



STATE OF WASHINGTON

SENTENCING GUIDELINES COMMISSION

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

MEETING MINUTES

October 27, 2023 9:00am – 12:00pm

1500 Jefferson Building

Olympia, WA 98516

And Zoom

Members Present:

Hon. J. Wesley Saint Clair, Chair
Greg Link
Hon. Sharonda Amamilo
Secretary Cheryl Strange
Kecia Rongen (proxy: Corey McNally)
Kimberly Gordon
Hon. Josephine Wiggs
Rep. Gina Mosbrucker
Hon. Jeffrey Swan
Jennifer Albright
Marc Baldwin
Senator Claire Wilson
Norrie Gregoire
Judge Karen Donohue
Judge Veronica Galván

Members Absent:

Tony Golik
Tim Wettack
Rep. Tarra Simmons
Commissioner Tye Menser
Jon Tunheim
Gina Cardenas

Guests:

Brad Meryhew, SOPB Chair
Whitney Hunt, SOPB Coordinator
Chief Brian Smith, WASPC

Staff:

Keri-Anne Jetzer
Dr. Lauren Knoth-Peterson, PSPRC

I. CALL TO ORDER

Chair Judge Saint Clair called the meeting to order. He welcomed Judge Donohue and Judge Galván who attended their first SGC meeting.

II. APPROVAL OF MINUTES

MOTION #23-45: APPROVE OCTOBER 13, 2023, MEETING MINUTES

MOVED: Judge Amamilo

SECONDED: Secretary Strange

PASSED: Passed

ABSTAIN: Norrie Gregoire, Corey McNally, Judge Donohue, Jennifer Albright, Marc Baldwin

III. RE-RANKING PROJECT

Reflecting on recent past re-ranking discussions of the SGC and the SOPB, Chair Judge Saint Clair reminded members that this project is not to determine why offenses are ranked as they are but rather to translate offenses on to the proposed sentencing grid.

Because of repeated comments stating ‘no reason’ for the elimination of offense-specific multipliers, Keri-Anne asked Dr. Lauren Knoth-Peterson to present information that was given to the Criminal Sentencing Task Force during their discussion about eliminating offense-specific multipliers. Lauren presented on the philosophies of punishment and how they apply to offense-specific multipliers, research that suggests there is greater risk of recidivism among generalists than specialists, the justifications the Task Force provided to eliminate these multipliers and preliminary data from the Statistical Analysis Center on disproportionality in the application of offense-specific multipliers that was presented to the Task Force.

Judge Saint Clair thought the final Criminal Sentencing Task Force’s report would be a good resource for members and could help the conversation. He asked Keri-Anne to send members the link.

SOPB Chair Brad Meryhew felt that this research about the multipliers doesn’t apply to the issue the SOPB is raising because reoffense rates for sex offenses are low. However, he noted, where practitioners see a huge difference in the proposed grid and related scoring rules is with other current offenses. In order to hold the defendant accountable in trial, the victim (per Petrich instructions) must testify to each individual incident. This grid substantially reduces the sentences for people accused of those offenses, and he cited the example of Rape of a Child 1. He recommended looking at sex offenses a little differently because of the different characteristics and suggested the SOPB would like to see some level of multiplier for children under age 14 for Rape of a Child 1 and 2, and Child Molestation 1 and 2.

Keri-Anne used that discussion to segue into a similar topic she wished to discuss with the members. She noted that in some of the subcommittee meetings, a policy decision was used to rank some offenses with vulnerable victims at a higher level than the standard offense (e.g. Theft of a Vulnerable Adult vs Theft 2). She asked members if this is a policy decision that could be widely applied. Greg Link replied that Assault 1 and Assault of a Child 1 is essentially the same behavior with an age component in Assault of a Child 1. However, Rape of a Child 1 is purely based on age while Rape 1 involves inflicting serious violent behavior. He thought that analysis breaks down for sex offenses but might be true for other offenses. SOPB Chair Meryhew added that the Washington Association of Treatment of Sexual Abusers representative on the SOPB made the same point that comparing Rape 1 and Rape of a Child 1 is not a fair comparison.

Greg Link emphasized that when discussing sentencing ranges for class A and B sex offenses, it is the minimum term that would be affected, not the sentence that will be served, as nearly all these offenses will end up under the ISRB.

Lauren observed that she's heard several different times during discussions that what works for non-sex offenses doesn't work for sex offenses. If sex offenses are so fundamentally different, she wondered if that highlights a need for discussion about a separate sex offense sentencing grid. A separate sentencing grid could address the issues of the criminal history score in a similar way to the drug grid. Judge Saint Clair thought that suggestion made sense. It allows the uniqueness of those offenses to be reflected in the grid by policy and it is a great time to consider it. Greg reminded members that if sexual motivation is added to any other offense those are also considered sex offenses.

Corey McNally provided some data on the percent of individuals who were released on their minimum term by risk level. In FY 2022-2023, 79% of Level 1 sex offenders were released on their first hearing, 66% of Level 2, and 37% of Level 3.

Judge Galván reminded members that it seems the beginning assumption is that the original sentencing grid was correct, that it was rooted in some logic, some evidence. She added that it is now known that it was not. Looking at the proposed sentencing grid, its foundation is within the context of the information that is now available. Things like bias and unfair consequences for certain communities were likely not part of the discussions when the first sentencing grid was created. Kim Gordon agreed and added that tools are now available to ensure that we do not have to address safety only by increasing the length of incarceration. She felt that this could be the commission that challenges others to think about this in the way Judge Galvan articulated.

Lauren offered to include a discussion about some of the SOPB's discontent of the changes to the grid and how that may not fit with sex offenses, consideration of a separate sex offense grid, and concerns related to that to help place it on the Legislature's radar.

Keri-Anne led members through discussions of the offenses within each recommended seriousness level. Members were asked to take a straw poll where there were multiple recommendations to get a glimpse for a preference. Lauren will be able to take that information to create some differential impacts on racial groups at the next meeting prior to any official vote.

SL 18 – no concerns

SL 17 – no concerns

SL 16 - no concerns

SL 15

- Rape 1
 - SL 14 aligns more closely with current practice.

- SL 14 Would align it with Assault 1 as it currently is. Both have same mandatory minimum term.
- SL 14 30% - Black individuals (disproportionate)
- SL 14 Rape 1 is a determinate sentence which already separates it from Assault 1.
- SL 15 results in a wholesale increase while SL 14 allows for both increase and decrease in range values.
- SL 15 results in great significance of change (in months).
- SL 15 Rape 1 is distinctly different offense from Assault 1 and should be 1 SL higher than Assault 1.
- SL 15 Majority of SOPB voted to support this rank (5 of 6 votes)
- Poll result: SL 14 – 6; SL 15 - 3

SL 14

- Promoting Commercial Sexual Abuse of a Minor
 - SL 14 This should be less serious than Trafficking 1. The nature of the crime is not equal to Trafficking 1.
 - SL 14 Ranges are large enough to take into account varying offenses.
 - SL 14 Majority of SOPB voted to support this rank (4 of 6 votes)
 - Poll result: SL 14 – 8; SL 15 - 1
- Rape of a Child 1
 - Conceptually belongs with Rape 1
 - SOPB split vote for SL14/15 (3/3)
 - Poll result: SL 14 – 6; SL 15 - 4
- Rape 2
 - Should be ranked below Rape 1/ROC 1
 - Poll result: SL 13 – 8; SL 14 - 2

SL 13

- Rape of a Child 2
 - SL 13 Should be ranked 1 SL below ROC 1
 - Poll result: SL 13 – 5; SL 14 – 1
- Child Molestation 1
 - SL 12 Involves sexual contact not penetration.
 - SL 12 Should be ranked 1 SL below ROC 2.
 - SL 13 Difference between CM1 and ROC2 can be small depending on how the behavior is played out.
 - Poll result: SL 13 – 2; SL 12 – 4
- Indecent Liberties with Forcible Compulsion
 - SL 12 Less serious level of sexual contact, not penetration.
 - SL 12 Should be ranked 1 SL below ROC 2.
 - SL 13 Difference between ILw/FC and ROC2 can be small depending on how the behavior is played out.
 - Poll result 1: SL 13 – 3; SL 12 – 3
 - After more discussion, Poll result 2: SL 13 – 2; SL 12 – 4
- Manslaughter 1

- SL 14 Higher rank due to loss of life.
- SL 13 Gradated levels of loss of life and the mental culpability of the defendant.
- SL 13 Drops from intent (Murder) to recklessness (mens rea)
- Poll not taken due to end of meeting.

IV. OTHER BUSINESS

No other business.

V. PUBLIC COMMENT

No members of the public were present.

VI. ADJOURNMENT

APPROVED AND ADOPTED BY THE SENTENCING GUIDELINES COMMISSION



11/3/2023

Judge J. Wesley Saint Clair (Ret), Chair

Date