



STATE OF WASHINGTON

SENTENCING GUIDELINES COMMISSION

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

MEETING MINUTES

July 8, 2022 9:00am – 12:00pm

Zoom

Members Present:

Hon. J. Wesley Saint Clair, Chair
Hon. Stanley Rumbaugh
Kimberly Gordon
Hon. Sharonda Amamilo
Kathleen Harvey
Jon Tunheim
Rep. Tarra Simmons
Marc Baldwin
Rep. Gina Mosbrucker
Kecia Rongen
Gina Cardenas
Secretary Cheryl Strange
Chief Ken Thomas

Members Absent:

Senator Mike Padden
Senator Claire Wilson
Tim Wettack
Greg Link
Tony Golik
Jennifer Albright
Norrie Gregoire
Hon. William Houser
Councilmember Derek Young
Hon. Josephine Wiggs

Staff:

Whitney Hunt (in for Keri-Anne
Jetzer)

I. CALL TO ORDER

Chair Judge Saint Clair called the meeting to order.

II. APPROVAL OF MINUTES

MOTION #22-39: APPROVE THE MINUTES FROM MAY 2022 MEETING

MOVED: Judge Rumbaugh
SECONDED: Representative Mosbrucker
PASSED: Passed
ABSTAINED: Secretary Strange

MOTION #22-40: APPROVE THE MINUTES FROM JUNE 2022 MEETING

MOVED: Judge Rumbaugh
SECONDED: Secretary Strange
PASSED: Passed

III. PRESENTENCE CREDIT COMMITTEE - UPDATE

Chair Judge Saint Clair briefed members on the memo that was drafted to be sent to the interested parties. It includes a description of the work and results of the committee. He asked members if there were any stakeholders who were missing from the memo. Jon Tunheim suggested adding Larry Jefferson, the Director of the Office of Public Defense.

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

The Chair asked members of the committee to provide an update. Kimberly Gordon reported that after some conversation, the committee members decided to individually analyze the language in the applicable statutes and then bring that to the next committee meeting for discussion. Ultimately, it was thought there were two questions being asked: 1) should we be doing something else, 2) should we make a change and what would that change be? The work will try to focus that conversation. Rep. Mosbrucker remarked that she is asking for guidance on the law and whether there is a punishment that fits this crime.

Judge Rumbaugh voiced his concerns about what to do with someone who was branded out of state or someone who voluntarily gets branded, and the issues related to getting people to testify. He agreed that that this behavior needs to stop as it has lasting effects on the impacted person. He also foresees a challenge in implementation. He noted there is already enforcement mechanisms in place for anyone tattooing anyone under the age of 18 and suggested that perhaps tattoo artists would be a place to start. Jon Tunheim added that the group discussed the difference in culpability between the artist who unwittingly does it and the artist who has knowledge of what is going on.

V. CRIMINAL CODE REVIEW COMMITTEE UPDATE

The Chair asked Kimberly Gordon to start the discussion on the tabled item of Animal Fighting - Mutilation. Kimberly reported that her analysis focused on the two types of offenses; Animal Cruelty 1, a sex offense and the more general cruelty, and Animal Fighting. There were a number of misdemeanor offenses, but she focused on felony convictions as that is what the AEJG dashboard allowed her view to help look at whether this would create disparate results. She walked through the conviction numbers and racial breakdown data she had provided to the SGC.

Members talked about the many aspects that play a part in the crime, such as peer pressure, brain development, and socioeconomic pressures, as well as the related consequences. A member wondered if there should be an intervention model that is based on habilitation rather than punishment. There was an acknowledgement of the need for a balance between holding people responsible for the decisions they make while at the same time providing pathways for them to improve and redeem.

Kathleen Harvey noted that Washington did move forward with JR to 25, which was based on the research around adolescent brain development. She believes science should be informing changes to systems, improving how to sentence, and responding

to criminal behavior. She appreciated the data provided by Kimberly and the discussion.

Jon Tunheim agreed with using science as a guide in making changes. He wondered if the system responds to risk or culpability. The conundrum is that research shows youth and emerging adults are the highest population to reoffend but realize that is in large part explained by the brain development research. So, he theorized, the punishment is reduced and rehabilitation increased because they are less culpable despite being higher risk. Regarding the older population, however, the idea is to punish based on risk. If the person is lower risk but has higher culpability, the punishment should still be less. He doesn't want to lose sight of the fact that culpability matters and is a factor when people break the law. He struggles with where the balance is.

The Chair invited David Trieweler to comment. David suggested that he thinks the question is 'what is the appropriate and effective response' and that the current response always seems to be lengthy incarceration. He questioned if incarceration is the only currency of accountability. In response to Jon Tunheim's thoughts about culpability, David said that culpability is part of how we respond to these behaviors. He wondered what it is about culpability that has caused sentences to have increased so drastically over the last 40 years.

Rep. Simmons observed that many people she met while in prison didn't have a first chance at life and that it was common for them to have significant childhood adverse trauma. She stated that she is participating on a bi-partisan national task force that is looking at the research on long prison sentences and reported there is a lot of agreement that long sentences do not achieve many goals. She believes we need to treat the root cause.

Gina Cardenas agreed that the sentencing does not change the outcome of what happened to victims and sometimes the criminal justice system actually causes revictimization.

Chief Thomas agrees with Jon Tunheim's comment about a need for change but also a need for balance. Safety of the community and a focus on the victims are important to his constituency. Thoughts were shared about the need for victim participation in the criminal justice system while also recognizing that some victims don't trust the system. It was observed that the criminal justice system seeks binary labels so that a defendant cannot also be considered a victim.

Members discussed RCW 69.40.030 and whether it falls under the definition of Assault. There was some agreement that it does. Jon Tunheim observed that while the statute covers noxious substances or poison, he didn't think it covered objects, such as needles, razor blades, etc. Kimberly Gordon was skeptical that this offense is needed as it was created in 1854 when things were very different.

MOTION #22-41: ACCEPT COMMITTEE’S RECOMMENDATION TO REPEAL RCW 69.40.030 AND NOTE TO LEGSLATURE TO LOOK AT ASSAULT STATUTE TO COVER ANY GAP CREATED BY REPEAL

MOVED: Judge Rumbaugh
SECONDED: Judge Amamilo
PASSED: Passed
ABSTAINED: Jon Tunheim

Members discussed RCW 9.16.010. Not enough information is known about the offense for some members to vote. Since the motion failed, the assumption was that the offense would remain an unranked class C felony.

MOTION #22-42: ACCEPT COMMITTEE’S RECOMMENDATION TO REPEAL RCW 9.16.010

MOVED: Kimberly Gordon
SECONDED:
PASSED: Failed – no second

During discussion of RCW 9.47.090, Kimberly Gordon noticed that the statute states “shall be punished by imprisonment...for not more than five years” and one of the convictions resulted in a 22 months sentence, but yet this is an unranked felony which has a presumptive range of 0 – 365 days. It was noted that the statutory maximum for a class C felony is five years and that is likely what the statutory language referred to. No motions were made. It was assumed the offense would remain an unranked class C felony.

MOTION #22-43: ACCEPT COMMITTEE’S RECOMMENDATION TO LEAVE LIST OF OFFENSES AS UNRANKED FELONIES AS INCLUDED IN THE REPORT DATED 7/8/2022, PAGES 6 - 36.

MOVED: Judge Saint Clair
SECONDED: Kimberly Gordon
PASSED: Passed
ABSTAINED: Secretary Strange

The Chair thanked the committee members for taking on this task and offering their assistance to the SGC.

VI. OTHER BUSINESS

Jon Tunheim wanted to give members a heads up that, as the Criminal Sentencing Task Force continues its work, it’s becoming evident that there will be residual work that needs to be done after the conclusion of the Task Force at the end of the year. He anticipates the final report will include that the work should be continued and that the SGC would be considered a viable candidate. He wasn’t sure exactly what that would look like but said he plans to have a conversation about the SGC and the resources it

has. He observed that for guideline structures across the country a fundamental necessity of a successful sentencing guidelines system is a robust organization, like a commission, that is constantly conducting evaluations and analyses. This is originally what the SGC was designed to do when it was fully staffed but, over the years, has been unable to do due to so few resources dedicated to its work. He went on to say we end up with subcommittees with people who are very busy and just don't have the capacity to offer much help. He is hopeful one of the recommendations of the Task Force will be to consider revitalizing the SGC in terms of its resources and trying to equip it to carry on that work. He thought it might be worth the SGC discussing during the rest of the year as to what that might look like, what a vision for the SGC would be, because the Legislature may start asking those questions.

Chair Judge Saint Clair has also heard that the unfinished work of the CSTF needs a home. He noted the staff of the Pennsylvania Commission on Sentencing that has several researchers and analysts. He felt it would be a challenge to cobble the resources needed if the SGC members would be doing the heavy lifting. He asked members to begin to think about what else and who else is needed for the SGC to be an effective voice and convener. He feels the SGC has credibility and wants to continue that as the conversation continues.

Marc Baldwin shared that when the Legislature eliminated the SGC as an independent agency in 2011, OFM was provided .5 FTE to run it. He thanked Ms. Darneille, who, before leaving the Senate, was able to bring that to 1 (full) FTE. He said this is something that they have seen coming, that the budget process has already started, and they are looking at it. Chair Judge Saint Clair was encouraged by that but admitted that another three or four people would be needed to complete the work that needs to be done. Jon Tunheim suggested looking at the staffing and function of other states' and the federal commissions.

Rep. Mosbrucker said she is grateful for the holistic look the SGC takes when looking at the criminal justice system. She is interested in more dialog to figure out what else could be considered currency for accountability. Regarding emerging adults (18-25), she thought the Legislature might first be willing to consider a pilot program and learn from the data before doing anything statewide.

VII. ADJOURNMENT

APPROVED AND ADOPTED BY THE SENTENCING GUIDELINES COMMISSION



8/12/2022

Judge J. Wesley Saint Clair (Ret), Chair

Date