



STATE OF WASHINGTON

SENTENCING GUIDELINES COMMISSION

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

MEETING MINUTES

February 10, 2023 9:00am – 12:00pm

Zoom

Members Present:

Hon. J. Wesley Saint Clair, Chair
Hon. Stanley Rumbaugh
Kimberly Gordon
Secretary Cheryl Strange
Greg Link
Marc Baldwin
Kathleen Harvey
Norrie Gregoire
Jon Tunheim
Jennifer Albright
Hon. William Houser
Kecia Rongen
Hon. Josephine Wiggs

Staff:

Keri-Anne Jetzer

Members Absent:

Senator Mike Padden
Tony Golik
Chief Ken Thomas
Rep. Tarra Simmons
Rep. Gina Mosbrucker
Senator Claire Wilson
Tim Wettack
Hon. Sharonda Amamilo
Gina Cardenas

Guests:

Commissioner Tye Menser, Thurston
County
Prachi Dave, Civil Survival
Hannah Woerner, Columbia Legal
Services
Daniel Landsman, FAMM

I. CALL TO ORDER

Chair Judge Saint Clair called the meeting to order.

II. APPROVAL OF MINUTES

MOTION #23-12: APPROVE DECEMBER 2022 MEETING MINUTES

MOVED: Judge Rumbaugh

SECONDED: Judge Houser

PASSED: Passed

MOTION #23-13: APPROVE JANUARY 2023 MEETING MINUTES

MOVED: Judge Rumbaugh

SECONDED: Judge Saint Clair
PASSED: Passed
ABSTAINED: Judge Houser, Jon Tunheim, Judge Rumbaugh

MOTION #23-14: APPROVE JANUARY 20, 2023 SPECIAL MEETING MINUTES

MOVED: Kimberly Gordon
SECONDED: Judge Rumbaugh
PASSED: Passed
ABSTAINED: Kathleen Harvey, Judge Houser

MOTION #23-15: APPROVE JANUARY 27, 2023 SPECIAL MEETING MINUTES

MOVED: Kimberly Gordon
SECONDED: Judge Rumbaugh
PASSED: Passed
ABSTAINED: Judge Houser

MOTION #23-16: APPROVE FEBRUARY 3, 2023 SPECIAL MEETING MINUTES

MOVED: Kimberly Gordon
SECONDED: Judge Saint Clair
PASSED: Passed
ABSTAINED: Judge Houser

III. LEGISLATIVE SESSION

SB 5451 – Allowing persons serving long sentences committed prior to age 25 to seek review for possible release from incarceration

Keri-Anne asked Daniel Landsman if he would provide the members with a brief description of this bill. Keri-Anne pointed out that another bill, HB 1396, is similar to SB 5451.

Judge Rumbaugh asked if this bill eliminates judicial discretion to reduce the minimum term, as determined in recent case law. Daniel wasn't sure if the bill impacts that or not but offered to get the Judge that information.

There was discussion of the differences between SB 5451 and HB 1396, aka the Monschke fix.

Keri-Anne reported that the Minority and Justice Commission indicated its support in a letter to the prime sponsor. Greg Link commented that this bill aligns with brain science and with case law and brings Washington to where it should have been after the Miller fix.

MOTION #23-17: SUPPORT SB 5451

MOVED: Greg Link
SECONDED: Kimberly Gordon
PASSED: Passed (Y=5, N=1)
ABSTAINED: Judge Rumbaugh, Kathleen Harvey, Marc Baldwin, Secretary Strange

HB 1324 – Concerning scoring of prior juvenile offenses in sentencing calculations

At Keri-Anne’s request, Daniel Landsman briefed members on this bill. Greg Link asked Daniel if the bill eliminates the use of prior juvenile offenses as an aggravating factor. Daniel replied he did not think it did.

Jon Tunheim reported that the biggest concern from WAPA was the unfunded mandate, which pushes it on to the counties. Judge Rumbaugh commented that the SCJA supports the bill but it must be funded. Kimberly Gordon pointed out that youth of color are disproportionately impacted by this scoring so this could be an important way to address systemic disparity in the system, going forward and looking back. On that basis alone it is an important bill and something to prioritize, she said.

Keri-Anne reported that in the fiscal note, AOC anticipated 4200 persons currently incarcerated with a juvenile point in their history and a current criminal history score of under 10, and another 3100 who are under community supervision. Daniel noted that people with two or fewer juvenile points and people with a maxed out criminal history scores would probably not need resentencing, thus reducing the actual number. Keri-Anne added that this is another bill that the Minority and Justice Commission included in their letter of support.

Commissioner Menser agreed with the concerns Jon Tunheim expressed. He reminded members that the courts are still dealing with Blake and Covid backlogs. He supports the policy but also supports the importance of the legislature funding this bill. Greg Link thought the SGC should support this policy as it did two years ago. He noted the system absorbed the cost of these punishments over the years and the state needs to pay the costs of its mistakes. This is good policy and it needs to be funded now.

Daniel Landsman asked if the members thought a longer, staggered implementation, prioritizing those closer to release, would help delay the annual resentencing impact on the courts. Judge Rumbaugh remarked that is being done now with Blake but ultimately there are still ‘x’ number of resentencings that have to be absorbed into the system. Judge Rumbaugh also agreed with Greg that this is long overdue and the mess needs to be cleaned up although this will cost a lot of money.

MOTION #23-18: SUPPORT HB 1324 REQUEST PROMPT AND ADEQUATE FUNDING TO IMPLEMENT

MOVED: Judge Rumbaugh
SECONDED: Greg Link
PASSED: Passed (Y=6, N=1)
ABSTAINED: Marc Baldwin, Secretary Strange, Kecia Rongen

HB 1169 – Concerning legal financial obligations

Keri-Anne asked Prachi Dave or Hannah Woerner to give members a brief summary of the bill. Judge Saint Clair asked if the bill waives interest penalties as a result of not paying. Prachi Dave replied that this bill does not address interest accrued on these particular fees. She said the waiver of interest was in a previous bill, HB 1783, which allowed waiving the interest on any legal financial obligation.

Judge Rumbaugh wondered why this couldn't be an administrative function. Hannah reported that in HB 1412 (2022) they had wanted to include an automatic waiver for non-restitution interest so that individuals wouldn't have to move through the courts, however, concerns were raised by the clerks on the feasibility of how they would have that automatic waiver take place. For that reason, she said that type of language was not included in this bill. Judge Rumbaugh remarked that even if it goes through the court, the function will still end up in the clerk's office. Jon Tunheim explained that from what he's heard from his county's clerk, they don't do anything with LFOs without a court order as a rule of practice.

Jon added that WAPA was supportive of the bill as long as victim programs maintain full funding. They support moving away from having defendants fund the victim programs and having the state step up to fund it. It is a more stable source of funding.

MOTION #23-18: SUPPORT HB 1169 CONDITIONED ON MAINTAINING CURRENT RESOURCES FOR SYSTEM-BASED VICTIM PROGRAMS

MOVED: Kimberly Gordon
SECONDED: Jon Tunheim
PASSED: Passed (Y=8, N=0)
ABSTAINED: Secretary Strange, Kecia Rongen

SB 5588 – Concerning the MHSA

Kimberly Gordon informed members that she and Judge Amamilo had similar reasons for suggesting this be brought before the full SGC. They both have come across a number of individuals who would be appropriate for this sentence alternative, but their support system is out of state.

Jon Tunheim commented that it also removes the requirement to provide a proposed treatment plan by the treatment provider. Currently, he explained, if someone is being considered for the MHSA, statute requires that the judge have before them the diagnosis and the proposed treatment plan so the judge knows what the plan is. He said there has been difficulty getting that. He was concerned about a judge granting a sentencing alternative without having any idea what the treatment plan is. Judge Rumbaugh said, in his experience, there is an evaluation completed that results in a plan. Being that he is not a mental health specialist, who is he to suggest if it is a good or bad treatment plan.

MOTION #23-20: SUPPORT SB 5588

MOVED: Kimberly Gordon
SECONDED: Greg Link
PASSED: Passed (Y=6, N=0)
ABSTAINED: Marc Baldwin, Jon Tunheim, Secretary Strange, Kecia Rongen

SB 5635 – Concerning victims’ rights

Jon Tunheim suggested this bill is a statement of current practice but also an aspirational statement for the resources to do the work.

Judge Rumbaugh remarked that the portion of the bill that requires the court to notify victims of new trial dates and speak related to the trial date continuance is not feasible.

Kimberly Gordon observed that to have the victim’s safety considered in bail determinations seems to be something that is already done under CrR 3.2. She’s unsure if that is needed. If it is trying to do something separate from CrR 3.2 then that would set up a conflict. She was also concerned that it would affect the presumption of release in CrR 3.2. Greg Link agreed and wondered if all the bill does is codifies what currently exists in other spots, then why is it needed? However, he added that he didn’t feel that procedural trial stuff such as this was under the purview of the SGC. Jon Tunheim agreed with Greg that this may not be in the SGC’s purview but did want to state for the record that victims do have Constitutional rights in this state.

MOTION #23-21: TAKE NO POSITION ON SB 5635

MOVED: Judge Rumbaugh
SECONDED: Judge Houser
PASSED: Passed (Y=11, N=0)
ABSTAINED: Secretary Strange

SB 5644 – Concerning juvenile records

Keri-Anne briefed members on the bill and on some of the testimony that took place at the public hearing of the Senate Human Services Committee.

Kimberly Gordon thought it was important to protect those who need protecting without impacting the important rights that are also at issue in the system. She thought there should be further study with all the stakeholders present. Norrie Gregoire noted that Washington Association of Juvenile Court Administrators had strong concerns. He agreed with Kimberly Gordon that certain parties may need access to some of these records for various reason in the interest of justice. WAJCA supports getting records sealed but a more intentional approach with all stakeholders at the table would be a more fruitful way to do it. Jon Tunheim added that WAPA members are of the same mind. Judge Rumbaugh suggested that the SGC continue to track the progress of this bill.

MOTION #23-22: POSITION OF OTHER SUGGESTING THIS BE FURTHER STUDIED WITH ALL STAKEHOLDERS WHICH WOULD OFFER RECOMMENDATIONS

MOVED: Kimberly Gordon
SECONDED: Judge Rumbaugh
PASSED: Passed (Y=11, N=0)
ABSTAINED: Kathleen Harvey

SB 5056 – Special allegation for habitual property offenders

Keri-Anne briefed members on the bill and provided testimony from the public hearing in the Senate Law & Justice Committee.

Kimberly Gordon understands that property crimes are front and center right now but all too often the solution is to lock people up for longer terms, which doesn't address the problem. Also, she observed the discretion is within the prosecution not the judiciary, which is not consistent with the way the SGC has viewed the importance of judicial discretion. Greg Link added that the Criminal Sentencing Task Force recommended eliminating most enhancements. There must be a better way to address the crime du jour. He suggested the legislature take a break and consider the recommendations of the Task Force before adding more.

Judge Rumbaugh countered that these are not new crimes. It's whether the punishment will be enforced. Data has shown that crime can be reduced when a prolific offender is taken off the street. There is a cost to not doing anything, mostly to small businesses when windows are broken and items are stolen. The Judge thought it would be another tool for the courts to have available to them. Jon Tunheim said he is hearing the same thing from his community. Organized property offenses are increasing and taking a toll on communities. Having also spent time on the Criminal Sentencing Task Force, Jon also agreed with things Greg Link mentioned such as being careful how these are dealt with and not reacting to the crime du jour. Jon admitted he would like to get to the place where the legislature comes to the SGC as a body to vet these ideas before the bill gets introduced so the SGC can discuss it and perhaps have some input on how the bill is drafted. The substitute bill added judicial discretion whether to impose this enhancement even when the prosecutor makes the allegation, so he thought it looked as though there was an attempt to balance out the discretion.

Norrie Gregoire thought this enhancement might help motivate people to consider drug court, since many of the people this would address would likely have a SUD nexus.

Judge Houser thought the better use of public funds, rather than just confinement, would be to develop a robust treatment program whether it be drug court or funded treatment facilities to attack the underlying problem, which is a rampant SUD among people who then turn to criminal activity to support their habits.

Greg Link observed that for the class C felonies eligible for this enhancement, most of the people would be getting a 5-year sentence, so the additional 12 months would be moot as the individuals would be very close to or up against their statutory maximum term anyway. The class B felonies would be getting sentences of 6 to 7 years. If that is not giving people the opportunity for treatment, he's not sure what adding another 24 months is going to do. It would cost about \$80,000 for the extra 24 months, which is far better spent creating actual drug treatment for those individuals.

MOTION #23-23: SUPPORT SB 5056

MOVED: Judge Rumbaugh
SECONDED: Norrie Gregoire
PASSED: Failed (Y=2, N=7)
ABSTAINED: Greg Link, Kecia Rongen, Jon Tunheim, Judge Wiggs

MOTION #23-24: OPPOSE SB 5056 UNTIL LEGISLATURE RESOLVES HB 1268

MOVED: Greg Link
SECONDED: Kimberly Gordon
PASSED: Passed (Y=7, N=2)
ABSTAINED: Kecia Rongen, Jon Tunheim, Judge Wiggs

SB 5160 – Concerning organized retail

Keri-Anne briefed members on the bill. Judge Saint Clair noted that this is a 'definition' bill which the SGC generally doesn't address but the Legislative Committee still wanted to give members an opportunity to comment.

MOTION #23-25: TAKE NO POSITION ON SB 5160

MOVED: Judge Houser
SECONDED: Kimberly Gordon
PASSED: Passed (Y=10, N=0)

HB 1002 – Increasing the penalty for hazing

Keri-Anne briefed members on the bill. She added that the SGC did not take a position on a similar bill last session, rather, the chair presented a statement noting two concerns: one is that the criminal behavior related to hazing is already captured under the assault offenses, thus creating complexity and different levels of punishment, and the other is that a person would receive a misdemeanor for this behavior in an academic setting while someone exhibiting the same behavior in the community would be subject to a gross misdemeanor up to a class B felony. The duplication perpetuates disparate treatment. One shouldn't get a discount because they are a student.

Jon Tunheim observed that there is bipartisan support for this bill. He added that, he doesn't know the specifics but heard the prosecuting attorney in Whitman County indicated he felt it was problematic to use the assault statute.

No motions were made.

Keri-Anne provided members with an update on the SGC-related bills HB 1114, HB 1196 and HB 1541/SB 5616.

IV. CRIMINAL CODE REVIEW COMMITTEE

V. OTHER BUSINESS

Keri-Anne reported that the federal Public Health Emergency has been extended and will officially expire on May 11, 2023, so the April SGC meeting will be 100% virtual and the hybrid meetings will start in May.

VI. PUBLIC COMMENT

No member of the public wanted to speak.

VII. ADJOURNMENT

APPROVED AND ADOPTED BY THE SENTENCING GUIDELINES COMMISSION



3/10/2023

Judge J. Wesley Saint Clair (Ret), Chair

Date