



STATE OF WASHINGTON

SENTENCING GUIDELINES COMMISSION

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

MEETING MINUTES

June 10, 2022 9:00am – 12:00pm

Zoom

Members Present:

Hon. J. Wesley Saint Clair, Chair
Hon. Stanley Rumbaugh
Kimberly Gordon
Hon. Josephine Wiggs
Hon. Sharonda Amamilo
Kathleen Harvey
Jon Tunheim
Rep. Tarra Simmons
Marc Baldwin
Rep. Gina Mosbrucker
Jennifer Albright
Kecia Rongen
Gina Cardenas
Norrie Gregoire
Hon. William Houser
Secretary Cheryl Strange
Councilmember Derek Young

Members Absent:

Senator Mike Padden
Senator Claire Wilson
Tim Wettack
Greg Link
Tony Golik

Staff:

Keri-Anne Jetzer

I. CALL TO ORDER

Chair Judge Saint Clair called the meeting to order.

II. APPROVAL OF MINUTES

Keri-Anne informed members the May 2022 meeting minutes had not been completed.

III. PRESENTENCE CREDIT COMMITTEE UPDATE

Keri-Anne informed members that the committee had concluded its work related to the *State v Enriquez-Martinez* decision. She announced that the committee had decided that technology is not where it needs to be to track or provide the necessary information related to persons who spend time in multiple jails under the same charge presentence. A memo has been drafted that will be sent to stakeholders with the committee's recommendations.

The Chair thanked the many groups that sent volunteers to participate in the committee discussions.

IV. COMPLETE DISCUSSION ON [HB 1844](#) - CREATING THE OFFENSE OF UNLAWFUL BRANDING OF ANOTHER PERSON

Keri-Anne reminded members that the Commission's last discussion about this bill was stopped before a conclusion had been reached to start the discussions with Dr. Johnson.

Jon Tunheim was open to exploring modifying a current statute to include this language. He felt that WAPA would support the idea that this be called out in statute as opposed to trying to put it into the substantial bodily harm category.

Rep. Mosbrucker reminded members of the background and purpose of the bill.

Judge Rumbaugh questioned what would happen if the tattooing occurred out of state where it is not a crime. What if there is a dispute of whether the individual did it on their own to gain favor? He noted that there is no mens rea on the part of the trafficker or the pimp. He was in support of adding it to a current statute.

Keri-Anne inquired if it would be helpful if a few members were to work on a suggestion and bring it back to the full SGC for consideration. The Chair thought that would be a good exercise.

Judge Amamilo has experience in working with victims of this type of harm. To her, this is a matter of whether the prosecutors have enough evidence and enough training to synthesize out those cases that don't fit in the category of forced branding. Any language should be explicit enough to address the particular and enduring harms of this injury to a person.

Committee volunteers: Rep. Mosbrucker, Jon Tunheim, Kimberly Gordon

There was discussion about how this work fits within the mission of the SGC. It was noted that the purpose of the SGC, as noted in its authorizing statute, is to advise the Governor and the Legislature on adult and juvenile criminal sentencing policies. The SGC took the position of not supporting HB 1844 during the last Legislative session stating that the behavior was already encompassed in current statute. The SGC did support the part of the bill that provided funds for removal of the tattoo. The exercise this committee would take is to see where this could be placed to make good sentencing policy.

Some members thought there was a legitimate question as to whether this behavior is currently encompassed in a current statute. While the SGC voted on the bill during the last legislative session, some weren't convinced that the members did the exploration that they could to make that final decision because of the need to vote on the bill that

was headed to a Legislative hearing. One member felt the connection between the request and the role of the SGC was that the offense would need to be ranked.

The Chair felt it was appropriate for the SGC to engage in the type of conversation and anticipates more conversations of this type as the SGC is asked to give advice.

V. CRIMINAL CODE REVIEW COMMITTEE UPDATE

Members continued their review of unranked offenses. Keri-Anne informed members that, since the last batch of offenses that were reviewed, she had received additional charging data from the Administrative Office of the Courts. She included this data in the document provided to members for today's meeting.

Judges Wiggs provided some background on the work of the committee and the recommendations they made.

Members thought it was a good idea to table discussion on RCW 9A.44.132(1) Failure to Register as a Sex Offender (1st Viol) until the Sex Offender Policy Board made their recommendation about it under their current assignment.

MOTION #22-38: Adopt Criminal Code Review committee recommendation to Leave as Unranked Felony for all offenses on 6/10/22 list, with the exception of RCW 9A.44.132(1).

MOVED: Judge Wiggs
SECONDED: Judge Rumbaugh
PASSED: Passed

Judge Wiggs requested that the unranked offenses with zero convictions in less than 20 years be brought back to the Criminal Code Review committee for discussion before being brought before the full SGC.

Judge Wiggs started discussion on RCW 16.52.117(2)(b) Animal Fighting - Mutilation. She asked Keri-Anne to remind members what motion was made related to Animal Cruelty. Keri-Anne informed members at the March 11, 2022, meeting, the SGC approved a motion to recommend that Animal Cruelty 1 be ranked at seriousness level 3.

Rep. Mosbrucker offered background on the motivation behind Animal Fighting – Mutilation. She explained how dogs were stolen from private yards, being harmed and used as bait for pit fights.

Chair Judge Saint Clair wondered why the group recommended SL 5. Judge Wiggs replied that the committee felt that the intentionality of the mutilation raised concerns and felt it appropriate to rank it higher than Animal Cruelty 1.

Kimberly Gordon asked how cases of animal killing and harming (other than through neglect) compared to this crime of mutilation. She has a concern that this could

exacerbate disproportionality in sentences imposed for this kind of behavior. What are the convictions and demographic breakdown for Animal Cruelty 1 and Animal Fighting – Mutilation convictions? Is there a gang-related component to them? She offered to contribute some data through the AEJG dashboard, however, information from certification of probable cause would provide additional information on whether there was a gang-related component and how the harms being charged compare to what is being considered for a SL 5. That would require pulling case records. (Animal Fighting - Mutilation is too new and there have not been any convictions thus far). Judge Wiggs remarked that these are similar crimes in victims and behavior and agreed that further analysis was warranted to ensure any recommendations do not create inconsistencies.

Members supported tabling discussion on RCW 16.52.117(2)(b) until further information can be gathered and shared with members.

Members discussed tabled item RCW 26.20.030 – Family Abandonment. Judge Amamilo talked about the difference between this statute and the dependency statute RCW 13.34.360. She expressed concern that in situations where a newborn is abandoned and left to die (with intent), what tool would be available to hold someone accountable if not this one.

There was discussion on whether this behavior was included in other statutes. It was suggested that RCW 9A.42.080 Abandonment of a Dependent Person 3 would be the closest. Jon Tunheim wondered if the low number of convictions for Family Abandonment is due to prosecutors looking at RCW 9A.42.080 first and charging it there. That statute uses ‘recklessly abandon’ so they would not have to prove ‘intentionally abandon’ but it adds additional requirement that there be a risk of substantial bodily injury. Judge Wiggs asked if Jon thought the statutes were duplicative, noting that one is an unranked felony and in the criminal chapter while the other is a gross misdemeanor and in the domestic relations chapter. Jon suggested the Legislature should look at the two statutes as they have similar behavior but differing consequences.

Judge Saint Clair pointed out the disproportionality in the child welfare system and agreed the Legislature needs to review the alignment of these statutes. The penalties are essentially the same, but the collateral consequences are different.

Based on the difference in the number of charges versus convictions, Jon Tunheim inferred prosecutors may be diverting it or using some rehabilitative outcome and then dismissing it. If that is the case, he thought the gross misdemeanor would achieve the same end of getting the person rehabilitation. Judge Amamilo stated that the criminal charge and the dependency review occur simultaneously until the prosecution is convinced that there is enough intervention and/or the parent is removed from the child’s life.

Keri-Anne reminded members that the final task from Rep. Goodman's request is to make recommendations to align criminal penalties outside the SRA into the SRA. She wondered if these statutes will be revisited again when that work is being completed. Judge Wiggs suggested tabling this item and revisiting during the final task work. Judge Saint Clair agreed that having the committee revisit its recommendation after hearing Judge Amamilo's comments from this meeting, would be a good idea.

VI. OTHER BUSINESS

Chair Judge Saint Clair announced that Keri-Anne will be on annual leave during the July meeting so Whitney Hunt, the Sex Offender Policy Board Coordinator, would be at the meeting in her stead.

Keri-Anne informed members that she and Jon Tunheim will be presenting at the National Association of Sentencing Commissions conference in August. They will be part of a panel along with the Pennsylvania Commission on Sentencing discussing the comprehensive reviews of the respective sentencing guidelines systems.

Members revisited their discussion on hybrid meetings from a few months ago. Keri-Anne informed members that OFM does not yet have equipment for hybrid meetings. An option would be to hold the meetings at the Helen Sommers Building on the Capitol Campus as it has conference rooms set up for hybrid meetings until OFM could figure out a way for her to hold hybrid meetings at a different location. Some members emphasized caution as many people have recently been or are currently sick and the fall is the time when illness increases. Members decided to revisit the issue in the fall.

VII. ADJOURNMENT

APPROVED AND ADOPTED BY THE SENTENCING GUIDELINES COMMISSION



7/08/2022

Judge J. Wesley Saint Clair (Ret), Chair

Date