



STATE OF WASHINGTON

## SENTENCING GUIDELINES COMMISSION

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

### MEETING MINUTES

**December 8, 2023 9:00am – 12:00pm**

1500 Jefferson Building  
Olympia, WA 98516  
And Zoom

#### Members Present:

Hon. J. Wesley Saint Clair, Chair  
Hon. Sharonda Amamilo (proxy: Judge Saint Clair)  
Greg Link  
Rep. Gina Mosbrucker  
Secretary Cheryl Strange  
Kecia Rongen (proxy: Secretary Strange)  
Kimberly Gordon  
Hon. Josephine Wiggs  
Hon. Jeffrey Swan  
Marc Baldwin  
Norrie Gregoire  
Judge Karen Donohue  
Judge Veronica Galván (proxies: Judge Wiggs/Judge Saint Clair)  
Commissioner Tye Menser  
Tim Wettack (proxy: Kimberly Gordon)

#### Members Absent:

Tony Golik  
Rep. Tarra Simmons  
Gina Cardenas  
Jennifer Albright  
Senator Claire Wilson  
Jon Tunheim

#### Guest:

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.

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

#### **MOTION #23-48: APPROVE NOVEMBER 17, 2023, MEETING MINUTES**

**MOVED:** Judge Swan

**SECONDED:** Greg Link

**PASSED:** Passed

**ABSTAIN:** Judge Saint Clair, Secretary Strange

### III. 2024 LEGISLATIVE SESSION

Chair Judge Saint Clair reminded members that the SGC has offered its knowledge and expertise in the last few years during the legislative session on bills in the sentencing arena. Keri-Anne stated the Legislative Committee meetings occur on Thursday mornings at 8am. She sent out placeholders on Fridays at noon for the Chair to call Special meetings for the SGC to be able to discuss any bills the Legislative Committee thinks would be of interest. The Legislative Committee generally consists of, at minimum, a judge, a prosecuting attorney and a defense attorney. DOC has also offered someone to participate on the committee as they have a large amount of information and expertise on many of these bills. The Legislative Committee works thought the criminal justice bills to determine which the SGC may want to discuss. Chair Judge Saint Clair asked for volunteers for the committee.

Kimberly Gordon, a former committee volunteer, commented that the committee has moved through the bills efficiently and it has dovetailed with the discussions and policy recommendations made outside of the legislative session. She felt participation on that committee was a way for her to add value to the work of the SGC.

Legislative Committee Volunteers: Judge Swan, Kimberly Gordon, Judge Saint Clair, Melena Thomson (DOC – or another designee). Chair Judge Saint Clair asked that Keri-Anne reach out to Jon Tunheim to see if he or someone else from WAPA can participate.

### IV. RE-RANKING PROJECT

Joanne Smieja was invited to the conversation.

The remaining offenses were grouped into sex, property and other person offenses, where possible, for easier review. The review started with sex offenses that had multiple recommendations.

#### Sex Offenses

SL 6

- Incest 1
  - Not limited to juveniles as victims
  - SL 6 – court has option of jail sentence available to it
  - Poll result: SL 6 – 9; SL 7 – 2
- Possession of Depictions of Minor Engaged in Sexually Explicit Conduct 1
  - Poll result: SL 6 – 9; SL 7 – 1
- Rape of a Child 3
  - Rape of a Child 2 – range of 78-102/life and is class A offense
  - Change from class C to B impacts registration requirements.
  - Poll result: SL 6 (B) – 2; SL 5 (C) – 10

Chair Judge Saint Clair instituted a 2-minute timer in order to keep discussions moving with the intent of getting through all the remaining offenses.

#### SL 5

- Custodial Sexual Misconduct 2
  - SL 6 – Serious abuse of power
  - Poll result: SL 5 (C) – 8; SL 6 (B) – 4
- Dealing in Depictions of Minor Engaged in Sexually Explicit Conduct 2
  - Charges are typically used for dropdowns in negotiations. Currently has county-based jail terms. Moving to SL 6 would remove that.
  - Poll result: SL 5 – 9; SL 6 – 3
- Sending, Bringing into the State Depictions of Minor Engaged in Sexually Explicit Conduct 2
  - Poll result: SL 5 – 10; SL 6 – 2
- Incest 2
  - Poll result: SL 5 (C) – 8; SL 6 (B) – 1
- Rape 3
  - Poll result: SL 5 – 9; SL 6 – 1
- Child Molestation 3
  - Committee recommendation noted to rank Child Mol 3 one SL below Rape of a Child 3 (straw poll landed on SL 5).
  - Child Molestation 2 straw poll lands on SL 8.
  - Added to straw poll consideration SL 4.
  - Poll result: SL 5 – 4; SL 6 – 1; SL 4 – 5
- Sexual Misconduct with a Minor 1
  - Poll result: SL 5 – 9; SL 6 – 0
- Sexually Violating Human Remains
  - Poll result: SL 5 – 10; SL 6 – 0

#### SL 4

- Possession of Depictions of minor Engaged in Sexually Explicit Conduct 2
  - SL 4 – Poss Depictions 1 is SL 6, keeping at SL 4 would maintain current 2 SL differentiation.
  - Poll result: SL 4 – 9; SL 5 – 1
- Viewing Depictions of Minor Engaged in Sexually Explicit Conduct 1
  - Poll result: SL 4 – 9; SL 5 – 1

#### SL 3

- Communication with Minor for Immoral Purposes (Subseq Viol or Prior Sex Offense Conviction)
  - Almost exclusively charged on cases on the internet.
  - Poll result: SL 2 – 8; SL 3 – 2

## SL 2

- Voyeurism 1
  - Poll result: SL 2 – 11; SL 3 - 1

Members reviewed the Other Person offense list

## SL 5

- Kidnap 2
  - Committee recommendations included moving rank up one SL when there is a prior violent offense in history because it is a strike offense. Otherwise, a person could get LWOP sentence before ever serving a prison sentence.
  - Would also change how these cases are tried. If prior violent offense makes it a higher seriousness level, that becomes an element under Washington law, and the offense needs to be proved beyond a reasonable doubt by a jury.
  - There is an element of double counting. The grid already takes into account prior violent with respect to widening the range (repeat violator column) and allows judges to impose a higher sentence based on the prior violent.
  - Poll result: SL 5 – 11; SL 6 – 0; SL 5 w/prior viol – 1

## SL 4

- Assault 2
  - Poll result: SL 5 – 11; SL 5 w/prior viol – 1; SL 6 – 0
- Vehicular Assault – Reckless Manner or DUI
  - Poll result: SL 5 – 11; SL 5 w/prior viol – 1; SL 6 - 0

## Unranked

- Custodial Interference 1
  - SGC suggested this offense be ranked but did not include a specific ranking.
  - Poll result: SL 3 – 0; SL 2 – 11

Members reviewed the Property offense list.

Lauren talked about the discussions by the various committees that made proposals based on groups of offenses and is denoted by color-coding in the document. At the request of a member, Lauren briefly explained the notion of the locally operated integrated sanctions for straddle cells, or cells that include a jail or prison term.

- New offense of Aggravated Theft >\$200,000 at SL 4
  - Because the monetary value of Theft 1 is from \$5,000 or more, there was a proposal to create Aggr Theft where the value was really large (>\$200,000) and placed at SL 4.
  - Use of major economic crimes aggravator or multiple counts when value is extremely large.
  - Move to report being completed by Lauren

- Trafficking in Stolen Property 1
  - Poll results: SL 4 – 1; SL 3 – 11
  - No disagreement with the argument that Mortgage Fraud, Organized Retail Theft 1, Retail Theft with Special Circumstances 1 and Theft with Intent to Resell 1 should be one seriousness level above Theft 1.
- Theft 2
  - SL 1 - the recommendation to place Theft 2 at SL 2 would make it commensurate to Theft 1.
  - Poll result: SL 2 – 0; SL 1 – 12
- Do you support Possession of Stolen Property 2 and Theft of Rental, Leased, Lease-Purchased or Loaned Property to be ranked at the same seriousness level as Theft 2:
  - Poll result: Yes – 12; No – 0
- Do you support Theft from a Vulnerable Adult 2, Theft with Intent to Resell 2, Retail Theft with Special Circumstances 2 and Organized Retail Theft 2 to be ranked one seriousness level above Theft 2:
  - Poll result: Yes – 10; No – 0
- Forgery
  - Poll result: SL 1 – 12; SL 2 - 0
- Do you support Unlawful Possession of a Personal Identification Device, Unlawful Possession of a Fictitious Identification, Unlawful Possession of Instruments of Financial Fraud, Unlawful Possession of Payment Instruments, and Unlawful Production of Payment Instruments to be ranked at the same seriousness level as Forgery:
  - Poll result: Yes – 12; No – 0
- Unlawful Trafficking in Food Stamps
  - Based on inflation calculation, the amount of \$100 in 2003 is equivalent to \$180 in 2023. Theft values have not kept up with inflation either.
  - SL 1 – 11; SL 2 – 0
- Extortion 2
  - Poll result: SL 4 – 0; SL 3 – 11
- Theft of a Firearm
  - Doesn't seem commensurate with other offenses within SL 7.
  - Poll result: SL 6 – 10; SL 7 – 0
- Unlawful Possession of Firearm 2
  - Poll result: SL 3 – 11; SL 4 – 0
- Unlawful Factoring of a Credit or Payment Card Transaction
  - Poll result: SL 3 – 10; SL 4 – 0

REVOTE: Sending, Bringing into the State Depictions of Minor Engaged in Sexually Explicit Conduct 1

- Original Poll result from 11/17/23 meeting: SL 8 – 5; SL 7 – 5 (TIE)
- Poll result today: SL 6 – 10; SL 7 - 1

Lauren re-ran the racial impact analyses based on these decisions and reported that the patterns are consistent from her original analyses based on the class A offenses. She said people of color are most likely to see a reduction in their minimum and maximum or a reduction in their sentence to make it align with the new standard ranges but also about 60% of the sentences that were previously issued will still be within the new standard ranges.

Keri-Anne presented language to members to be included in the report that explains these rankings are not official recommendations but rather educated placeholders from the SGC to be used as a starting point for additional discussion. The language does indicate the SGC is in agreement that, regardless of the outcomes, a regular and continuous review of the policy changes needs to occur along with intentional consideration of racial impact analyses.

**MOTION #23-49: APPROVE INCLUSION OF THE PRESENTED  
LANGAUGE INTO REPORT TO LEGISLATURE AS  
WRITTEN**

**MOVED:** Judge Swan  
**SECONDED:** Greg Link  
**PASSED:** Passed - unanimous

Chair Judge Saint Clair commended members for their hard work on this project and being able to conclude on time.

**V. OTHER BUSINESS**

No other business.

**VI. PUBLIC COMMENT**

No member of the public wished to address members.

**VII. ADJOURNMENT**

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



2/9/24

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Judge J. Wesley Saint Clair (Ret), Chair

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Date