



STATE OF WASHINGTON

SENTENCING GUIDELINES COMMISSION

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

MEETING MINUTES

October 14, 2022 9:00am – 12:00pm

Zoom

Members Present:

Hon. J. Wesley Saint Clair, Chair
Kimberly Gordon
Hon. Sharonda Amamilo
Secretary Cheryl Strange
Jennifer Albright
Greg Link (proxy: Kimberly Gordon)
Norrie Gregoire
Councilmember Derek Young
Marc Baldwin
Kathleen Harvey
Kecia Rongen
Tim Wettack
Hon. Josephine Wiggs

Members Absent:

Senator Mike Padden
Tony Golik
Chief Ken Thomas
Gina Cardenas
Hon. William Houser
Hon. Stanley Rumbaugh
Jon Tunheim
Rep. Gina Mosbrucker
Rep. Tarra Simmons
Senator Claire Wilson

Staff:

Keri-Anne Jetzer

I. CALL TO ORDER

Chair Judge Saint Clair called the meeting to order.

II. APPROVAL OF MINUTES

MOTION #22-49: APPROVE THE MINUTES FROM SEPTEMBER 2022 MEETING

MOVED: Marc Baldwin
SECONDED: Kimberly Gordon
PASSED: Passed
ABSTAINED: Secretary Strange, Judge Wiggs

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

Keri-Anne explained that, based on members' discussion at the last meeting, Kimberly Gordon offered some suggested language related to the use of aggravating circumstances. Keri-Anne asked members if the added sentence required additional discussion or if it was ready to be forwarded to Rep. Mosbrucker. Members thought sending the additional language and referencing the discussion in the meeting minutes would be sufficient.

IV. SENTENCING GUIDELINES COMMISSION FUTURE

Judge Saint Clair reminded members that the Criminal Sentencing Task Force will be submitting its report at the end of 2022 and there has been discussion about how the SGC plays into some of its recommendations. He thought the concept of sunshine so this kind of review happens more frequently is important and so areas of concern, like racial disproportionality, are presented. It is thought that the SGC is the place for some of that work to occur, like it did when it was an independent agency. If this is the recommendation, Chair feels that more staff with high level expertise are definitely needed.

Judge Saint Clair mentioned that he reached out to Rep. Mosbrucker and Sen. Wilson to see if there are any Legislative bills in the works again this year to expand the SGC's membership.

Keri-Anne reported that after the September SGC meeting, OFM, SGC, and a Criminal Sentencing Task Force co-chair met to talk about each entity's work toward increasing the resources of the SGC. Jon Tunheim drafted a recommendation for the CSTF that was reviewed by the others. Marc Baldwin confirmed again that OFM has placed an FTE placeholder in its budget. He suggested it would be appropriate for the Chair to go on record and send a letter to the OFM Director indicating the SGC's support of the additional resources.

Greg Link remarked that a new grid is the centerpiece of the CSTF recommendations but yet it won't have consensus from WAPA and the victim advocates. He added that one of the recommendations was to hold a regular review of any changes that are made. In the meantime, he thought the SGC could be making its own decision about what to look at. During his time on the task force, Greg noted why there is disparity in the prison population and what is causing it was never asked. He felt the SGC should ask that question as well as what can be done to address the issues. He went on to say that if the Legislature would like these questions answered, they need to provide more than one FTE to the SGC.

Secretary Strange said that now is the time to advance this. The Office of Equity has created the PEAR (Pro Equity Anti-Racist) plan. All executive branch agencies, by executive order, are to address this, so now is the time to advance this. Many other members agreed that there has been a great deal of conversation about these issues but that is all it has been -- conversation.

MOTION #22-50: SGC SHOULD BEGIN AND PRIORITIZE STUDYING THE CAUSES OF RACIAL DISPROPORTIONALITY IN SENTENCING OUTCOMES AND IN THE DEPARTMENT OF CORRECTIONS' POPULATION AND DEVELOP RECOMMENDATIONS TO ADDRESS THOSE CAUSES

MOVED: Greg Link
SECONDED: Judge Wiggs
PASSED: Passed Unanimous

V. CRIMINAL CODE REVIEW COMMITTEE UPDATE

Keri-Anne informed members the SGC's Criminal Code Review committee has completed its work and is ready to present its additional recommendations to the SGC. Review of the committee's recommendations on unranked offenses continues and there are recommendations related to drug sentences and placement of criminal penalties under the SRA that will be brought before the SGC in upcoming meetings.

There is no due date included in the work request by Rep. Goodman although the original intent was to complete it by the end of 2022 to coincide with the CSTF report and the discussion of the sunset of the Blake fix during the 2023 Legislative session. The SGC was recently informed it is not being asked to make recommendations related to the Blake fix as the Health Care Authority was charged by the Legislature with creating an advisory group to address that question. The recommendations related to unranked offenses are not directly tied to recommendations coming from the Criminal Sentencing Task Force's report in December. Additionally, the CSTF added more full day meetings in order to complete its work by the end of the year, which impacts several members of the SGC who serve on the Task Force. Based on the amount of work that the SGC still needs to address in order to complete the request, Keri-Anne asked if members would like to keep the initial due date they set for themselves and perhaps add time to the November meeting, or extend the due date into 2023. Keri-Anne and Chair Judge Saint Clair discussed all of this and proposed pushing the due date into 2023.

Keri-Anne informed members that she sent the list of unranked offenses included in the November 2021 blanket motion to repeal. She asked members to review it and let her know if any offenses need to be readdressed now that there is some court filing data available.

Chair Judge Saint Clair asked members how they felt about adding another hour to the November and December meetings to ensure all the work is completed in time for the report to be completed. Judge Wiggs felt confident that if members take time to review meeting materials Keri-Anne sends out before the meetings and be prepared to focus on the work to be done, the work could be completed by February 2023 without adding time to the meetings.

RCW 9.47.090 – Maintaining a Bucket Shop

Keri-Anne shared what Jon Tunheim found after contacting the Spokane Prosecuting Attorney. It was reported that a deputy prosecuting attorney had found this offense and used it as a plea bargain tool at that time, hence the two Spokane convictions in the same year.

MOTION #22-51: ACCEPT COMMITTEE’S RECOMMENDATION TO REPEAL RCW 9.47.090

MOVED: Greg Link
SECONDED: Kimberly Gordon
PASSED: Passed
ABSTAIN: Secretary Strange

RCW 9.94.041 – Possession of Controlled Substance by Prisoner (State Facility)

Keri-Anne reminded members of the presentation by DOC at the prior meeting. She also updated her data to include the population percentage by race category.

Norrie Gregoire remarked that small adult facilities have lesser abilities to intervene than larger facilities do. His facility is dealing with fentanyl coming in and he fears that if the consequence is softened too much it may create unintended consequences, such as shutting down a work crew because the drops are occurring where the crews are working. He reported they have learned that losing good time or having additional time added is a big deal for those who are serving a local sanction. It’s not as big of a deal for those in jail presentence and awaiting a prison sentence.

Kim Gordon asked for more information such as:

- How the programming and resources provided to people that have substance use problems compares in DOC versus local jails.
- How much of this problem is really driven by incarcerated people bringing in substance versus staff bringing in substances? This might offer the amount of impact on the problem if the current path was continued.

Secretary Strange reported that DOC infracts persons found with contraband, so all of the convictions are for violations in local facilities, which matches the court charging data.

Keri-Anne reported that the Heath Care Authority’s Substance Use Resource Services and Advisory Committee voted to recommend decriminalization of simple possession, although she didn’t know if that was for all drugs or certain drugs. She added that the title of this offense was created by the Caseload Forecast Council when the offense was related to only controlled substances. It has since been modified to include cell phones and other forms of electronic devices.

The Chair tabled discussion on this item.

RCW 9.94.045 – Possession of Controlled substance in Prison by Non-Prisoner
Discussion Tabled

RCW 9A.36.060 - Promoting a suicide attempt

Keri-Anne shared that Jon Tunheim found the case in Thurston County was a plea agreement for a person suffering mental health issues who threatened to blow himself up in or near a state office building. Keri-Anne confirmed that the language of the statute did not change after the Death with Dignity Act passed.

The committee’s recommendation is to rank the felony, without stating what that level should be. The Chair asked if a motion was required to accept the motion. Keri-Anne said that the Chair can move forward with General Consent, meaning if there are no members who object, the recommendation is accepted.

General Consent – no objections.

RCW 9A.36.090 – Threats Against Governor or Family

The recommendation is to rank this offense at seriousness level 4.

General Consent – no objections.

RCW 9A.40.060 – Custodial Interference 1

The recommendation is to rank this felony but didn’t suggest a seriousness level.

General Consent – no objections.

RCW 9A.40.110 – Coercion of Involuntary Servitude

The recommendation is to rank this felony at seriousness level 5.

General Consent – no objections.

RCW 9A.40.090 – Luring of a Child or Developmentally Disabled Person

Judge Wiggs commented that since this offense pertains to vulnerable persons she thought it was appropriate to consider the recommendation to rank at seriousness level 4.

**MOTION #22-52: ACCEPT COMMITTEE’S RECOMMENDATION TO
RANK RCW 9A.40.090 AT SL 4**

MOVED: Judge Wiggs

SECONDED: Norrie Gregoire

PASSED: Passed

ABSTAIN: Secretary Strange, Greg Link, Kimberly Gordon

RCW 9A.76.023(2)(a) – Disarming a Law Enforcement or Corrections Officer

Judge Wiggs noted it seems inconsistent to engage in conduct that is equivalent to Assault 4 (misd) but the offense becomes Assault 3 when the victim is a law enforcement officer and is ranked at seriousness level 3.

MOTION #22-53: ACCEPT COMMITTEE’S RECOMMENDATION TO RANK RCW 9A.76.023(2)(a) AT SERIOUSNESS LEVEL 3 OR HIGHER TO MAKE IT AT LEAST EQUAL TO ASSAULT OF LAW ENFORCEMENT OFFICER RCW 9A.36.031(3)(g)

MOVED: Judge Wiggs
SECONDED: Norrie Gregoire
PASSED: Passed
ABSTAIN: Secretary Strange, Greg Link, Kimberly Gordon, Kathleen Harvey

RCW 9A.76.023(2)(b) – Disarming a Law Enforcement or Corrections Office and FA is Discharged

Chair asked to revisit this offense as it fell under the November 21, 2021, blanket motion to repeal.

RCW 9A.61.030 – Defrauding a Public Utility 1

Kimberly Gordon asked if there was information on the circumstances of this offense is applied. Judge Saint Clair suggested it might be for grow activities where electricity is stolen.

Judge Amamilo thought this was covered under Theft 1. Keri-Anne noted that the amount for Theft 1 is \$5,000+ while the amount for this offense is \$1,500+. Members wondered if this offense was overlooked when the Theft values were changed. Kimberly Gordon commented that, as this seems to be covered under Theft 1, repealing this offense would simplify the statute and keep inconsistencies from happening when one offense is updated and another is not.

MOTION #22-54: ACCEPT COMMITTEE’S RECOMMENDATION TO REPEAL RCW 9A.61.030

MOVED: Kimberly Gordon
SECONDED: Judge Amamilo
PASSED: Passed
ABSTAIN: Secretary Strange, Kathleen Harvey

RCW 9A.61.040 – Defrauding a Public Utility 2

MOTION #22-55: ACCEPT COMMITTEE’S RECOMMENDATION TO REPEAL RCW 9A.61.040

MOVED: Kimberly Gordon
SECONDED: Judge Amamilo
PASSED: Passed
ABSTAIN: Secretary Strange, Kathleen Harvey

RCW 9A.76.177 – Amber Alert – Making False Statements to a Public Servant

**MOTION #22-56: ACCEPT COMMITTEE’S RECOMMENDATION TO
REPEAL RCW 9A.76.177**

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

The remaining unranked offenses on the list are under the recommendation to leave as an unranked felony. The Chair asked members to review those offenses to see if there are any concerns about leaving them as unranked for the next meeting.

VI. OTHER BUSINESS

Keri-Anne reminded members the November meeting is on the third Friday due to the Veteran’s Day holiday.

VII. ADJOURNMENT

APPROVED AND ADOPTED BY THE SENTENCING GUIDELINES COMMISSION



11/18/2022

Judge J. Wesley Saint Clair (Ret), Chair

Date