



STATE OF WASHINGTON

**SENTENCING GUIDELINES COMMISSION**

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

**MEETING MINUTES**

**April 8, 2022 9:00am – 12:00pm**

**Zoom**

Members Present:

Hon. J. Wesley Saint Clair, Chair  
Tim Wettack  
Hon. Stanley Rumbaugh  
Councilmember Phillip Lemley  
Kimberly Gordon  
Hon. Josephine Wiggs  
Secretary Cheryl Strange  
Hon. Sharonda Amamilo  
Kathleen Harvey  
Gina Cardenas  
Greg Link  
Senator Claire Wilson  
Councilmember Derek Young  
Tony Golik  
Hon. William Houser  
Jon Tunheim  
Norrie Gregoire

Members Absent:

Senator Mike Padden  
Rep. Tarra Simmons  
Marc Baldwin  
Rep. Gina Mosbrucker  
Jennifer Albright  
Kecia Rongen

Staff:

Keri-Anne Jetzer

Guest:

Dr. Karen Johnson, Director  
Office of Equity

**I. CALL TO ORDER**

Chair Judge Saint Clair called the meeting to order.

**II. APPROVAL OF MINUTES**

**MOTION #22-36: APPROVE MINUTES FROM MARCH 2022 MEETING**

**MOVED:** Judge Rumbaugh

**SECONDED:** Tim Wettack

**PASSED:** Passed

**ABSTAINED:** Jon Tunheim

### **III. DISCUSS MODIFICATIONS TO LEGISLATIVE BILLS**

#### **HB 1715 - Concerning the membership of the sentencing guidelines commission.**

Chair Judge Saint Clair repeated the purposes of the bill. Keri-Anne said she spoke with Rep. Mosbrucker after the legislative session was over as to potential reasons why the bill did not make it further. One of the reasons was that the universities had submitted a fiscal impact that was not zero. According to statute, SGC members are not reimbursed for their time, only travel expenses, so Keri-Anne wasn't sure if those impacts could actually be realized. She informed members that the descriptions of the SGC positions in the RCW are almost identical to those in the Model Penal Code – Sentencing. The MPCs language also includes an academic position. The MPCs notes that, while the number of commissions with such a position are small (perhaps because some have research units), they consider that position to be a necessity. A possible solution suggested would be to reword the bill to make it explicit that UW/WSU are only being consulted to determine the qualification of a nominee for the academic position, and that they are not expected to provide a person to serve in that position.

Keri-Anne asked members for their thoughts on giving the legislative members a vote. The MPCs doesn't indicate that the legislative members don't have the right to vote, but it doesn't indicate that any position does not have the right to vote. There are only four legislative members on the SGC and, thus, would not make a quorum by themselves. She provided examples of other commissions, boards, and councils where legislative members have a vote.

Keri-Anne observed that the MPCs included specific language related to the ethnic, gender and geographic diversity of the membership. While the SGC submitted a letter to the Legislature and the Governor's Office asking that more attention be given to this when appointing new members, she wondered if such language should be included in the SGC's authorizing statute. Senator Wilson noted that there is similar language around equity that is included in the new legislation related to reimbursements and compensation for people with lived experience. In light of this, it was concluded that adding language to the authorizing statute was not necessary.

Councilmember Young submitted that WSIPP has provided exceptional assistance to the Criminal Sentencing Task Force and he would definitely like them to be involved in vetting nominees for the academic position.

Jon Tunheim was supportive of adding an academic member and thought that if there is going to be a fiscal impact, perhaps the SGC should ask the Legislature to fund it. He wondered if it would be possible to have WSIPP provide assistance to the SGC in the same way it is currently providing assistance to the CSTF. The CSTF will expire at the end of fiscal year 2023 and the value of all the research that has taken place could continue within the SGC.

Senator Wilson noted that the bill made it to the Rules Committee. She offered a few reasons why it may not have made it out of Rules, most being related to the short

session. She added that there was no companion bill, which can sometimes make it more difficult to move bills.

There was broad support for keeping the academic position, making it a non-voting position to maintain neutrality between research and policy, and to clarify the language that UW/WSU are only being consulted as to the qualifications of a nominee.

Members discussed giving legislative members voting rights. One thought was that it might be incentive for them to participate on the Commission. Another thought was that it might get complicated if the member votes on an issue that will come before them in a legislative committee they participate on. Keri-Anne reminded members that, currently, legislative members do have the right to make and second motions.

There wasn't support to change the statute and make Legislative members voting rights.

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

Chair Judge Saint Clair informed members that Rep. Mosbrucker had requested the SGC continue the conversation about this bill so that she might include that feedback in a revised bill for the next legislative session. He then reviewed the discussion points brought up previously.

Jon Tunheim talked about the level of power and control that is exercised in these situations. He thought from a policy standpoint this behavior would be an assault, but also believed the victimization comes mostly from the power and control that's being exercised. Tony Golik agreed that it is more than just a mark that is left on a person and is a very serious offense.

Judge Wiggs submitted this behavior is already encapsulated in the human trafficking statutes. Judge Rumbaugh echoed Judge Wiggs' sentiment, that this behavior is already included in the statutes, whether it be promoting prostitution, human trafficking, money laundering (regarding ill-gotten gains), or assault.

Judge Amamilo thought the purpose of the branding, the impact on the victim, and the perceived authority in the mind of the trafficker made this different from other types of harm in other types of assaults. She added the scarring that reminds someone they were assaulted is very different from scarring that reminds someone that another person had control of their life.

Kimberly Gordon provided information into the chat for additional context (located at end of minutes). She also felt that this behavior is already included under assault, particularly under Assault 2. She talked about the substantially bodily harm definition and was of the opinion that it exceeded the temporary but substantial disfigurement language. She agreed that the harm Judge Amamilo spoke of is separate from the

physical mark but noted that Assault 2 subsection (f) may encapsulate that. This is a different way of applying current statutes, but she felt it was already included.

Tony Golik replied that he felt the behavior did not fit clearly within the current Assault 2 statute, which includes temporary but substantial disfigurement or fracture by an assault. He felt this conduct was more serious than Assault 2 but yet did not meet the definition of Assault 1. He thought made sense to look this conduct and ask what the appropriate crime is that fits this very serious conduct. The question is what the right seriousness level range should be.

Judge Amamilo asked if it was an option to add this conduct to an existing crime to make it plain that the behavior is included within its definition. She observed that this discussion demonstrates how confusing it could be across the range of stakeholders.

Judge Saint Clair expects similar questions like this as the Criminal Sentencing Task Force concludes its work and hands any remaining work off to the SGC. He expressed appreciation that Rep Mosbrucker inquired of the SGC what makes sense, whether it is a new offense or modifying a current one.

**IV. DR. KAREN JOHNSON, DIRECTOR, OFFICE OF EQUITY**

Chair Judge Saint Clair introduced Dr. Johnson who facilitated discussion related to equity, inclusion and race.

**V. ADJOURNMENT**

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



5/13/2022

\_\_\_\_\_  
Judge J. Wesley Saint Clair (Ret), Chair

\_\_\_\_\_  
Date

Kimberly Gordon posted to the chat:

RCW 9A.36.021

Assault in the second degree.

(1) A person is guilty of assault in the second degree if he or she, under circumstances not amounting to assault in the first degree:

(a) Intentionally assaults another and thereby recklessly inflicts substantial bodily harm; or

(b) Intentionally and unlawfully causes substantial bodily harm to an unborn quick child by intentionally and unlawfully inflicting any injury upon the mother of such child; or

(c) Assaults another with a deadly weapon; or

(d) With intent to inflict bodily harm, administers to or causes to be taken by another, poison or any other destructive or noxious substance; or

(e) With intent to commit a felony, assaults another; or

**(f) Knowingly inflicts bodily harm which by design causes such pain or agony as to be the equivalent of that produced by torture; or**

(g) Assaults another by strangulation or suffocation.

RCW 9A.04.110 Definitions:

(4)(a) "Bodily injury," "physical injury," or "bodily harm" means physical pain or injury, illness, or an impairment of physical condition;

**(b) "Substantial bodily harm" means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or which causes a fracture of any bodily part;**

(c) "Great bodily harm" means bodily injury which creates a probability of death, or which causes significant serious permanent disfigurement, or which causes a significant permanent loss or impairment of the function of any bodily part or organ;

From <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4590125/>:

Many refugees in the developed world are **survivors of torture** and present with health needs without their traumatic experience being disclosed or identified. Chronic pain is a common problem, as are **symptoms of post-traumatic stress disorder (PTSD), anxiety, depression, and other distress**. Current circumstances, particularly poverty, uncertainty about asylum, separation from or loss of family and roles, and difficulties settling in the host country, all contribute to current psychological problems and exacerbate existing ones. Psychological treatment studies tend to be focused either on PTSD diagnosis and use protocol-driven treatment, usually in the developed world, or on multiple problems using multimodal treatment including advocacy and welfare interventions, usually in the developing world.