



STATE OF WASHINGTON

SENTENCING GUIDELINES COMMISSION

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

MEETING MINUTES

August 12, 2022 9:00am – 12:00pm

Zoom

Members Present:

Hon. J. Wesley Saint Clair, Chair
Kimberly Gordon (proxy: Greg Link)
Hon. Sharonda Amamilo
Kathleen Harvey
Jon Tunheim
Rep. Gina Mosbrucker
Kecia Rongen
Gina Cardenas
Secretary Cheryl Strange
Jennifer Albright
Hon. William Houser
Senator Claire Wilson
Tim Wettack
Greg Link
Hon. Josephine Wiggs

Members Absent:

Senator Mike Padden
Tony Golik
Norrie Gregoire
Councilmember Derek Young
Marc Baldwin
Chief Ken Thomas
Rep. Tarra Simmons
Hon. Stanley Rumbaugh

Staff:

Keri-Anne Jetzer

I. CALL TO ORDER

Chair Judge Saint Clair called the meeting to order.

II. APPROVAL OF MINUTES

**MOTION #22-44: APPROVE THE MINUTES FROM JULY 2022 MEETING
WITH CORRECTION ON PAGE 3 THAT STATE DID
MOVE FORWARD WITH JR TO 25.**

MOVED: Judge Amamilo
SECONDED: Kathleen Harvey
PASSED: Passed
ABSTAINED: Judge Houser, Greg Link

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

Judge Amamilo briefed members on the work of the committee. They are using existing hate crime language to create a legislative finding within the human trafficking section of the Revised Code. They will present their recommendation at the September SGC meeting.

IV. CRIMINAL SENTENCING TASK FORCE - UPDATE

Jon Tunheim reported that the Task Force is reviewing the proposed grid and updating itself on the work that went into it. The Task Force has a goal to offer some type of proposed grid structure, however, there will not be a complete package of proposals on all the issues discussed over the past years, meaning there will still work to be done. He said he has a feeling that the SGC will be a candidate to complete some of that work. Greg agreed that the SGC may be carrying on some of that work and he envisioned that looking similar to the SGC's work in 2018/2019 with additional and extended meetings. He also thought that additional support would be necessary. Keri-Anne reminded members that the SGC was provided funding to contract with the Council of State Governments to complete some research for the SRA Review project. Chair Saint Clair reminded members that Marc Baldwin had indicated at the July meeting that OFM has been looking into this.

V. CRIMINAL CODE REVIEW COMMITTEE UPDATE

Keri-Anne brought up two unranked RCWs that had not been voted on at the July meeting. Since the SGC has voted on all unranked RCWs that it has reviewed thus far, and since the Criminal Code Review committee had put forth two recommendations for each of these offenses, she asked the members if they would consider stating for the record their position.

RCW 9.16.010

MOTION #22-45: ACCEPT COMMITTEE'S RECOMMENDATION TO LEAVE RCW 9.16.010 AS UNRANKED FELONY

MOVED: Judge Wiggs
SECONDED: Rep. Mosbrucker
PASSED: Withdrawn

Judge Houser noticed an oddity with the statute language that makes the offense both a felony and a gross misdemeanor. Greg Link suggested there could be a Blakely issue if a judge would make a decision as to whether this is a gross misdemeanor or felony level offense.

MOTION #22-46: RECOMMEND REPEAL RCW 9.16.010

MOVED: Judge Saint Clair
SECONDED: Judge Wiggs
PASSED: Passed

RCW 9.47.090 – Chair Saint Clair asked if the committee members would share their discussions or comments. Judge Houser commented that until today he didn't know what a bucket shop was. He would be surprised if it was used much in the future. David Trieweler reported that none of the members of the committee felt they were experts in security law which was the reason for the hesitation in the recommendation.

Chair Saint Clair thought looking at the certification for probable cause might help explain what the behavior actually is. Jon Tunheim also felt it was a specific statute used by someone with specific expertise, perhaps it might be a tool used by the Attorney General's Office. Chair Saint Clair suggested asking the AGO if they used it. Members agreed to place this in the 'parking lot' until more information was available.

RCW 16.52.117(2)(b) – Keri-Anne reminded members of prior discussions on this statute and the data that Kimberly Gordon provided related to Animal Fighting and Animal Cruelty 1. Keri-Anne presented additional information she collected.

Jon Tunheim observed that Animal Cruelty 1 with sexual abuse of an animal is ranked at seriousness level 3. He felt also ranking this offense at SL 3 would maintain consistency. He added that SL3 is where the stat max for a class C offense is met at a criminal history score of 9+.

**MOTION #22-47: RECOMMEND RANKING RCW 16.52.117(2)(b) AT
SERIOUSNESS LEVEL 3**

MOVED: Judge Houser
SECONDED: Judge Wiggs
PASSED: Passed
ABSTAIN: Secretary Strange

RCW 9.94.041 – Keri-Anne explained that the Caseload Forecast Council data does not distinguish between the state and local/county subsections of this statute, while the court case data does. She reminded members that this offense was part of the blanket motion to repeal because it had zero convictions in 20 years. It turns out that is because the CFC includes any of those convictions under one code.

Senator Wilson asked if the body scanners would have any impact on this. Secretary Strange said there has been a delay in getting the scanners in due to supply chain issues. She noted that if DOC staff found something, they would make a referral to law enforcement.

Jon Tunheim noted that the statute also included things like cell phones, which makes it more about controlling the environment. He was curious if DOC has any position on whether this is improperly ranked or if this a tool they would like to continue to have in their tool box. Secretary Strange stated that DOC puts forth a lot of resources in trying to prevent drugs from entering their facilities. She added that there are not enough resources available to meet the unmet need of substance use disorder treatment.

Keri-Anne asked, for those who are under DOC's jurisdiction, does DOC deal with this behavior through the violation process or is the person referred for prosecution? Secretary Strange said there are a variety of consequences that can occur in addition to a referral being made to law enforcement. Secretary Strange offered to bring other DOC personnel in to provide the members with more information.

Judge Wiggs asked if it was possible to get the demographic data on the 603 convictions for this offense. Keri-Anne said she could provide that for the next meeting.

There was discussion of the seeming lack of effect of the unranked felony in deterring people from bringing drugs into a facility. It was suggested that perhaps the drugs should be separated from the other contraband. Judge Wiggs pointed out that pre-Blake possession of controlled substance penalty could have been higher than that of an unranked offense, depending on criminal history score. She thought it would be consistent if the drug violation would be less than an unranked offense.

VI. OTHER BUSINESS

Chair Saint Clair asked Jon Tunheim and Keri-Anne to brief members on the National Association of Sentencing Commission conference they attended. Jon reported that his biggest take away was that, in talking with other commissions and staff, he didn't find a commission that was as under resourced as Washington's. Most of the commissions that do the same work that Keri-Anne does, but most of them also have very specifically skilled data analyst researchers who collected data, analyze it and report out on it. He thinks this SGC is sorely missing that. If the SGC is going to pick up work from the Task Force, a case needs to be made to the Leg that we need more resources, he said. He felt that the influence, the status, and the capacity of the other commissions across the country exceeded ours. That was a message he felt he needed to bring to this group and the Legislature.

Keri-Anne reported about what she learned during a session on extreme sentences. Washington, DC, completed a review of every offense. Its commission recommended maximum sentences should be no more than 45 years and a second look should occur at 15 years. She noted other sessions that had takeaway information.

Chair Saint Clair asked if any sessions addressed disproportionality and disparity. Jon reported that he heard it thematically in many of the presentations. A couple of key places it came up was in the impact of criminal history score and in finding the balance in giving judges more discretion. Keri-Anne agreed. She noted that the extreme sentence presentation included a recommendation to use racial impact analysis. She relayed that the Legislature passed a bill that requires the CFC to create a table of race by crime category each year. Clela Steelhammer added that the CFC creates an annual disproportionality report by crime category. She explained that their race data is based on what is reported on the J&S form so Hispanic is included as a race category. Jon suggested that in considering a future vision of the commission, it

could play an important role by giving recommendations to the Legislature on racial impacts of criminal justice bills. Chair Saint Clair thought the SGC should highlight that as a way to address the system impact that is seen. Greg suggested the SGC specifically ask the Legislature to direct the SGC to do that and provide the necessary funds to do it. Senator Wilson reminded members of the work of the Office of Equity.

Chair Saint Clair noted that the timing of this is appropriate as the upcoming session is a longer session and the CSTF recommendations will be coming forth. Jon asked Keri-Anne to check with other commissions to see if they have any suggestions. Keri-Anne said she could also check with Marc Baldwin to see what OFM is working on, as he had mentioned during the July SGC meeting. Julie Martin offered to work with Keri-Anne in getting racial data and mentioned looking at research at DOC. Julie suggested Correctional Leadership Association could be surveyed for information as well. She went on to say that OFM is now requesting that, going forward, any decision package for agencies requesting funding for policy decisions include the stakeholder work that has been done and what racial impact statement they are making. She suggested seeking the addition of a few more days for fiscal notes, especially in the longer sessions, specific to resources in the human centered committees, etc. More time is needed to do policy well. Chair Saint Clair asked Keri-Anne to make this an agenda item for the next several meetings.

VII. ADJOURNMENT

APPROVED AND ADOPTED BY THE SENTENCING GUIDELINES COMMISSION



9/9/2022

Judge J. Wesley Saint Clair (Ret), Chair

Date