



STATE OF WASHINGTON

SENTENCING GUIDELINES COMMISSION

Helen Sommers Building, PO Box 43124 • Olympia, Washington 98504-3124 • (360) 688-8511

MEETING MINUTES

February 11, 2022 9:00am – 12:00pm

Zoom

Members Present:

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

Members Absent:

Senator Mike Padden
Chief Cherie Harris
Rep. Tarra Simmons
Senator Claire Wilson
Councilmember Derek Young
Tony Golik
Hon. William Houser

Staff:

Keri-Anne Jetzer

Guest:

Retired Judge Mike Heavey

I. CALL TO ORDER

Chair Judge Saint Clair called the meeting to order.

II. APPROVAL OF MINUTES

MOTION #22-18: APPROVE MINUTES FROM JANUARY 2022 MEETING

MOVED: Councilmember Lemley

SECONDED: Tim Wettack

PASSED: Passed

MOTION #22-19: APPROVE MINUTES FROM JANUARY 21, 2022, SPECIAL MEETING

MOVED: Kecia Rongen
SECONDED: Councilmember Lemley
PASSED: Passed

MOTION #22-20: APPROVE MINUTES FROM JANUARY 28, 2022, SPECIAL MEETING

MOVED: Secretary Strange
SECONDED: Kimberly Gordon
PASSED: Passed

III. PRESENTENCE CREDIT WORK GROUP UPDATE

Keri-Anne reported that members decided at the last meeting that a few more stakeholder voices are needed to continue discussion. Keri-Anne has been provided with the names of volunteers and is setting up the next meeting for the end of February.

IV. [HB 1692](#) – ELIMINATING DRIVE-BY SHOOTING AS AGGRAVATING CIRCUMSTANCE UNDER MURDER 1

Chair Judge Saint Clair reminded members that this discussion had been tabled during the previous meeting. Judge Rumbaugh, Kimberly Gordon, and Judge Heavey met after the last meeting and offered language for the SGC's consideration today.

Judge Rumbaugh reported that they discussed the issue of removing the aggravating circumstance of drive-by shooting from the Aggravated Murder statute. There is currently one person who is serving a sentenced under this section and they identified two other people who had been prosecuted under it. They concluded this aggravating circumstance was a lasting testament to racial inequity that was brought into the code through the Hard Time for Armed Crime Initiative and that it needed to be removed. They debated whether it should be an aggravating factor under RCW 9.94A.535(3) or if there were already ample avenues to deal with this type of crime. Judge Rumbaugh remembered that the general consensus of the SGC was that this does not need to remain as an aggravating circumstance for Aggravated Murder, so the question was what to do next. The result of their discussion was to recommend deleting the aggravating circumstance. Should the Legislature choose to add it to the aggravating factors, the SGC can deal with that proposal at that time.

Judge Heavey thanked the members for their work.

MOTION #22-21: ADOPT PROPOSED MOTION RELATED TO HB 1692:
Wherefore, it is moved that the Sentencing Guidelines Commission endorses and supports Section 1 of HB 1692; that being, we ask the legislature to delete section (7) from RCW 10.95.020. The effect would be to remove “shooting from or near a motor vehicle” as an aggravating circumstance that justifies a conviction for aggravated murder.

MOVED: Judge Rumbaugh
SECONDED: Tim Wettack
PASSED: Passed
ABSTAIN: Jon Tunheim, Marc Baldwin

V. REVIEW OF LEGISLATIVE BILLS

SB 5663 – Streamlining procedures related to State v. Blake

Kimberly Gordon requested that the SGC consider this bill based on her understanding how it changes rules for vacating convictions. She explained the proposal is looking at how to provide relief to those who are impacted by the Blake decision. Her concern is that it removes the person with the conviction and their counsel from the process. It allows the state to dictate the order and terms of vacation. While it is not typically a SGC issue, she felt it was something that should be weighed in on.

Jon Tunheim replied that Washington Association of Prosecuting Attorneys has been working on this bill and he wanted to clarify that its intent is to allow prosecutors to proactively vacate sentences, return LFOs, and get the convictions removed from people’s records without having to go through a formal process. He didn’t think it prohibited a defendant from bringing a motion or obtaining counsel. He noted that to do this for convictions going back to the 1970s, some people will be waiting for a very long time before they get their convictions vacated and LFOs returned.

Judge Saint Clair asked if people would be getting interest on their LFOs payments since they have been in the custody of the state. Jon Tunheim replied that the bill sets up a centralized state bureau so that people know where to go, but he wasn’t sure if interest was addressed.

Judge Wiggs-Martin commented that when a Judgment & Sentence is ordered for a pure VUCSA crime, that becomes the court’s order. She didn’t understand why that is vested in the prosecutor’s office in this bill. Judges process dismissals all the time, she added. Jon replied that he wasn’t sure if the court was willing to take on that task. She felt that the court should be doing that work and not placing it on the prosecutor’s office.

Greg Link provided background on discussions last year regarding a streamlined process to respond to Blake. Ultimately, he reported, there sometimes is a difference in agreement on what relief is required. He said the question about interest is currently being litigated and there is a question on whether bail jumping related convictions should be vacated, as a couple of examples. He was interested in the SGC voicing its

concerns and maybe entering into a conversation with the prime sponsor. There was discussion on whether a statutory vacation would be applicable.

MOTION #22-22 OPPOSE SB 5663 AS IT DOES NOT PROVIDE EQUAL AND MEANINGFUL ACCESS TO ALL THE AFFECTED PARTIES

MOVED: Kimberly Gordon
SECONDED: Greg Link
PASSED: Passed (N=2)

HB 1844 – Unlawful branding of another person

Rep. Mosbrucker reported that this bill came to her from trafficked survivors, many of whom were branded to show they belonged to the person who trafficked them. The bill makes it a crime to knowingly brand or tattoo someone for the purpose of tracking them. The bill also allowed victims who wish to have a tattoo removed access to funding to help pay to remove it.

Judge Rumbaugh commented that, while the motivation behind the bill is admirable, practically speaking, the crime would be hard to prove. For a variety of reasons many trafficked individuals during the period of their association with the trafficker have an emotional attachment to that individual and will readily obtain the tattoo. How is a prosecutor or judicial officer to distinguish whether there was unlawful branding when consent had been given, he asked?

Greg Link offered that this crime already falls under Assault offenses, although Jon Tunheim wasn't sure about that. Jon thought it might fall under Assault 2, which is a seriousness level 4 offense and this new crime would be a seriousness level 8 offense. His inclination was to support the bill because, while it may not be widely used, it would be a better tool than Assault to have available in these specific cases.

Judge Amamilo agreed with Jon and thought it differentiated from a typical assault because it is an on-going assault every time the branded person sees the tattoo.

Kimberly Gordon supported the idea of providing access to people who have suffered this harm so they can remove those tattoos. She thought that there are already aggravating factors, such as vulnerable victim, that could be applied to any offense to get at this behavior.

Judge Saint Clair asked if there would need to be a change in the definition of Assault 2 or if it is sufficient as it to encompass this behavior. Jon posited that Assault with intent to commit another felony (Trafficking or Promoting Prostitution) would be a more viable option. He thought the real issue is the specificity of the tool for this kind of conduct and that it is ranked between Assault 1 and Assault 2 to acknowledge the more egregious behavior and the more culpable intent of actually branding another. He said he doesn't always agree in creating niche crimes because they often don't get used but thinks this one fits in this particular area as a useful tool.

In terms of the SGC’s work on the disparities, the disproportionalities, and the long-term effects, Judge Wiggs-Martin believed the first question someone ought to consider is if this behavior is already punished. Kimberly Gordon added that creating these crimes, instead of using an aggravating factor, for example, takes the discretion out of the hands of the judges and puts it into the hands of the prosecutors.

MOTION #22-23: OPPOSE NEW OFFENSE IN HB 1844 BUT SUPPORT AMENDMENT TO ALLOW FINANCIAL SUPPORT FOR REMOVAL OF BRANDING

MOVED: Kimberly Gordon
SECONDED: Councilmember Lemley
PASSED: Passed (N=2)
ABSTAIN: Marc Baldwin, Judge Amamilo

SB 5667 – Possession and use of falsified COVID-19 vaccination document

Judge Amamilo thought only a civil infraction might be better suited for such an offense but, even then, she wasn’t convinced. She wondered what the penalty is for parents who falsify vaccination cards for their children to enter school. She didn’t feel a criminal charge was warranted. Judge Wiggs-Martin agreed that she didn’t think it needed to be criminalized and also wondered about the penalties in similar arenas.

Councilmember Lemley inquired if there are already statutes that addressed falsifying legal documents. Jon Tunheim suggested perhaps selling the falsified documents may fall under forgery, but he wasn’t completely sure. He also thought, as did Judges Amamilo and Wiggs-Martin, that this was reflective of a “crime of the day” type of offense and criminalizing it was not appropriate.

MOTION #22-24: OPPOSE SB 5667

MOVED: Judge Amamilo
SECONDED: Judge Wiggs-Martin
PASSED: Passed

VI. CRIMINAL CODE REVIEW COMMITTEE

Keri-Anne reported that the committee is waiting to receive juvenile adjudication data on the remaining 69 unranked offenses that have zero convictions in less than 20 years to complete its review of unranked offenses.

She added that the document before members consisted of committee recommendations on unranked offenses with convictions in the last 20 years for the SGC’s consideration.

There was discussion about RCW 19.118.080(1). Judge Rumbaugh wondered why this was not a civil issue as it seems to be a contractual violation. Kimberly Gordon also wondered in what context this offense was being used.

MOTION #22-25: RECOMMEND REPEAL OF RCW 19.116.080(1)

MOVED: Judge Rumbaugh
SECONDED: Kimberly Gordon
PASSED: Passed

Members reviewed RCW 9A.64.030 – Child Selling. There was discussion on whether this would fall under another statute such as Trafficking (probably not). A member asked if there was a federal law that covers this behavior which might explain the small number of convictions in the state. The three-month sentence issued for the single conviction in 2003 seems to conflict with the harm of the offense. Chair Judge Saint Clair suggested creating a “parking lot” for offenses that members need to give additional thought. Keri-Anne moved this offense to the “parking lot”.

MOTION #22-26: APPROVE RECOMMENDATIONS OF CRIMINAL CODE REVIEW COMMITTEE DOCUMENT DATED 2/11/2022

MOVED: Judge Rumbaugh
SECONDED: Kimberly Gordon
PASSED: Passed

VII. OTHER BUSINESS

Members discussed the future of in-person meetings. Keri-Anne noted a concern in finding venues that will allow a large group to meet until things had opened up. She suggested the option of meeting in-person on a quarterly basis if members preferred virtual meetings. A member noted that most members volunteer their time in addition to their day jobs. She appreciated the ability to fully engage during the virtual meetings and then quickly return to her other work instead of commuting from a venue. She said that makes it easier for her to serve. Another member commented that, based on her experience, hybrid meetings can pose a communication challenge between those in the room and those attending virtually. Members decided to table the discussion until the July meeting.

Chair Judge Saint Clair reminded members that Dr. Johnson from the Office of Equity will be providing training on how to talk about race at the April and May meetings.

VIII. ADJOURNMENT

APPROVED AND ADOPTED BY THE SENTENCING GUIDELINES COMMISSION



3/11/2022

Judge J. Wesley Saint Clair (Ret), Chair

Date