



STATE OF WASHINGTON

SENTENCING GUIDELINES COMMISSION

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

MEETING MINUTES

January 12, 2024 9:00am – 12:00pm

1500 Jefferson Building

Olympia, WA 98516

And Zoom

Members Present:

Hon. Jeffrey Swan, Acting Chair
Hon. J. Wesley Saint Clair (proxy: Judge Swan)
Hon. Sharonda Amamilo (proxy: Judge Wiggs/Greg Link)
Greg Link
Secretary Cheryl Strange
Kecia Rongen (proxy: Secretary Strange)
Kimberly Gordon (proxy: Ramona Brandes)
Hon. Josephine Wiggs
Marc Baldwin
Judge Karen Donohue
Judge Veronica Galván (proxies: Judge Donohue)
Commissioner Tye Menser
Tim Wettack (proxy: Greg Link)
Chief Brian Smith

Members Absent:

Tony Golik
Rep. Tarra Simmons
Jennifer Albright
Senator Claire Wilson
Jon Tunheim
Rep. Gina Mosbrucker
Norrie Gregoire

Guest:

Brad Meryhew, SOPB Chair
Whitney Hunt, SOPB Coordinator

Staff:

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

I. CALL TO ORDER

Acting Chair Judge Swan called the meeting to order.

II. APPROVAL OF MINUTES

Keri-Anne reported that she was unable to complete the meeting minutes in time for this meeting.

III. 2024 LEGISLATIVE BILL PROPOSALS

HB 2177 - Concerning the membership and operation of the sex offender policy board. Brad Meryhew, Chair of the Sex Offender Policy Board, informed members about the bill. He and others worked with stakeholders to give voice to those with lived experience in their discussions, similar to what the SGC and other agencies have done. The SOPB has consistently had those voices in their proceedings, but since there are limitations regarding voting and speaking during meetings, it was thought that expanding the Board to include these individuals made sense. In addition to the expansion, the bill is asking the Legislature to fund a successful sex offender management conference last held several years ago with federal funding. Lastly, the bill changes the name to the Sex Offense Policy Board which allows the Board to focus not just on those convicted of a sex offense, but also victims and the entire sex offense management system.

Greg Link commented that after having been on the Criminal Sentencing Task Force and experiencing the diversity of viewpoints there, it felt it really broadened its conversations.

MOTION #24-04: MOTION TO SUPPORT HB 2177

MOVED: Ramona Brandes
SECONDED: Greg Link
PASSED: Passed (Y- 12; N – 0)
ABSTAIN: Secretary Strange

HB 2178 - Establishing a pathway off lifetime community custody for individuals with sex offense convictions.

SOPB Chair Brad Meryhew briefed members on the bill. Kecia Rongen, Chair of the Indeterminate Sentence Review Board, shared that the ISRB is neutral on the bill but did work on it with stakeholders. The ISRB had offered input to Legislators.

Keri-Anne reminded members that when the SGC reviewed the Sentencing Reform Act in 2018, the Council of State Government offered data from a study on life-time supervision. The authors determined that after 20 years without reoffending, even high-risk individuals had a likelihood of reoffending equal to that of someone with no criminal history. While the SGC’s report did not include a recommendation related to lifetime supervision specifically, it did support the concept of offering individuals ways to reduce their supervision term, an example of which is the relatively new Compliance Credit.

MOTION #24-05: MOTION TO SUPPORT HB 2178

MOVED: Ramona Brandes
SECONDED: Greg Link
PASSED: Passed (Y- 9; N – 1)
ABSTAIN: Secretary Strange, Kecia Rongen, Judge Amamilo

HB 1999/SB 5962 - Concerning fabricated intimate or sexually explicit images and depictions.

Members discussed if this bill is addressing AI images and cartoon drawings, or actual individuals. There was no clear determination based on the language of the bill.

Greg Link remarked that the US Supreme Court case from 2003, *Ashcroft vs Free Speech Coalition*, that says you can't criminalize fake child pornography as it is protected under the First Amendment. Given the murkiness of the bill's definitions, there is a potential conflict.

Keri-Anne mentioned a similar bill, SB 6184, that creates a new offense referring to "indistinguishable from an actual and identifiable minor". Members discussed both bills.

Brad Meryhew pointed out the harm that is caused to children who are made part of sexual depictions. Greg Link added that part of the *Ashcroft* decision was that in fictional images there is no harm to a child in the production process.

MOTION #24-06: MOTION TO OPPOSE HB 1999/SB 5962

MOVED: Commissioner Menser

SECONDED: Greg Link

PASSED: Passed (Y- 7; N – 0)

ABSTAIN: Secretary Strange, Kecia Rongen, Judge Swan, Chief Smith, Judge Donohue, Jennifer Redman

SB 6184 - Concerning deepfake artificial intelligence-generated pornographic material involving minors.

Brad Meryhew thought it would be a good idea for there to be a comprehensive look at these issues.

Ramona Brandes thought this bill's definitions were clearer than those of the previous bills. Greg Link added that Washington State Supreme Court's analysis of *Ashcroft* in *State v Luther* (2006) makes it clear that the First Amendment analysis has to focus on how the child pornography is made rather than what it communicates with the idea that a child wasn't actually harmed in the production of it. That was the line the court drew in *Luther*. He felt this bill presents the same concern.

Dr. Knoth-Peterson noted that this bill's language specifies 'indistinguishable' from an actual and identifiable minor, not that it is itself an actual and identifiable minor. There are companies, she went on to say, that develop AI-generated images of people for companies to use on their webpages. This technology takes eyes from an image of one person and a nose from an image of another person, so it's not actually a real person but an amalgamation of the way the technology combines pieces of different images to create a final image that does look 'actual and identifiable' but it's not itself a real person. She was unsure if the addition of 'actual and identifiable' overcomes the concerns identified by members.

MOTION #24-07: MOTION TO OPPOSE SB 6184

MOVED: Ramona Brandes
SECONDED: Greg Link
PASSED: Passed (Y- 8; N – 0)
ABSTAIN: Secretary Strange, Kecia Rongen, Judge Swan, Chief Smith,
Commissioner Menser, Jennifer Redman

SB 5998 - Timing of eligibility for vacation of nonfelony convictions.

Judge Galván wondered if this bill is taking steps backwards by again making legal financial obligations a barrier to reentry. There was discussion about the bill language.

MOTION #24-08: MOTION TO OPPOSE SB 5998 AS CURRENTLY WRITTEN BECAUSE OF THE REQUIREMENT OF ALL LFOS THAT CREATES A BARRIER TO REENTRY.

MOVED: Judge Galván
SECONDED: Ramona Brandes
PASSED: Passed (Y- 11; N – 0) unanimous
ABSTAIN: Secretary Strange, Kecia Rongen

HB 1383 - Concerning people convicted of one or more crimes committed before the person's 18th birthday petitioning the indeterminate sentence review board for early release.

Keri-Anne updated members that this bill had been revived from last session. She also briefed on SB 5981, which is similar to HB 1383.

When asked if the SGC supported SB 5981 previously, Keri-Ann reported that the bill was released later during the legislative session and the SGC did not discuss it.

Kecia Rongen explained that under SB 5981, if the person has been convicted of a class A or B offenses after their 18th birthday, they would not be eligible to petition. Currently, she explained, a person could be convicted of a gross misdemeanor after the age of 18 and be disqualified. She emphasized that the big change is that they don't need to have served 20 years before becoming eligible to petition but could petition when they are 24 years old instead.

Greg Link thought this bill gets at two areas, 1) trying to give the benefit of JR to 25 to those who were sentenced before it took effect and 2) trying to implement the direction the supreme court gave in *Houston-Sconiers*, that courts have to consider the mitigating qualities of youth whenever they are imposing a sentence on a juvenile.

MOTION #24-09: MOTION TO SUPPORT HB 1383

MOVED: Greg Link
SECONDED: Ramona Brandes
PASSED: Passed (Y- 9; N – 1)
ABSTAIN: Secretary Strange, Kecia Rongen

SB 5981 - Concerning the indeterminate sentence review board.

MOTION #24-10: MOTION TO SUPPORT SB 5981

MOVED: Greg Link
SECONDED: Ramona Brandes
PASSED: Passed (Y- 12; N – 1)
ABSTAIN: Secretary Strange, Kecia Rongen

HB 1396 - Concerning persons sentenced for aggravated first degree murder committed prior to reaching 21 years of age.

Keri-Anne informed members that this bill was revived from the last session. She noted that the SGC voted to support HB 1344 (2021), which was similar. When HB 1396 dropped, the SGC did not discuss the bill. This year’s Legislative Committee thought it would be worthy of discussion.

It is believed that this bill is in part providing a fix per *Monschke* decision, but other parts go beyond that decision. Judge Galván asked if resentencings were already happening for these persons sentenced to life. Greg Link noted that some counties are, but some counties indicated they cannot resentence as there is no statute that authorizes the sentence that *Monschke* requires. He said there are a couple of those cases before the Supreme court right now.

MOTION #24-11: MOTION TO OPPOSE HB 1396 AS WRITTEN BUT IF AMENDMENT IN SECTION 5 WERE REMOVED, THAT WOULD RESOLVE THE SGC CONCERNS.

MOVED: Greg Link
SECONDED: Ramona Brandes
PASSED: Passed (Y- 8; N – 1)
ABSTAIN: Secretary Strange, Kecia Rongen, Jennifer Redman

HB 2065/SB 5971 - Recalculating sentencing ranges for currently incarcerated individuals whose offender score was increased by juvenile convictions.

Keri-Anne reported that this bill makes last year’s bill HB 1324 (2023) retroactive and that the SGC voted unanimously to support HB 1324.

Judge Swan asked, because this bill is retroactive, if this bill would open up the possibility of people asking to be resentenced. Greg Link replied that the bill provides a graduated resentencing eligibility with a couple of triggering dates for people who are currently incarcerated and when they can seek resentencing.

Commissioner Menser stated that he is supportive of the policy but that this bill is similar to the *Blake* decision. He noted that work has been handled well by the county court systems because of state funding to support the additional staffing. He said if this is anything like that, he would not be able to support it unless it included a request for funding just like *Blake*.

Kimberly Gordon agreed that the Legislature needs to be told that funding is necessary to complete this work. Speaking from a historical perspective, she added that the former SGC Chair, Professor David Boerner, was not hesitant to say we can know better and as we know better, we need to be the ones to take responsibility for correcting the mistakes we made.

Judge Swan noted the attorney shortage that is happening across the state. He agreed with the funding recommendation. He also added that this would impact victims by having to revisit the sentencing. Ramona Brandes added that the savings that would be realized by DOC through this bill would free up funds to fund the extra work.

Chief Smith said he understands the reasons people support this bill but feels what the victims would be put through is too much.

MOTION #24-12: MOTION TO SUPPORT HB 2065/SB 5971 AND RECOMMEND THE LEGISLATURE TO ADEQUATELY FUND THE COST OF RESENTENCING.

MOVED: Greg Link
SECONDED: Ramona Brandes
PASSED: Passed (Y- 8; N – 1)
ABSTAIN: Secretary Strange, Kecia Rongen

HB 2186 - Concerning deferred adjudications for juveniles.

Judge Swan said when he worked in juvenile court that there was a really strong question from the bench about guidance on whether these should occur.

MOTION #24-13: MOTION TO SUPPORT HB 2186 AND TELL THE LEGISLATURE THEY NEED TO ADEQUATELY FUND THE COST OF RESENTENCING.

MOVED: Judge Swan
SECONDED: Commissioner Menser
PASSED: Passed (Y- 8; N – 1)
ABSTAIN: Secretary Strange

HB 2217 - Concerning authority over individuals found guilty of or accused of criminal offenses that occurred when the individual was under age 18.

There was discussion about what the bill was trying to accomplish.

MOTION #24-14: MOTION TO TABLE DISCUSSION ON HB 2217

MOVED: Ramona Brandes
SECONDED: Chief Smith
PASSED: Passed
ABSTAIN: Secretary Strange

HB 2154/SB 6063 - Modifying the definition of persistent offender to exclude convictions for offenses committed by someone under the age of 18 and providing for resentencing.

Greg Link observed that several research papers, including one by UW Professor Heather Evans, has shown that there is a stark disproportionately in who gets declined, primarily Black and Latino youth, even when controlling for the crimes committed. This bill would help undo the historical racial disparity in sentencing practices.

MOTION #24-15: MOTION TO SUPPORT HB 2154/SB 6063

MOVED: Ramona Brandes
SECONDED: Greg Link
PASSED: Passed (Y- 9; N – 0)
ABSTAIN: Secretary Strange, Kecia Rongen

SB 5912 - Concerning reentry services and supports.

Keri-Anne shared that in the past the SGC has supported reentry efforts knowing that those efforts can lead to a reduced potential for recidivism and is evidence based. Greg recalled in its 2019 SRA review, the SGC specifically recommended front-loading services because data showed most violations occur within the first 12-18 months on supervision. He feels this is consistent with that.

Secretary Strange informed members that this bill was introduced last year and partially vetoed by Governor Inslee because certain requirements had not been funded in the final budget.

MOTION #24-16: MOTION TO SUPPORT SB 5912 WITH ADDITIONAL RECOMMENDATION THAT IT BE ADEQUATELY FUNDED.

MOVED: Chief Smith
SECONDED: Judge Swan
PASSED: Passed (Y- 8; N – 0)
ABSTAIN: Secretary Strange, Kecia Rongen

HB 1995/SB 5893 - Providing gate money to individuals releasing from custody prior to the expiration of their sentence.

Secretary Strange reported that last year there were significant legislative changes made around gate money for the general population. She explained that this is a different population and related to transportation, etc.

MOTION #24-17: MOTION TO SUPPORT HB 1995/SB 5893

MOVED: Ramona Brandes
SECONDED: Greg Link
PASSED: Passed (Y- 7; N – 0)
ABSTAIN: Secretary Strange, Kecia Rongen, Jennifer Redman

HB 1798 - Concerning allowed earned release time for certain offenses and enhancements.

Keri-Anne informed members that this bill dropped late in the session last year for interim work so the SGC did not discuss it. She noted it does comport with two recommendations from the 2022 CSTF report: Recommendation #16 - to make all enhancements eligible for earned release time and Recommendation #17 - for the Legislature to review earned release time and consider increasing the percent for certain crimes for greater simplicity and consistency in calculations.

Secretary Strange said this is DOC request legislation from last year and went on to briefly explain how the DOC calculates the earned release time.

Greg recalled from CSTF discussions that applying a uniform 33.3% to serious violent offenses and enhancement reduced the disparity of the prison population by a certain amount. Keri-Anne replied that, when she listened to the testimony of this bill in the policy committee, someone had indeed mentioned it would decrease the disproportionality of the population but she didn't remember the amount provided. Secretary Strange remarked that DOC is looking at equity and distribution in various areas through the pro equity plan and through the classification and infraction systems. It is of great interest of the DOC to address disproportionality in corrections, she added.

MOTION #24-18: MOTION TO SUPPORT HB 1798

MOVED: Ramona Brandes
SECONDED: Greg Link
PASSED: Passed (Y- 7; N – 0) unanimous
ABSTAIN: Secretary Strange, Kecia Rongen

REVISIT: HB 2217 - Concerning authority over individuals found guilty of or accused of criminal offenses that occurred when the individual was under age 18.

Dr. Knoth-Peterson relayed that she had contacted committee staff but learned they had not had a chance to review the bill yet. She noted that, based on what Jennifer Redman placed in the chat, they had the same understanding that the bill extends the jurisdiction of A+ offenses up to age 23. Ramona Brandes also reached out to juvenile practitioners and agreed with Dr. Knoth-Peterson's and Jennifer Redman's conclusion.

MOTION #24-19: MOTION TO SUPPORT HB 2217

MOVED: Ramona Brandes
SECONDED: Greg Link
PASSED: Passed (Y- 7; N – 0)
ABSTAIN: Secretary Strange, Kecia Rongen

IV. OTHER BUSINESS

No other business

V. PUBLIC COMMENT

A member of the public thanked the members for their work and appreciated the healthy conversation taking place.

VI. ADJOURNMENT

APPROVED AND ADOPTED BY THE SENTENCING GUIDELINES COMMISSION



2/9/24

Judge J. Wesley Saint Clair (Ret), Chair

Date