Tunheim mentioned, part of the motivation could be to align it with Assault. If we oppose it, it's as if the SGC doesn't support the alignment. Part of the discussion is why it is *not* aligned, why if this behavior is done at college is it viewed differently, why does the Legislature think it's appropriate that substantial bodily harm inflicted in the context of hazing at a university, at seriousness level 3, is something different than substantial bodily harm on the street, which is Assault 2 and is a strike offense.

**MOTION #22-14: NO POSITION ON HB 1758 BUT EMPOWER THE CHAIR TO MAKE THE STATEMENT**

**MOVED:** Jon Tunheim  
**SECONDED:** Councilmember Lemley  
**ABSTAIN:** Marc Baldwin  
**PASSED:** Passed

**HB 1844– Creating the offense of unlawful branding of another person**

Rep. Mosbrucker reported the motivation behind this bill is because many people who are sex trafficked are branded by tattoo or subdermal implant by the ringleader in order to track them. She was unsure if this bill would move but was happy to accept any feedback to make it a better bill.

Jon Tunheim reviewed the bill briefly and supported the idea. He was concerned that it may be disproportionately severe as it was ranked at a seriousness level 10, making it commensurate with Child Molestation 1. He has not talked with his colleagues about it yet.

David Trieweiler wondered if branding someone against their will would fall under Assault 2, a class B felony and strike offense. He thought it seemed to be another situation where a crime already exists.

No motion was made.

**III. ADJOURNMENT**

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



2/11/2022

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Judge Saint Clair, Chair

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Date