



STATE OF WASHINGTON

## SENTENCING GUIDELINES COMMISSION

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

### **SPECIAL MEETING MINUTES**

**January 27, 2023 12:00pm – 1:00pm**

**Zoom**

Members Present:

Hon. J. Wesley Saint Clair, Chair  
Kimberly Gordon  
Hon. Sharonda Amamilo  
Secretary Cheryl Strange  
Greg Link (proxy: Kimberly Gordon)  
Kecia Rongen  
Hon. Stanley Rumbaugh  
Hon. Josephine Wiggs  
Norrie Gregoire  
Jon Tunheim  
Kathleen Harvey

Staff:

Keri-Anne Jetzer

Members Absent:

Senator Mike Padden  
Tony Golik  
Chief Ken Thomas  
Gina Cardenas  
Rep. Tarra Simmons  
Senator Claire Wilson  
Jennifer Albright  
Marc Baldwin  
Tim Wettack  
Hon. William Houser  
Rep. Gina Mosbrucker

Guest:

Commissioner Tye Menser, Thurston  
County

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

Chair Judge Saint Clair called the meeting to order.

#### **II. DRAFT LEGISLATIVE BILLS**

##### **HB 1432/SB 5474 – Concerning juvenile justice**

Members were concerned about how the changes in the bill would be funded. Jon Tunheim observed that restitution is eliminated and then the task force is created to figure out how the Community Compensation program is funded. He thought it should be the other way around. This prompted a concern about the impact on victims and their ability to get restitution while the task force is creating the process and infrastructure.

**MOTION #23-01: SUPPORT HB 1432/SB 5474 BUT NOTE CONCERNS ARE THE NEED FOR A FUNDING SOURCE AND THAT THE TASK FORCE IS CREATED AT THE SAME TIME THE FEES AND CHARGES ARE ELIMINATED**

**MOVED:** Kimberly Gordon  
**SECONDED:** Judge Rumbaugh  
**PASSED:** Passed (6=Y 2=N)  
**ABSTAINED:** Kathleen Harvey, Secretary Strange

**SB 5434 – Concerning the jurisdiction of the juvenile court**

Kathleen Harvey stated that this bill comports with the research of the adolescent brain development science and JR to 25 where the state system serves juveniles up to the age of 26. She also referenced trauma-informed care needed for the younger age group and that it doesn't need to be acquired through the juvenile justice system.

While he couldn't take a position, Jon Tunheim expected his association would have concerns about the major shift in dealing with 19- and 20-year-olds and about raising the presumptive age of capacity.

**MOTION #23-02: SUPPORT SB 5434/HB 1440**

**MOVED:** Kimberly Gordon  
**SECONDED:** Judge Amamilo  
**PASSED:** Passed  
**ABSTAINED:** Kathleen Harvey, Secretary Strange, Kecia Rongen, Jon Tunheim

**SB 5033 – Reclassifying Custodial Sexual Misconduct**

Jon Tunheim noted that the Legislature has only recently been taking on the recommendations of the Criminal Sentencing Task Force and reranking is a major piece of that work, especially if a new grid is being considered. He thought this could be wrapped into that work, although he does not know where WAPA stands on that. Kimberly Gordon thought that made sense.

Judge Saint Clair commented that the work of the CSTF could be a few years down the road and he didn't see that keeping the Legislature from making the change today. He thought it felt premature to assign these levels when the levels will more than likely be changing. Not knowing the back story, many members guessed this was likely a "bill du jour".

**MOTION #23-03: SGC VOTES OTHER ON SB 5033 CITING THE CRIMINAL SENTENCING TASK FORCE RECOMMENDATION FOR RE-RANKING OFFENSES ON NEW SENTENCING GRID**

**MOVED:** Kimberly Gordon  
**SECONDED:** Jon Tunheim  
**PASSED:** Passed

**SB 5032 – Extending felony DUI lookback and creating DOSA-DUI**

Judge Rumbaugh noted in the bill that if the incarceration time exceeds 26 months, it can only be implemented at the request of the prosecution. He and his colleagues believe that usurps judicial discretion and sentencing is a uniquely judicial function. Generally, he is in favor of any off-ramp to the criminal legal system and he has no problem extending the lookback period. He added that after Blake, drug courts have the capacity to monitor this type of sentencing alternative. Judge Amamilo agreed with Judge Rumbaugh.

**MOTION #23-04: SGC VOTED OTHER ON SB 5032 THERE IS SUPPORT FOR THE DOSA-DUI SENTENCING ALTERNATIVE BUT CONCERNS ABOUT LIMITING JUDICIAL DISCRETION WHEN THE MIDPOINT IS ABOVE 26 MONTHS**

**MOVED:** Judge Rumbaugh  
**SECONDED:** Judge Amamilo  
**PASSED:** Passed  
**ABSTAINED:** Secretary Strange

**HB 1024 – Concerning labor and income of incarcerated persons**

Judge Rumbaugh remarked that workers compensation benefits are suspended for any injured worker that is under Judgment and Sentence, so he didn't understand why that was included in the bill.

Secretary Strange reported that DOC would be signing in as neutral with significant fiscal impacts. She said they have been working with the bill sponsor to look at an incremental increase in some wages and different ways to help an incarcerated individual have more money when they release so they can be somewhat sufficient.

Jon Tunheim thought that if the SGC did comment on the bill, there should be a comment about the necessity that it be funded. Kimberly Gordon thought the ripple effect on the families and the communities that are otherwise affected by a person's inability to earn a living wage is a good reason to support this policy. She also thought it is a good policy to support to eliminate the concept of involuntary servitude.

**MOTION #23-05: SUPPORT HB 1024 POLICY BUT TAKE NO POSITION ON THE DETAILS OF THE BILL**

**MOVED:** Kimberly Gordon  
**SECONDED:** Judge Saint Clair  
**PASSED:** Passed (4=Y)  
**ABSTAINED:** Secretary Strange, Kecia Rongen, Jon Tunheim, Kathleen Harvey, Judge Rumbaugh

**SSB 5046 – Concerning postconviction access to counsel**

Kimberly Gordon proffered this was in the SGC’s wheelhouse because it is about the equitable access to the courts and because of the SGC’s previous support for second look at appropriate cases. She is frequently asked by incarcerated individuals for pro bono assistance in cases like this and added the only people who are typically getting representation are those who have the resources going into prison, have a pension while in prison, or have family members who are able to scrape together money. There is a difference in access for marginalized communities.

Jon Tunheim thought this bill was more about procedural process and not sentencing-related, so he was unsure if it fell under the SGC’s purview. He thought his association probably would support access to counsel but noted that while this would be a state program with state public defenders, the response work would still be done by county prosecutors and it would really impact the workload of prosecutors. If there is no funding for this, county prosecutors would have to absorb the cost or turn to their county commissioners for additional resources out of the county budget. He is concerned about creating a program for defense but not balancing the resource that would be required for prosecutors to respond to the additional workload.

Kimberly provided information she obtained from Greg Link. Numbers from AOC show that the court of appeals has called for a response in cases like this from the prosecutor in 47% of the personal restraint petitions that are pending, but only from appointed counsel in 2.7% of the cases. What that suggests, she said, is that the need to staff this by prosecutors is not necessarily affected by this bill. It is already there and is a function of the court requiring a response by prosecutors. The numbers highlight the disparity of the resources that are provided to the defense and that the court is really only hearing from one side of the issue.

**MOTION #23-06: SUPPORT THE CONCEPT OF SSB 5046 BUT TAKE NO POSITION ON THE DETAILS OF THE BILL**

**MOVED:** Kimberly Gordon  
**SECONDED:** Judge Wiggs  
**PASSED:** Passed (5=Y)  
**ABSTAINED:** Jon Tunheim

**III. ADJOURNMENT**

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



2/10/23

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Judge J. Wesley Saint Clair (Ret), Chair

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Date