



STATE OF WASHINGTON

## SENTENCING GUIDELINES COMMISSION

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

### MEETING MINUTES

**March 10, 2023 9:00am – 12:00pm**

**Zoom**

Members Present:

Hon. Sharonda Amamilo, Acting Chair  
Hon. Stanley Rumbaugh  
Kimberly Gordon  
Secretary Cheryl Strange  
Greg Link  
Marc Baldwin  
Kathleen Harvey  
Jon Tunheim  
Jennifer Albright  
Hon. Josephine Wiggs  
Gina Cardenas  
Tim Wettack

Staff:

Keri-Anne Jetzer

Members Absent:

Tony Golik  
Chief Ken Thomas  
Rep. Tarra Simmons  
Rep. Gina Mosbrucker  
Senator Claire Wilson  
Hon. J. Wesley Saint Clair, Chair  
Norrie Gregoire  
Hon. William Houser  
Kecia Rongen

Guest:

Commissioner Tye Menser, Thurston  
County

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

Acting Chair Judge Amamilo called the meeting to order

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

##### **MOTION #23-26: APPROVE FEBRUARY 2023 MEETING MINUTES**

**MOVED:** Judge Rumbaugh

**SECONDED:** Marc Baldwin

**PASSED:** Passed

**ABSTAIN:** Judge Amamilo

**MOTION #23-27: APPROVE FEBRUARY 17, 2023 SPECIAL MEETING  
MINUTES**

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

**III. LEGISLATIVE SESSION**

SHB 1189 – Concerning the release of incarcerated individual from total confinement prior to the expiration of a sentence.

Tim Wettack indicated strong support for any vehicle that would support second look. Judge Rumbaugh noted that discussions on second look have been happening for about a decade. He also supported the concept as he felt it was in line with prior discussions the SGC had about a second look process.

Kimberly Gordon explained that while WACDL/WDA believes there are good aspects of the bill, such as the second look provision, but there are also complicated parts related to the Clemency and Pardons Board. For that reason, she will remain neutral on the bill and wanted members to know since her organization is generally very supportive of second look legislation.

Jon Tunheim reported that WAPA is in a similar position. WAPA has advocated that the CPB is the proper venue for a second change opportunity but there are details being worked on so he will abstain.

Greg Link agreed with Kimberly Gordon. He thought the bill may widen the funnel at the top end but ultimately does not increase the number of people who will get commutations and clemency because, ultimately, that is the Governor's choice alone.

**MOTION #23-28: SUPPORT SHB 1189**

**MOVED:** Tim Wettack  
**SECONDED:** Judge Rumbaugh  
**PASSED:** Passed (Y=5, N=0)  
**ABSTAINED:** Marc Baldwin, Secretary Strange, Greg Link, Kimberly Gordon, Jon Tunheim, Judge Wiggs

HB 1396 – concerning persons sentenced for aggravated first degree murder committed prior to reaching 21 years of age

Keri-Anne explained that HB 1325/SB 5154 also deals with this topic. She noted none of the three bills have passed their policy committees but reminded members that any of them could still be used if necessary to implement the budget. Jon Tunheim reported that he heard there is not likely to be any effort to revive any of these "Monschke" fix bills this session. Marc Baldwin added that there is no fiscal note for HB 1396 bill so it is unlikely it would be considered necessary to implement the budget. For this reason, the SGC did not further discuss the bill.

HB 1150 – Creating the offense of the unlawful branding of another person

Jon Tunheim observed that the bill has not moved out of the house of origin and is likely dead.

SHB 1268 – Concerning sentencing enhancements

Judge Rumbaugh suggested the elimination of the street gang enhancement would help dismantle the systematic discrimination in the criminal courts as many enhancements are applied to people of color or immigrant groups. Keri-Anne reported that she thought the street gang enhancement had never been used because of the difficulty of prosecutors to apply it. Clela Steelhammer added that she wasn't sure of the exact number but agreed that it has been used very infrequently. Keri-Anne noted the bill also eliminates protective zones, which have been found to promote racial disproportionality.

Commissioner Menser supported the elimination of the automatic stacking of firearm enhancements to allow case-by-case application. He explained that during his time as a defense attorney, he has seen multiple firearm enhancements create unfair sentences.

Greg Link said that, while he supported retroactivity, this is a good bill and is consistent with recommendations from the Criminal Sentencing Task Force because people of color disproportionately receive enhancements.

Jon Tunheim commented that some of the other enhancements are of concern for WAPA. As an example, there isn't anywhere in King County that doesn't fall under a school zone enhancement, but in rural areas, it looks much different.

**MOTION #23-29: SUPPORT SHB 1268**

**MOVED:** Greg Link

**SECONDED:** Kimberly Gordon

**PASSED:** Passed (Y=6, N=0)

**ABSTAINED:** Secretary Strange, Jon Tunheim

HB 1770 – Increasing the seriousness level of the crime of unlawful possession of a firearm

Keri-Anne reported that this bill was dropped late and would not move further during this session. She suspected it would either be discussed during the interim or come back next session. She asked if the members wished to discuss it. Members did not feel the need to discuss it at this time.

SHB 1104 – Concerning eligibility and requirements for deferred prosecutions

While this bill generally deals with gross misdemeanors, Keri-Anne informed members that the bill would require a second deferred prosecution for DUI or PC to count in the criminal history score.

Kimberly Gordon asked if this scoring change aligns with any recommendations from the Criminal Sentencing Task Force. Greg Link replied that this bill specifically was

not discussed in the Task Force, but that it had considered simplifying the scoring rules while still allowing for specific misdemeanor offenses related to DUI and domestic violence to remain in the calculation. Members agreed to pass on further discussions on this bill.

Keri-Anne reported that the SGC's expansion bill HB 1114 passed out of the House unanimously and that Chair Judge Saint Clair testified at the public hearing in the Senate Law & Justice Committee yesterday. The other bills that had involved the SGC (HB 1541 and HB 1196) either have not moved or no longer pertain to the SGC.

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

Keri-Anne briefed members on the remaining unranked offenses that needed review.

##### 70.155.140 – Shipping or transporting tobacco products ordered through mail or internet

Kimberly Gordon said she felt there is an overlap with federal law.

Jon Tunheim commented that this offense is focused on the shipper and not the buyer. That may explain why county prosecutors are not seeing these, that it may be more of an AGO action if it's at the state level, or federal regulatory under ATF. He thought the conduct would be commensurate to a gross misdemeanor level offense.

Judge Wiggs reminded members to be mindful of how crimes are punished depending on the status of the person perceived to be committing the crime. It may differ for the company than for a person. Jon Tunheim appreciated the Judge's comment and asked if a comparison between the penalty for the shipper and the buyer could be made and brought back to the SGC.

#### **MOTION #23-30: REFER BACK TO COMMITTEE TO COMPARE AGAINST REGULATION ON BUYER**

**MOVED:** Jon Tunheim

**SECONDED:** Greg Link

**PASSED:** Passed

**ABSTAINED:** Secretary Strange, Jennifer Albright

##### 9.91.170(5) – Intentional infliction, injury or death to a dog guide or service animal

Judge Amamilo noted the additional vulnerability to the person the service animal supports in addition to the injury to the animal. Greg Link replied that an assault charge could accompany any animal cruelty charge if someone were to engage in behavior against the dog. He supported repeal as he felt this conduct was captured under Animal Cruelty 1.

Jon Tunheim thought the focus of this offense was about the interference of the use of the support animal. He suspected there is something behind this as part of the original bill's enactment language refers to it as "Layla's Law". He would be interested in

hearing from communities using service animals to know if there a reason for this law outside of the cruelty to the animal.

**MOTION #23-31: ACCEPT COMMITTEE’S RECOMMENDATION TO  
REPEAL RCW 9.91.170(5)**

**MOVED:** Greg Link  
**SECONDED:** Kimberly Gordon  
**PASSED:** Passed (Y=4; N=3)  
**ABSTAINED:** Secretary Strange, Marc Baldwin

9.91.175(3) – Intentionally injures, disables or causes death of an on-duty search and rescue dog

**MOTION #23-32: ACCEPT COMMITTEE’S RECOMMENDATION TO  
REPEAL RCW 9.91.175(3)**

**MOVED:** Greg Link  
**SECONDED:** Kimberly Gordon  
**PASSED:** Passed (Y=5; N=0)  
**ABSTAINED:** Secretary Strange, Judge Amamilo, Kathleen Harvey

19.210.040 – Unused property, Merchants – Prohibited sales (3<sup>rd</sup> or subseq offenses within 5 years).

Keri-Anne reported that the Criminal Code Review Committee suggested repealing this offense if it had no convictions in the past 20 years, which would require checking the fiscal year 2021 data. Keri-Anne confirmed that this offense did not have any convictions in fiscal year 2021.

Kimberly Gordon mentioned she recently saw that an influencer was having a moving sale of the products she had received from companies. She thinks that the target is no longer the same as when this law was passed.

**MOTION #23-33: ACCEPT COMMITTEE’S RECOMMENDATION TO  
REPEAL RCW 19.210.040**

**MOVED:** Kimberly Gordon  
**SECONDED:** Greg Link  
**PASSED:** Passed (Y=6; N=0)  
**ABSTAINED:** Secretary Strange

38.42.050 – False affidavit under service member civil relief act

Jon Tunheim thought that his is related to protections to service members who are involved in civil litigation. He agreed that people misrepresenting themselves would fall under the perjury statute. Greg Link agreed.

**MOTION #23-34: ACCEPT COMMITTEE’S RECOMMENDATION TO  
REPEAL RCW 38.42.050**

**MOVED:** Kimberly Gordon  
**SECONDED:** Greg Link  
**PASSED:** Passed (Y=4; N=0)  
**ABSTAINED:** Secretary Strange; Judge Amamilo

9A.44.132(1) – Failure to registers as a sex offender (1<sup>st</sup> violation)

Keri-Anne reported that the SGC had wanted to wait to see what the Sex Offender Policy Board (SOPB) recommendation was on this offense as it was part of the review the SOPB conducted in 2022. In the SOPB’s report, it recommended FTR-SO (subsequent offense) be reduced from a SL 2 offense to an unranked offense and that one year of community custody be assigned, regardless of risk level, for a first offense and two years for subsequent offenses. She added that the current HB 1394, which passed the House and is now in the Senate, reduces failure to register as a sex offender to a gross misdemeanor for juvenile offenses.

Jon Tunheim thought the SOPB has more subject matter expertise and more focus on the interaction of these statutes together.

**MOTION #23-35: NO POSITION - DEFER TO THE SEX OFFENDER  
POLICY BOARD**

**MOVED:** Jon Tunheim  
**SECONDED:** Greg Link  
**PASSED:** Passed (Y=8; N=0)

9A.76.023(2)(b) – Disarming a law enforcement or corrections officer and firearm is discharged

Keri-Anne explained that the SGC has already voted to accept the committee’s recommendation to rank this felony although did not suggest a seriousness level. Similar offenses had included a suggested seriousness level and the Chair wanted to continue conversation to see if members wanted to suggest a seriousness level for this offense to maintain consistency in the recommendations.

**MOTION #23-36: RECOMMEND RANKING RCW 9A.76.023(2)(b) AT  
SERIOUSNESS LEVEL 4 OR HIGHER**

**MOVED:** Jon Tunheim  
**SECONDED:** Jennifer Albright  
**PASSED:** Passed (Y=4; N=3)

Keri-Anne briefed members on the status of the draft report.

**V. OTHER BUSINESS**

**VI. PUBLIC COMMENT**

No member of the public wanted to speak.

## VII. ADJOURNMENT

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



4/14/23

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Judge J. Wesley Saint Clair (Ret), Chair

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Date