



## WASHINGTON COURTS

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# Superior Court Judges' Association

March 30, 2011

House State Government and Tribal Affairs Committee  
Washington State Legislature

Dear Representative,

As president of the Superior Court Judges' Association (SCJA) I ask you to carefully consider the impact of HB 2029 and HB 2034, drastically altering the current structure of the Sentencing Guidelines (SGC). While the SCJA has considered the SGC a valuable partner in criminal justice, we will not comment on the underlying merits of the bills, but clearly draw your attention to two functions that superior courts require and request these functions be reassigned; data/reporting requirements and the Sentencing Manual.

The courts and criminal justice stakeholders are dependent on data gathering and the calculation of rates of recidivism in order to accurately review the impact of determinant sentencing (Sentencing Reform Act) and efforts to make changes to the existing structure. It is vital to policy, program, and funding development to understand recidivism trends for adults and juveniles, and their relative impact on the crime rate, jail population offender supervision and programming. Our juvenile justice system is proof positive of the reduced recidivism and substantial cost savings that results when data driven policy decisions are made.

To that end, the SCJA requests that if the SGC responsibilities are reassigned, the reporting and evaluation duties be assigned to the Washington State Center for Court Research (WSCCR). As part of a judicial branch agency, WSCCR has a well-grounded understanding of court records, and is able to draw on the business expertise of the courts to correctly classify and analyze court records with a minimum of ambiguity and guesswork. The Center's Court Contact and Recidivism Database (CCRD) supports analysis of individuals' offending careers across juvenile and adult age ranges. The Center's ability to reduce person identification errors in Washington court records is peerless. Also with regard to data quality, the Center has led the drive to improve criminal history data in Washington through their proposal for an electronic Judgment and Sentencing form. Absent electronic Judgment and Sentence data, the paper based system of analysis and reporting requires additional staffing at the WSCCR. ii

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Letter on Sentencing Guidelines Commission  
House State Government and Tribal Affairs

The second issue critical to the SCJA is maintenance of the Sentencing Manual. The manual acts as a reference guide to various stakeholders in the court community including superior court judicial officers, prosecutors, and defense attorneys. Failure to maintain the manual presents real risks. The SRA, which has been amended over 200 times, is a complex sentencing process. Without the guidance provided in the manual, you can expect a rise in sentencing errors which will result, at a minimum, in additional hearings. In some cases these errors may result in state liability as well.

Thank you in advance for your consideration of the above. Please do not hesitate to contact me directly if you have any questions.

Sincerely,

Stephen Warning  
President Judge, SCJA

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<sup>i</sup> CCRD can be used to calculate recidivism rates for persons convicted of particular offenses (such as aggravated assault, for example); CCRD also contains the courts' information on offenders' race and ethnicity, making CCRD a key resource for analysis of disproportionate minority contact in the judicial branch; the CCRD is completely operational, and currently is used to assess effectiveness of treatment programs in terms of their impacts on recidivism

<sup>ii</sup> Estimated staff is 1.5 FTE

## McDougall, Regina

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Subject: FW: Sentencing Guidelines Commission Bills

KMO

HB 1371: This is the bill which had the most activity of the two. This is a large bill which deals with the elimination of boards and commissions. Sections 134-148 address the SGC and shift almost all of its responsibilities to OFM. Section 139 which deals with an interstate supervision of felons council shifts that to DOC. Sections 141 and 142 also eliminate the SGC as one of two entities to the governor when prison or jail overcrowding is at a point where an immediate adjustment in sentences must be made. Under this bill the governor consults with the remaining entity, the Pardons and Clemency Board. However, this bill was substantially amended.

SHB 1371: Basically, all of the above was eliminated. Section 64 only changed the appointing authority for members of the commission from the governor to the Secretary of DOC. It did not eliminate its functions. Last action on it was a public hearing on February 24th.

HB 2029 and 2034: These bills are scheduled for hearing on March 31st in the House State Government and Tribal Affairs Committee. The draftsmanship of these bills leaves much to be desired, I will highlight some of them but it is a pervasive problem. I will do both bills together because 2029 substitutes DOC and DSHS for the SGC and 2034 substitutes the Supreme Court for SGC in provisions that are basically the same.

- Section 1 - eliminates Juvenile Disposition Standards Commission, SGC, Monetary threshold amounts for property crimes, Sex Offender Policy Board, Collaborative arrangement with U of W mental health center.
- Section 2 - SGC is completely advisory and may offer advice only if requested by DOC, Governor or Legislature
- DOC appoints voting members but the balance of the appointment language in 9.94A.860 which has numerous references to the governor (Query: did the drafter intend dual appointment authority either DOC/Governor or Supreme Court/Governor?)
- The commission only meets if asked to do so by DOC, Governor or Legislature
- However subsection (8) says "the commission must serve as a clearinghouse and information center for the collection, preparation, analysis, and dissemination of information on: (a) state and local adult sentencing practices; and (b) juveniles sentenced as adults (Query: does the drafter mean the SCG or DOC? see Section
- Section 3 - new section giving DSHS the "clearinghouse" responsibility for state and local juvenile sentencing practices and juveniles sentenced as adults.
- Section 4 - retains only subsection (1) of 9.94A.480. All of SGC's data collection and comparison of judicial sentencing practices to the standard range are eliminated.
- Section 5 - substitutes DSHS for SGC under 13.50.010 (juvenile records) under both statutes
- Section 6 - substitutes DOC for SGC under 9.94A.74501 (state council for interstate adult offender supervision) under HB 2029 but the Supreme Court under HB 2034. DOC makes more sense under either bill.
- Section 7 - this section reads: **Sec. 7.** RCW 9.94A.855 and 2005 c 282 s 20 are each amended to read as follows: The (~~commission~~) secretary of the department shall appoint a

research staff of sufficient size and with sufficient resources to

accomplish its duties. The ~~((commission))~~ department may request from ~~((the office of financial management, the indeterminate sentence review board,))~~ the administrative office of the courts, the department of corrections, and the department of social and health services such data, information, and data processing assistance as it may need to accomplish its duties, and such services shall be provided without cost to the ~~((commission))~~ department. ~~((The commission shall adopt its own bylaws. The salary for a full time executive officer, if any, shall be fixed by the governor pursuant to RCW 43.03.040.))~~

I assume this section means that DOC/Supreme Court will be given funds to collect and process data but see my Query under

Section 2. The "without cost" language is in the current statute.

- Section 8 - amends 9.94A.870. This section allows the governor to declare an emergency re: overcrowding and consult with DOC/Supreme Court to revise or amend the standard ranges. I think the Supreme court would find this particularly difficult.
- Section 10 - 10.98.140 - DOC/Supreme Court to keep records of all sentencings above and below the standard range.
- Sections 11, 12 and 13 - eliminate the SGC from other processes where DOC is already involved by statute; however, under 2034 the department of licensing is added to Sections 10 and 11 and the Supreme Court is not added to Sections 12 and 13

SSB 5790 This bill is currently "x" filed. I wanted to give you a short analysis:

Sec. 14: allows the gov. or leg. to request the SGC to convene, within amounts appropriated and the commission will be within OFM. This section also substantially reduces the SGC tasks.

Section 16, 17 and 20: SGC functions go to DOC

Section 18: SGC functions re: juvenile courts also goes to DOC

The balance of the bill strikes the SGC from various statutes.

Section 15 is a new section which relates to minimum and maximum terms, not directly to the SGC. If this bill goes anywhere the Criminal Committee should review this section.

**Note:**

- This analysis does not address whether the SCJA supports, opposes or takes no position on the elimination of the SGC. Some SGC functions, such as data gathering, are necessary for an accurate review of the SRA and its impact. However, those functions could be performed by AOC through WSCCR. Another function, which is not directly addressed in any of the legislation, is the Sentencing Manual. The maintenance of this manual is essential to judges, prosecutors and defense counsel. If the manual is not up-to-date errors in sentencing will occur more frequently. Sandy Mullins advised that approximately \$100,000 in damages has been paid by the state to prisoners who were incorrectly sentenced because of errors in the Manual.
- As the comments above indicate, HB 2029 and 2034 have serious drafting problems. The language in the original 1371 is better.

My Opinion:

- 2029/2034 really gut the SGC by making it an advisory group with nothing to do unless someone asks. Looks like a slow death to me so why not put it out of its misery. Section 8 calls the SGC a "clearinghouse" but all the functions to effectuate that go to DOC.
- I don't think the Supreme Court is the entity to take over most of the SCG functions directly.
- I saw Carl McCurley's email about the ability of WSCCR to take over the data functions and that does make sense to me. I think it is better to have an independent agency rather than DOC. I don't know if DOC is able to do it without substantial expansion of its resources.
- Someone must do the manual. I think either DOC, through the attorney general, or AOC, with a staff member who is a lawyer could do it.

My quick thoughts.

**Judge Kathleen M. O'Connor**  
**1116 W Broadway**  
**Spokane, WA 99260**  
**509-477-4707**

## McDougall, Regina

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**From:** McCurley, Carl  
**Sent:** Friday, March 25, 2011 2:57 PM  
**To:** Marler, Dirk; McDougall, Regina; Ruhl, Chris  
**Subject:** SGC functions

Hi Dirk,

About WSCCR and recidivism analysis for adults and juveniles—

WSCCR has good access to data resources necessary to identify individuals and their history of convictions. As part of a judicial branch agency, Center staff have well-grounded understanding of the structure of court records, and are able to draw on the business expertise housed at the AOC and in the courts to correctly classify and analyze court records with a minimum of ambiguity and guesswork. CCRD staff have extensive experience in matching different cases to specific persons, and the Center's ability to reduce person identification errors in Washington court records is peerless. Center staff support the AOC's current Data Quality Initiative by giving it direction, and have steered its initial efforts toward accuracy of charge and case data elements. Also with regard to data quality, the Center has led the drive to improve criminal history data in Washington through an electronic Judgment and Sentencing form.

The Center's Court Contact and Recidivism Database (CCRD) supports analysis of individuals' offending careers across juvenile and adult age ranges; CCRD can be used to calculate recidivism rates for persons convicted of particular offenses (such as aggravated assault, for example); CCRD also contains the courts' information on offenders' race and ethnicity, making CCRD a key resource for analysis of disproportionate minority contact in the judicial branch; the CCRD is completely operational, and currently is used to assess effectiveness of treatment programs in terms of their impacts on recidivism.

The CCRD is currently maintained through private foundation grant funds; yearly maintenance requires about \$30,000 in staff time. For WSCCR to completely support SGC analysis of sentencing would necessitate handling and recording information from the current, paper-based Judgment and Sentencing, in addition to the staff time needed to perform analysis and prepare reports, about 1.5 FTE yearly.

Carl

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## McDougall, Regina

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**Subject:** FW: Notes on HB 2034

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**From:** SCJA Legislative Committee [mailto:SCJALEGISLATIVE@LISTSERV.COURTS.WA.GOV] **On Behalf Of** O'Connor, Kathleen  
**Sent:** Tuesday, March 29, 2011 12:55 PM  
**To:** SCJALEGISLATIVE@LISTSERV.COURTS.WA.GOV  
**Subject:** Re: [SCJALEGISLATIVE] Notes on HB 2034

I looked at Sandy's notes and suggestions on the bill, below are my comments:

Section 1 - the legislation needs to be clear what entity is responsible for gathering data and providing reports to the Governor, Legislature and Supreme Court. I think it should be WSCCR for everything. Whether the legislature wants these particular reports is up to them. Subsection (3) - review of monetary threshold for property crimes is an executive/legislative function. It should not be delegated to the Supreme Court.

Section 2 - the legislation needs to be clearer about the role of the governor and either DOC or SC in appointing members of the commission. Subsection (8) needs to be reworked. If the SGC no longer has a data gathering function being a "clearinghouse" is very confusing. I assume the legislature only wants one database. I suggest it should be a "person" rather than a "j&s" database at WSCCR.

Section 3 - same comments re: "clearinghouse".

Section 4 - Sandy suggest some directives to SGC remain so reports can be done. **Regina, please ask Dr. McCurley to confirm he can create these types of reports.**

Section 5 - **Do we agree that DSHS can do the juvenile data base or is this something WSCCR can do as well?**

Section 6 - Agree DOC should do this.

Section 8 - Interesting question about separation of powers if the governor or the legislature can call into session if under Supreme Court. Is the SGC going to have a budget and staff so it could be called into session to do something?

Section 10 and 11 - the reference to DOL may be in error - need to ask drafter.

Section 10 - with respect to the language Sandy suggests be added. The courts do not have any system in placed to do this now. Is this something that WSCCR could do? **Regina, please review the language added in Section 10(3) with Dr. McCurley as well.** The type of savings indicated by Sandy may encourage the legislature to return some "day to day" authority to the SGC.

The references at the end to the changes to the J&S by adding some boxes to the standard form should be relatively easy.

Thanks

**Judge Kathleen M. O'Connor**  
**1116 W Broadway**  
**Spokane, WA 99260**  
**509-477-4707**

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**From:** Sandy Mullins [mailto:sandy.mullins@sgc.wa.gov]  
**Sent:** Tuesday, March 29, 2011 8:04 AM  
**To:** Lenell Nussbaum; Russell D. Hauge; David Boerner; Warning, Steve  
**Cc:** dboerner@seattleu.edu  
**Subject:** Notes on HB 2034

I'm attaching the notes on HB 2034 that I sent to the bill drafter, Alex McBain, and Rep. Hudgins last week. They issued a fiscal note request on HB 2029 yesterday, so apparently the DOC configuration isn't off the table. As we discussed on this morning's call, I will try to reach members of the House State Gov and Tribal Affairs Committee and discuss some of the problems with the bill and the issues associated with divvying up the functions of the SGC without ensuring that someone is maintaining the guidelines manual, a function which is not in current statute or contemplated in either of these bills. The hearing on both bills is Thursday morning at 8 am, I will sign in to testify as "other". I'll send you all the fiscal notes on these when they are released.

Sandy

Sandy Mullins, Executive Director  
WA State Sentencing Guidelines Commission  
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**From:** /o=SGC/ou=First Administrative Group/cn=Recipients/cn=SandyM  
**Sent:** Saturday, March 26, 2011 12:34 PM  
**To:** Lenell Nussbaum; Russell D. Hauge; David Boerner; warnings@co.cowlitz.wa.us  
**Cc:** dboerner@seattleu.edu  
**Subject:** RE: 7:30 am Tuesday, March 29 SGC Leg Committee

Hi Everyone,

I apologize for the typo-HB 2034 is the bill that Rep. Hudgins told me they would be moving forward. I'm not sure what role the SGC would have in advising the Sup. Ct. I brought that duplication in juveniles sentenced as adults to the drafter's attention, as well as questions I had throughout the bill and some suggestions I had for language and functions they need to keep in statute. My reading of this is that it does away with the SGC database, but I am trying get clarification as to their intent.

Sandy

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**From:** Lenell Nussbaum [mailto:nussbaum@seanet.com]  
**Sent:** Friday, March 25, 2011 6:26 PM  
**To:** Sandy Mullins; Russell D. Hauge; David Boerner; warnings@co.cowlitz.wa.us

**Cc:** [dboerner@seattleu.edu](mailto:dboerner@seattleu.edu)

**Subject:** Re: 7:30 am Tuesday, March 29 SGC Leg Committee

Sandy,

I will be unavailable Tuesday morning because I am responsible for delivering some Russian judges to Judge Coughenour that morning. I can provide comments before then, if that's helpful. Maybe one of you can clarify for me: What possible role would the SGC have in advising the Supreme Court? I'm having trouble contemplating that.

Both bills appear to give both the SGC and DSHS responsibility for "sentencing juveniles as adults."

And they're probably moving on which one?

Lenell

----- Original Message -----

**From:** Sandy Mullins

**To:** [Russell D. Hauge](#) ; [David Boerner](#) ; [Lenell Nussbaum](#) ; [warnings@co.cowlitz.wa.us](mailto:warnings@co.cowlitz.wa.us)

**Cc:** [dboerner@seattleu.edu](mailto:dboerner@seattleu.edu)

**Sent:** Friday, March 25, 2011 5:28 PM

**Subject:** 7:30 am Tuesday, March 29 SGC Leg Committee

We have two new bills on the SGC, [HB 2029](#) (SGC in DOC) and [HB 2034](#) (SGC in Supreme Ct.). Both will be heard in committee on 3/31. I've heard they are going to move on [HB 2034](#) rather than [HB 2034](#), but we should probably talk about them both. There are some obvious drafting errors in both of them and I have sent my notes on these, and other clarifications that need to be made, to the leg staff.

The call number is 1-800-704-9804 and the code is 778761#.

Thanks,

Sandy

Sandy Mullins, Executive Director  
WA State Sentencing Guidelines Commission  
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Phone: (360) 407-1056  
[sandy.mullins@sgc.wa.gov](mailto:sandy.mullins@sgc.wa.gov)

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