



STATE OF WASHINGTON

SENTENCING GUIDELINES COMMISSION

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

MEETING MINUTES

May 10, 2024 9:00am – 12:00pm

1500 Jefferson Building

Olympia, WA 98516

And Zoom

Members Present:

Hon. J. Wesley Saint Clair
Hon. Sharonda Amamilo (proxy: Greg Link)
Greg Link
Secretary Cheryl Strange (proxy: Deputy
Secretary Sean Murphy)
Ramona Brandes
Vasiliki Georgoulas-Sherry
Judge Karen Donohue
Commissioner Tye Menser
Hon. Jeffery Swan
Jon Tunheim
Kecia Rongen
Rep. Gina Mosbrucker
Chief Brian Smith
Tim Wettack
Jeremiah Bourgeois
Dr. Jennifer Albright

Members Absent:

Rep. Tarra Simmons
Dr. Esther Matthews
Judge Veronica Galván
Jennifer Redman
Hon. Josephine Wiggs
Senator Claire Wilson
Norrie Gregoire

Guests:

Brad Meryhew, Chair, SOPB
Whitney Hunt, Coordinator, SOPB

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 #24-48: APPROVE APRIL 12, 2024, MEETING MINUTES

MOVED: Sean Murphy

SECONDED: Chief Smith

PASSED: Passed

III. DISCUSS NEW WORK REQUEST

Chair Judge Saint Clair informed members that Representative Goodman submitted a work request to the Chair and the Commission. He introduced Rep. Goodman who was in attendance to answer questions about the request.

Rep. Goodman thanked the Chair and took a moment to acknowledge SGC member Rep. Mosbrucker as she has decided not to run for office again. He said it has been a privilege and pleasure to work with her and thanked her for her partnership. Rep. Mosbrucker replied that she felt the same.

Rep. Goodman talked about what he is looking for in his request that the SGC review the sentencing grid bill, HB 2504, that he dropped this past session. He said this bill is meant to be a foundation from which further discussion can take place. While there are many important sentencing issues, such as three-strikes, mid-sentence review, enhancements, and eligibility for sentencing alternatives, these are not meant to be included in the review. The SGC can play with the ranges and the percentages applied to the grid. He noted the re-ranking proposals the SGC submitted last December have been incorporated into the bill.

Rep. Goodman expected one of the issues found by the SGC would be multipliers. The bill includes a 'repeat violator' column which increases the ranges and judicial discretion in sentencing for repeat sex, violent, serious violent, and domestic violence offenses. Rep. Goodman went on to say one idea behind the new grid is to give judges discretion so there is more flexibility without having to impose an exceptional sentence. He hoped the SGC resisted changing the sentence lengths of specific offenses, like, for example, the change made to Animal Cruelty made during this last legislative session. He is asking the SGC to look at the entire sentencing structure and not any particular offense, making sure it is rational and informed by evidence.

He thanked the Commission for taking on this request and feels it is the proper body to do this work. At the end of this year, he will introduce a new sentencing grid bill that includes the SGC's recommendations. Chair Judge Saint Clair thanked the Representative and appreciated his confidence that the SGC is the proper venue for this discussion to occur.

Rep. Goodman added that he also sent a work request letter to the Sex Offender Policy Board to review HB 2178, regarding a pathway off lifetime supervision for persons convicted of sex offenses, to see what further refinements are possible.

The Chair noted that there would be about five Commission meetings before the task's due date. He asked the members for guidance on how to proceed with the review and suggested work groups may be helpful. Chief Smith agreed that work groups would be helpful as he found the work groups in the Criminal Sentencing Task Force to be productive. Ramona Brandes said she created a document mapping the current and proposed grids level by level. She offered this material to the members. Dr. Knoth-Peterson commented that different ways of presenting information are helpful and

important. There is similar information in the supplemental report published by the Public Safety Policy and Research Center. This document doesn't consider the number of sentences that fall within each cell. That is important to know to determine the impact. Rep. Goodman remarked that the proposed grid was set to include sentence lengths that, in general, fit within what judges are ordering today. Ramona Brandes noted that she liked the formula under the grid as it makes more sense the randomness of the current grid.

Chief Smith reminded members that one of the few areas of consensus in the CSTF was the idea of incarcerated individuals receiving programming from day one (quality vs quantity of confinement time), which reinforces the changes made to the southwest corner. He asked Rep. Goodman if there was any legislation coming out about that as he believed it would help gain support for parts of the sentencing grid. Rep. Goodman acknowledged there are a number of key contingencies that, unless they are also enacted, will not make this new grid workable, including things such as mid-sentence reviews, state supported local community-based sanctions, more robust programming in the prisons, and finding a balance on liability.

Jon Tunheim informed members that after the CSTF, WAPA created an ad-hoc committee to continue to engage in the analysis and conversation related to a proposed sentencing grid. They have already started looking at HB 2504. He understands Rep. Goodman's desire to identify exactly what the issues of contention are, which can help him come to some sort of compromise.

Chief Smith suggested that a legislative proposal to significantly expand the existing DOC prison education (like at Clallam Bay), which got bipartisan support, would change the conversation about the grid.

Chair Judge Saint Clair said that he and Keri-Anne will get back to the members about a work plan. Rep. Goodman requested to be added to the meeting schedule for this work.

IV. RE-RANKING PROJECT CONTINUED

➤ Identity Theft

Keri-Anne explained that when the subcommittees were considering the policy logic related to Theft 1 and Theft 2 offenses, Identity Theft offenses had not been part of those discussions. Dr. Lauren Knoth-Peterson said her records show that the Class B subcommittee did state that Identity Theft 1 should be commensurate with other theft offenses.

Commissioner Menser remarked that the statutory provision allowed several counts to be stacked and each crime prosecuted can be punished separately. Ramona Brandes suggested there is a difference between possessing someone's identity information and using someone's identity information, but that the statute doesn't delineate the

difference. Commissioner Menser commented that, when an individual steals a wallet and attempts to use a card to purchase goods, he doesn't see that as any different than stealing a purse to get the cash. Most people just don't carry cash anymore.

Judge Swan brought up the issue of a person having credit cards from one person but for several different institutions and whether those each constitute same criminal conduct.

There was discussion about the challenge in meeting the elements to get Theft 1 and Theft 2 charged. It is easier to get charges for Identity Theft plus ID Theft is a serious problem. Greg Link commented that stealing \$20,000 would result in a Theft 2 at a seriousness level of 2, but if he has someone's driver's license with intent to get \$1,500 it is a seriousness level 5. That doesn't make sense to him. He believed that the potential for long-term harm can't be more serious than the actual harm. Dr. Knoth-Peterson observed that language under the ID Theft statute, RCW 9.35.020(7) specifically, provides language related to civil damages, which the theft statutes do not have.

MOTION #24-49: MOVE IDENTITY THEFT 1 TO SL 3 AND MOVE IDENTITY THEFT2 TO SL 2

MOVED: Ramona Brandes
SECONDED: Commissioner Menser
PASSED: Passed (Y-12; N-1)
ABSTAIN: Vasiliki Georgoulas-Sherry, Kecia Rongen, Deputy Secretary Sean Murphy

➤ **Creating new offense of Aggravated Theft**

Theft 1 is any amount greater than \$5,000. The re-ranking subcommittee suggested that an aggravated theft offense could offer a more serious penalty at seriousness level 4 for values greater than \$200,000, for example. Greg Link remarked that cases like that generally are resolved as exceptional sentences, which is driven by the dollar amount. Jon Tunheim agreed. As mentioned earlier, in the cases where there were multiple items stolen, each item could count as an offense, thereby increasing the criminal history score.

Members said there may be situations where people are more interested in getting their money back than imposing a longer sentence or where people want the sentence in addition to their money. This may be why exceptional sentences exist, it was observed.

Keri-Anne stated that there are other economic offenses that go above \$5,000, thus, all those offenses would also need an aggravated offense to create parity with Theft 1.

Members did not support the creation of a new theft offense for several reasons.

➤ **Unlawful Trafficking in Food Stamps – monetary value**

There was consensus that the Legislature should revisit offense monetary values every five years to keep it in line with inflation and create consistency across offenses.

➤ **Unlawful Redemption of Food Stamps – reduce to misdemeanor**

Keri-Anne briefed members that the subcommittee believed that Trafficking in Food Stamps, at seriousness level 1, is a more serious offense than Unlawful Redemption of Food Stamps, also at seriousness level 1, and should be ranked higher.

Discussion suggested that people who are unlawfully redeeming food stamps are only getting sustenance, while those who are trafficking are doing so to get something other than what is available under food stamps. It was believed that if an EBT card was stolen and used, that would possibly move it into the identity theft arena based on the definition in the statute. The number of charges as reported by the Administrative Office of the Courts, for either offense, are fewer than 40 in the past twenty years.

Members wondered if the creation of the statute was related to a federal government requirement for states to have some level of enforcement.

Even though the available confinement time could be greater if positioned as a gross misdemeanor, not having a felony record would be beneficial.

MOTION #24-50: REDUCE TRAFFICKING IN FOOD STAMPS >= \$100 TO A GROSS MISDEMEANOR AND REDUCE TRAFFICKING IN FOOD STAMPS < \$100 TO A SIMPLE MISDEMEANOR

MOVED: Ramona Brandes
SECONDED: Jeremiah Bourgeois
PASSED: Passed (Y-9; N-2)
ABSTAIN: Vasiliki Georgoulas-Sherry, Kecia Rongen, Deputy Secretary Sean Murphy, Commissioner Menser

MOTION #24-51: REDUCE UNLAWFUL REDEMPTION OF FOOD STAMPS TO A SIMPLE MISDEMEANOR

MOVED: Ramona Brandes
SECONDED: Jeremiah Bourgeois
PASSED: Passed (Y-11; N-0)
ABSTAIN: Vasiliki Georgoulas-Sherry, Kecia Rongen, Deputy Secretary Sean Murphy, Commissioner Menser

➤ **Intimidating a Judge – add to Crime Against a Person**

Discussion noted that jurors and witnesses are not part of the criminal legal system, while judges and prosecutors are. Intimidating a Judge is different than harassment, said one member. Prosecutors would be included under the Intimidating a Public

Servant offense, which is a class B, seriousness level 3 offense and is included as a Crime Against a Person. Intimidating a Juror/Witness/Judge is a seriousness level 6 offense.

Intimidating a Juror/Witness/Judge also applies to post court action.
Continued discussion was tabled for the next meeting.

V. OTHER BUSINESS

Chair Judge Saint Clair announced that the SGC has been included in the membership of the Jail Modernization Task Force. He has appointed Dr. Esther Matthews to be the SGC's representative.

VI. PUBLIC COMMENT

There were no public members in attendance.

VII. ADJOURNMENT

APPROVED AND ADOPTED BY THE SENTENCING GUIDELINES COMMISSION



6/14/2024

Judge J. Wesley Saint Clair (Ret), Chair

Date