



STATE OF WASHINGTON

## SENTENCING GUIDELINES COMMISSION

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

### MEETING MINUTES

**November 18, 2022 9:00am – 12:00pm**

**Zoom**

Members Present:

Hon. J. Wesley Saint Clair, Chair  
Kimberly Gordon  
Hon. Sharonda Amamilo  
Secretary Cheryl Strange (proxy:  
Dianne Ashlock)  
Jennifer Albright  
Greg Link (proxy: Kimberly Gordon)  
Norrie Gregoire  
Marc Baldwin  
Kathleen Harvey  
Kecia Rongen  
Tim Wettack  
Hon. William Houser  
Hon. Stanley Rumbaugh  
Jon Tunheim  
Rep. Gina Mosbrucker  
Senator Claire Wilson

Members Absent:

Senator Mike Padden  
Tony Golik  
Chief Ken Thomas  
Gina Cardenas  
Rep. Tarra Simmons  
Councilmember Derek Young  
Hon. Josephine Wiggs

Staff:

Keri-Anne Jetzer

Guests:

Brian Flaherty, KC OPD  
Jim Chambers, Citizen

#### **I. CALL TO ORDER**

Chair Judge Saint Clair called the meeting to order.

#### **II. APPROVAL OF MINUTES**

##### **MOTION #22-57: APPROVE THE MINUTES FROM OCTOBER 2022**

##### **MEETING**

**MOVED:** Judge Amamilo  
**SECONDED:** Rep. Mosbrucker  
**PASSED:** Passed  
**ABSTAINED:** Judge Houser

### **III. SENTENCING GUIDELINES COMMISSION FUTURE**

Chair Judge Saint Clair asked Jon Tunheim, co-chair of the Criminal Sentencing Task Force, to brief members on the current work of the Task Force. Jon reported the Task Force has been working on consensus deliberations for the last two meetings and will be submitting its report by the end of December. There are about ten recommendations left to discuss.

Chair Judge Saint Clair also noted that there is a joint legislative work session taking place on December 14 to present the work of the Task Force. He remarked that, while he started on the Task Force after becoming Chair of the SGC in 2020, it has been a three-year endeavor for others.

Chair Judge Saint Clair informed members that he sent a letter to the OFM Director supporting the FTE placeholder included in OFM's budget requests. He said recommendations coming from the Task Force related to the SGC will require a great deal of research.

Keri-Anne briefed members that two changes to the Open Public Meetings Act will impact the SGC now that it has been determined that it would fall under the OPMA. One change is related to a new requirement to allow public comment. The SGC's agenda will now allow a period of time for public comment. The other change is related to remote meetings. Remote meetings can only occur during an emergency and the federal emergency is in effect until January 11, 2023. After that, the SGC will be required to offer a physical location for its regular and special meetings. Keri-Anne said she is working with OFM to find space for those physical meetings. Meetings will be hybrid so those who wish to participate virtually will still be able to do so.

She offered some proposals to the bylaws to clarify or incorporate these changes and asked members for feedback.

#### **MOTION #22-58: APPROVE CHANGES TO THE BYLAWS AS SPECIFIED IN THE DOCUMENT PRESENTED DURING THE 11/18/22 SGC MEETING**

**MOVED:** Judge Rumbaugh  
**SECONDED:** Kimberly Gordon  
**PASSED:** Passed

### **IV. CRIMINAL CODE REVIEW COMMITTEE**

Keri-Anne briefed members on the work of the Criminal Code Review committee on drug sentences, one of the other projects contained in Rep. Goodman's request of the SGC. She provided the recommendation from the Health Care Authority's Substance Use Recovery Services Advisory Committee regarding its recommendation related to criminal penalties for possession of a controlled substance.

Recommendation: Review RCW 69.50.401(2)(c) for any changes since Blake decision  
Some members commented that simple possession of controlled substances is not being charged. Part of the reason is that two diversions are required prior to charging as a misdemeanor but there is no way of tracking how many diversions a person has received.

A few members observed that some people who fall under this statute are selling to supply their own disorder but also noted there is a significant impact on communities for folks who do not fall under that category, the people who bring narcotics into communities for profit. It was stated there is no treatment available for delivery of a controlled substance.

Rep. Mosbrucker commented that there is a severe lack of treatment infrastructure in eastern Washington and elsewhere within the state to fully implement a treatment model.

Members felt that distribution to a minor should not be included in any penalty modification of this offense.

Based on the lack of a therapeutic model for delivery, and that cannabis is available for purchase by adults legally, Judge Houser said this offense then focuses on the black market for cannabis and delivery to people under the age of 21. Jon Tunheim said he had a similar concern. To have a legitimate legal market, there needs to be enforcement on the illegal market. If that is diminished, the legal market is undermined. He added that there is a new trend connecting the illegal market with human labor trafficking.

Kimberly Gordon suggested more information and that this be revisited at the next meeting.

**MOTION #22-59: TABLE DISCUSSION ON THIS RECOMMENDATION**

**MOVED:** Judge Houser  
**SECONDED:** Rep. Mosbrucker  
**PASSED:** Passed

Recommendation: Repeal RCW 69.50.408 – Second or subsequent offenses  
Keri-Anne reported that Jim Chambers had requested via email to address the membership on this recommendation. Jim, who had been sentenced under this statute, shared his experience with the members. Chair Judge Saint Clair stated he has seen Jim at many Criminal Sentencing Task Force meetings and many of the Task Force's work group meetings as well. He thanked Jim for making time to share his lived experience.

Keri-Anne presented some conviction data she collected on subsequent VUCSA sentences from the Caseload Forecast Council's annual Statistical Summary of Adult Felony Sentencing reports.

Rep. Mosbrucker thought, because of the term ‘may’ in the statute’s language, this was something that would be applied on a case-by-case basis and not automatically applied to all subsequent convictions. Judge Amamilo replied that mitigating and aggravating factors could also be used on a case-by-case basis instead of this statute.

Judge Rumbaugh noted that the prior offense would increase the criminal history score in addition to the doubling that this statute allows.

Judge Houser observed that the statute allows a term of imprisonment up to twice the term otherwise authorized, however, that does not change the range on the drug grid. The maximum term on the drug grid is 120 months. Anything above that as allowed by this statute, as he understand it, would require an exceptional sentence.

Jon Tunheim agreed with Judge Houser’s analysis and stated his concern was that there may have been an intent on the part of the Legislature to allow for the possibility of exceptional sentences when there is a subsequent offense and created this statute to allow room for this to happen. These types of recommendations would be made by a prosecutor, particularly when dealing with a trafficker with a substantial quantity.

**MOTION #22-60: ACCEPT COMMITTEE’S RECOMMENDATION TO  
REPEAL RCW 69.50.408**

**MOVED:** Judge Houser

**SECONDED:** Judge Amamilo

**PASSED:** Passed

**ABSTAINED:** Jon Tunheim, Kecia Rongen, Secretary Strange, Marc Baldwin,  
Kimberly Gordon, Greg Link

Recommendation: Expand eligibility of drug courts

Jon Tunheim said that current best practice in drug courts is to focus on high-risk/high-need folks but he felt the ‘sole gatekeeper’ comment in the recommendation is a misnomer. If it’s a pre-plea drug court, a participant’s admission into it requires a three-way agreement between the prosecution, the court, and defendant. He also felt that statute is not the proper placement of the use admittance criteria, even though it is considered a best practice by National Association of Drug Court Professionals (NADCP). He said each drug court looks at its criteria a bit differently and thought it’s still possible to encourage best practices without putting this in statute.

Judge Amamilo remarked that this has also been an ongoing conversation with the Criminal Justice Treatment Account panel. She noted that while WAPA may feel that the ‘sole gatekeeper’ is a misnomer, she felt it was still the perception by many others. Kimberly Gordon agreed and wondered if there were any data available about these decisions. She also expressed concern that this is not uniform across the state. Without direction by the Legislature with specific expectations, it’s probable that there will be drug court participation that varies by geography and by prosecutor administration. Jon agreed that more data is needed and he could support a recommendation for some efforts to gather and analyze data.

Chair Judge Saint Clair said, in his experience with drug court, it felt like the decisions were not made in a transparent way. He thought having the Legislature articulate a broader base would not mean they are ordering the executive branch to let people into the program. He said that keeping data is very important to track who gets in, who doesn't, who gets terminated, and if/where there is disproportionality.

**MOTION #22-61: ACCEPT COMMITTEE'S RECOMMENDATION  
RELATED TO EXPANDING DRUG COURT ELIGIBILITY  
WHERE THERE IS A NEXUS BETWEEN THE ALLEGED  
CRIMINAL ACT AND SUBSTANCE USE DISORDER AS  
WRITTEN IN THE 11/18/22 CCR DRUG  
RECOMMENDATIONS DOCUMENT**

**MOVED:** Kimberly Gordon  
**SECONDED:** Judge Rumbaugh  
**PASSED:** Passed (1-no)  
**ABSTAINED:** Judge Houser

Recommendation: Advise the Legislature of the need for a statewide process for evaluations.

Chair Judge Saint Clair commented that he was on the NADCP board for about six years and that this is consistent with NADCP standards.

Jon Tunheim said he's not opposed to the recommendation but felt the Legislature already knows of this need as they provided funding to the Administrative Office of the Courts to establish a behavioral health unit and to provide tech assistance to drug courts throughout the state to implement best practices and facilitate a peer review process.

Kimberly Gordon asked if the recommendation could be amended to include the need for data. Chair Judge Saint Clair suggested evaluations occur on a regular basis to ensure programs are maintaining quality after the initial evaluation. Jon Tunheim proffered that the NADCP has documents and methodology about data collection and analysis.

Kimberly suggested that WSIPP is the entity in the best place to regularly report on whether drug courts are meeting best practices. Kimberly offered to provide some draft language for the next meeting and asked if Jon Tunheim would like to work with her on it. Chair Judge Saint Clair suggested this be sent back to the Criminal Code Review committee for further flushing out.

Judge Houser thought that collecting data and analysis might be an independent recommendation rather than amending the current recommendation.

Recommendation: Need more funding for treatment.

**MOTION #22-62: ACCEPT COMMITTEE’S RECOMMENDATION FOR MORE FUNDING FOR TREATMENT AS WRITTEN IN THE 11/18/22 CCR DRUG RECOMMENDATIONS DOCUMENT**

**MOVED:** Judge Houser  
**SECONDED:** Kimberly Gordon  
**PASSED:** Passed unanimously

Recommendation: Conduct review of drug grid.

Keri-Anne explained that the bill that established the drug grid directed WSIPP to conduct an analysis of the drug grid. One report was submitted but the analysis was not completed.

**MOTION #22-63: ACCEPT COMMITTEE’S RECOMMENDATION TO HAVE DRUG GRID REVIEWED AS WRITTEN IN THE 11/18/22 CCR DRUG RECOMMENDATIONS DOCUMENT**

**MOVED:** Kimberly Gordon  
**SECONDED:** Jennifer Albright  
**PASSED:** Passed unanimously

Decision: Movement of criminal penalties to the SRA is not necessary as there are resources available in the Caseload Forecast Council’s Adult Felony Sentencing Manual for non-practitioners to find these penalties.

Keri-Anne briefed members on Project #3 related to moving felony criminal penalties outside the SRA into the SRA.

No members disagreed with this decision.

**V. OTHER BUSINESS**

Keri-Anne reminded members to let her know if there are any offenses that are part of the blanket repeal list that they would like to review.

**VI. PUBLIC COMMENT**

David Trieweiler commented that most of the CCR committee members felt pretty strongly in the necessity of decriminalizing drug use.

Chair judge Saint Clair thanked David for his participation on the CCR committee.

**VII. ADJOURNMENT**

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



12/9/2022

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

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Date