

January 13, 2022

**The SOPB's recommendations on SSOSA reforms; treatment alternatives for certain sex offenses; lifetime supervision; failure to register (FTR); washouts; and system improvements**

Brad Meryhew, Chair  
Sex Offender Policy Board



# Who We Are

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There are 13 board members that make up the SOPB. These organizations are designated in statute and each organization designates their representative(s) to serve on the board:

- Brad Meryhew, Chair, **Washington Association of Criminal Defense Lawyers**
- Jedd Pelander, Vice Chair, **DCYF Juvenile Rehabilitation Administration**
- Blanche Barajas, **Washington Coalition of Sexual Assault Programs**
- Keith Devos, **DSHS Special Commitment Center**
- Linda Farmer, **Association of Washington Cities**
- Jimmy Hung, **Washington Association of Prosecuting Attorneys**
- Hon. Nelson Lee, **Superior Court Judges Association**
- Christine Minney, **Washington State Association of Counties**
- Michael O'Connell, **WA Association for the Treatment & Prevention of Sexual Abusers**
- Terrina Peterson, **Washington Association of Sheriffs and Police Chiefs**
- Mac Pevey, **Department of Corrections**
- Lori Ramsdell-Gilkey, **Indeterminate Sentence Review Board**
- Shawn Sant, **Washington Association of Prosecuting Attorneys**
- Richard Torrance, **Office of Crime Victims Advocacy**
- Jamie Weimer, **Washington Association of Sheriffs and Police Chiefs**

# Assignment by the House Community Safety, Justice & Reentry Committee

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On March 29, 2022, the House Community Safety, Justice & Reentry Committee convened the Sex Offender Policy Board to:

- Conduct a current review of the [Special Sex Offender Sentencing Alternative \(SSOSA\)](#) and make recommendations for improvements to the SSOSA process, including the current eligibility criteria, judicial discretion and barriers to accessibility. These recommendations should address any shortages in sex offender treatment or other services employed by this alternative sentence.
- Review research and make recommendations regarding best practices related to [sentencing alternatives for individuals with sexual offenses](#), including “non-contact” sex offenses.
- Review research and make recommendations regarding best practices and procedures related to [lifetime supervision](#) of adults convicted of sexual offenses to include: the monetary and collateral costs of lifetime supervision; the impact on community safety of lifetime supervision; and any recommendations regarding procedures to end lifetime supervision in individual cases or in its entirety.
- Review research and current practices and procedures for [Failure to Register \(FTR\) cases](#) and make recommendations regarding how to ensure community safety most effectively while wisely using scarce public resources.
- Review research and make recommendations regarding best practices for [felony “washout” periods](#) for sex offenses, as provided in RCW 9.94A.525(2).
- Make recommendations regarding [sex offender policies and practices](#) related to the above referenced policies, and make recommendations as appropriate regarding improvements to treatment, housing, community re-entry and other relevant policies.

# How We Organized the Assignment

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The SOPB created three subcommittees made up of diverse stakeholders and experts on each topic:

- SSOSA & Sentencing Alternatives Subcommittee
  - Assignment items (1,2,&6 )
- Lifetime Supervision Subcommittee
  - Assignment items (3&6)
- Failure to Register (FTR) & Washouts Subcommittee.
  - Assignment items (4-6)
- The subcommittees presented to the board throughout the project and made final recommendations for the board's consideration

# Recommendations

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The SOPB finalized 26 recommendations that we submit to the Committee for consideration.

- Our recommendations fall under 6 categories:
  1. Special Sex Offender Sentencing Alternative (SSOSA)
  2. New treatment alternatives for certain sex offenses
  3. Lifetime supervision
  4. Failure to Register (FTR)
  5. Offender score washouts for prior sex offenses
  6. Sex offender management system improvements

# **Special Sex Offender Sentencing Alternative (SSOSA)**



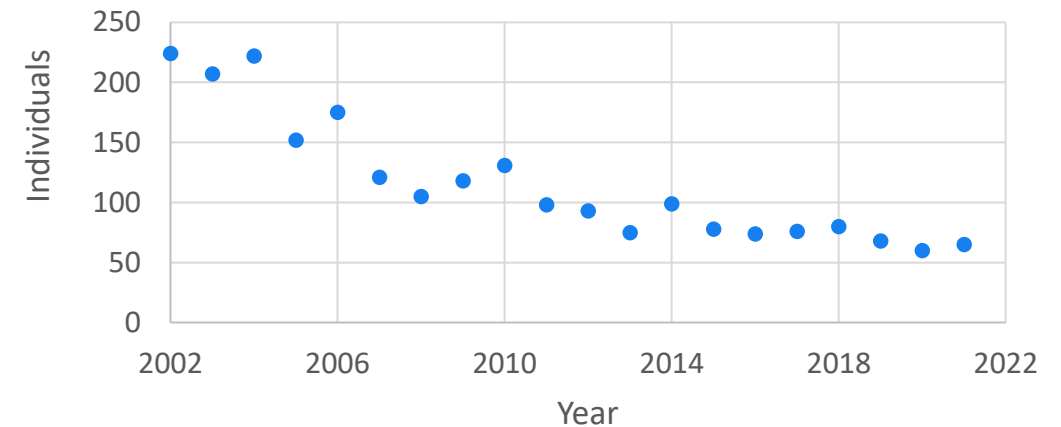
# SSOSA: Brief History & Main Takeaways

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SSOSA was authorized in 1984 with the original purpose to encourage victims to engage in the criminal justice system with an opportunity for the offender to receive treatment without lengthy incarceration.

- This statute has been amended throughout the years and has specific criteria for eligibility
  - Requires a previously established relationship for eligibility
- Research has shown that SSOSA works (WSIPP): individuals granted a SSOSA have lower rates of recidivism than those meeting the criteria for the alternative but sentenced to prison
- The use of SSOSA has declined even though the data shows SSOSA is an effective sentencing alternative
- SSOSA has widespread support including from the victims' services community
  - It is intended to allow for accountability and to encourage victims to disclose without fear that the individual known to them, and who caused them harm, be subject to a lengthy term of incarceration (ex: parents, guardians, grandparents, etc.)

Number of people who received a SSOSA in last 20 years



# SSOSA: Our Recommendations

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## **We unanimously recommend that the SSOSA statute be protected and preserved.**

- The evidence is strong that this sentencing alternative is an effective tool to resolve many cases and has proven itself over the decades.
  - We recommend that RCW 9.94A.670 be clarified to include language that requires an individual to enter a plea of guilty prior to trial in order to be eligible.
- We recommend addressing financial disparities by implementing a sliding fee schedule for evaluations and treatment and establishing low-cost treatment options.
  - We further recommend designating funding for work release for individual's on SSOSA as individuals who are incarcerated and who cannot continue employment, and therefore cannot pay for treatment, are not eligible.



# **New Treatment Alternatives for Certain Sex Offenses**



# New Treatment Alternatives: Brief History & Main Takeaways

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- SSOSA is effective for low-risk individuals; however, it is restricted to individuals whose sexual offense involved a victim with whom they had an established relationship.
- 2 groups of individuals were identified for potential treatment alternatives:
  - Individuals whose offense is limited to downloading, copying, or viewing illegal depictions of minors unknown to them on the internet
  - Individuals convicted of a sexual offense as a result of a law enforcement sting conducted online
- Extensive research in the field establishes that child sexual abuse image offenders are at low risk to reoffend or commit a hands-on offense, and they are very amenable to specialized treatment.
- There is less research on the internet sting offenders, which caused some concern amongst some board members.

# New Treatment Alternatives: Our Recommendations

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- We unanimously recommend that a sentencing alternative similar to SSOSA be enacted for those convicted of violations of RCW 9.68A. Offenses related to Child Sexual Abuse Images.
- We recommend by a majority that a sentencing alternative similar to SSOSA be enacted for those convicted of an internet sting or other case not involving an identifiable victim.
- We unanimously recommend that SSOSA, and any other alternatives adopted, only be available *to those who are willing to take responsibility for their sexual misbehavior and express a strong willingness to address those behaviors.*
- We recommend that any treatment alternatives adopted be similar to SSOSA:
  - Eligibility would require no prior sex offenses or violent offenses in the last five years;
  - That there be a suspended standard sentencing range of eleven years or less;
  - That there be annual review hearings with the sentencing Court, as well as a treatment termination hearing;
  - That there be up to five years of specialized sex offender treatment.

# Lifetime supervision



# Lifetime Supervision: History in Washington

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- In 2001, Washington reestablished indeterminate sentencing for certain serious sex offenses resulting in lifetime supervision for those convicted of Class A sex offenses.
  - Indeterminate sentences had been abandoned in 1984 with the SRA.
  - This reform was adopted at least in part to avoid costly sexually violent predator (SVP) litigation for high-risk offenders.
- Also included with individuals subject to lifetime supervision were those who were judged low-risk, including individuals given a SSOSA for a Class A offense.
- The number of individuals in the community on lifetime community custody continues to go up.
  - As of 2021, 1457 CCB offenders released by the ISRB.
  - Additionally, there are several hundred offenders on lifetime supervision for SSOSA sentences who have never gone to prison.

# Lifetime Supervision: What the Research Tells Us

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- The purpose of community custody or supervision is to promote the *rehabilitation* and *reintegration* of individuals transitioning from prison to the community.
- The Sentencing Model Penal Code recommends using reliable risk-needs assessment instruments when deciding the length of the supervision term and what conditions of supervision to impose.
- Individuals convicted of a sexual offense present a perceptibly low risk for recidivism in general.
- Individuals assessed at a higher risk level tended to reoffend quickly upon release
  - Those who did not reoffend had a higher chance of being successful and remaining in the community offense free.
- Collateral consequences of lifetime supervision include hopelessness and anxiety. There are impacts to employment, mental health, housing and family systems.

# Lifetime Supervision: Our Recommendations

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- We recommend by a majority that the law allow individuals subject to lifetime community custody to earn the end of that supervision if they meet the eligibility requirements.
- This recommendation is based on the research and application of the Risk/Needs/Responsivity (RNR) principles. *Individual risk is central to this proposal.* A person could still be on supervision for life if they are unable to meet the eligibility requirements.
  - **Level I.** Those who are rated Level I by the End of Sentence Review Committee would be discharged from community custody once they have been in the community for five consecutive years without committing a disqualifying event.
  - **Level II.** Those who are rated Level II by the End of Sentence Review Committee would be discharged from community custody once they have been in the community for ten consecutive years without committing a disqualifying event.
  - **Level III.** Those who are rated Level III by the End of Sentence Review Committee would be discharged from community custody once they have been in the community for fifteen consecutive years without committing a disqualifying event.

# Failure to Register (FTR)





## FTR: History & Main Takeaways

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- In 1990, Washington passed an omnibus bill: the Community Protection Act. This bill created several new laws, including one that requires people convicted of a sex offense to register.
- Research and evidence show that sex offender registration has not affected recidivism.
  - 2009 WSIPP Study: based on the limited number of rigorous studies available at that time, it was tentatively concluded that the laws had no statistically significant effect on reducing recidivism.
  - A recent meta-analysis of these studies provides comprehensive evidence that the implementation of SORN laws over the last 25 years has had no effect on recidivism.
- The American Law Institute Model Penal Code recently recommended that the penalty for a Failure to Register case should be a misdemeanor.

## FTR: History & Main Takeaways cont.

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- Over the years, Washington has made Failure to Register even more serious:
  - 1997 - FTR made a felony for B and C offenses.
  - 2009 - FTR second offense is sex offense.
  - 2012 - Subsequent FTRs become Class B offenses.
- Average FTR sentences have gone up and up.
  - In 2009 - the average felony sentences was 22.2 months.
  - Since 2012 - the average sentence has been **31.4** months.
  - Data from 2000-2019 shows there have been an average of almost 500 FTR *felony* prosecutions each year.

# FTR: Our Unanimous Recommendations

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- FTR should be reduced from a Seriousness Level II offense to an unranked felony for the purposes of sentencing
  - This would result in a presumed sentencing range of 0-12 months
- FTR defendants should be given one year of community custody, *regardless of risk level*, for a first offense and two years for subsequent offenses
  - Requiring community custody still provides accountability and a safety valve of supervision without the costs of incarceration.
- Individuals under DOC supervision for an FTR should be assessed to identify the individual's barrier(s) to registration compliance and be provided with resources/tools.
- We recommend that FTR offenses should not be defined as a “sex offense” under RCW 9A.44.128 of 9.94A.030.
  - Under current law the second offense of FTR and thereafter are defined as “sex offenses”
  - FTR offenses are not significant predictors of sexual recidivism
  - Classifying FTRs as sex offenses may minimize the seriousness of actual sex offenses

# **Offender Score Washouts for Prior Sex Offenses**



# “Washouts”: Definition & Main Takeaways

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- **Definition of “washout”:** A term of art used by courts and lawyers to describe the point at which a prior felony conviction can no longer be used to calculate the offense score on a subsequent felony conviction
  - Prior convictions “wash out” if the individual has spent a designated period of time in the community without committing *any* crime that results in a conviction
  - Currently, Class A felonies and all sex offenses never wash out
  - An offense that “washes out” remains on the individual’s criminal history for all purposes *except* the calculation of a future offender score
- There is currently very limited academic research or data on the topic of “washouts”
- We spent significant amounts of time working to hear all perspectives regarding washouts.

# “Washouts”: Our Recommendations

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The SOPB was unable to achieve any consensus on this difficult issue. We offer three possible solutions to the Committee and supporting votes:

1. No washouts for subsequent offenses (the current state of the law)
2. Allow washouts for subsequent offenses only if those are non-violent offenses that are not sex offenses (as defined in RCW 9.94A.030)
3. Allow this portion of the assignment related to washouts be completed after the Criminal Sentencing Task Force has completed their work on this subject

**Option 1:** The SOPB recommends no washouts for subsequent offenses. The current state of the law.

**Voting results**

Yes: 2 votes — WAPA, WASPC

No: 9 votes — DCYF, WACDL, WCSAP, WSAC, WATSA, DOC, ISRB, OCVA, AWC

Abstain: 1 vote — SCC

**Option 2:** The SOPB recommends the law allow washouts for subsequent offense only if those are non-violent offenses that are not sex offenses as defined in RCW 9.94A.030.

**Voting results**

Yes: 4 votes — WADCL, DCYF, AWC, WSAC

No: 7 votes — WCSAP, WATSA, WASPC, DOC, ISRB, OCVA, WAPA

Abstain: 1 vote — SCC

**Option 3:** The SOPB recommends that the portion of this assignment related to washouts be completed after the Criminal Sentencing Task Force has completed their work on this subject.

**Voting results**

Yes: 10 votes — WADCL, ISRB, OCVA, AWC, DOC, SCC, WATSA, WCSAP, WAPA, WSAC

No: 1 vote — DCYF

Abstain: 1 vote — SCC

# **Sex Offender Management System Improvements**



# System Improvements: Our Recommendations

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**Washington has a shortage of certified sex offense treatment providers (SOTPs). Expanding the pool of treatment providers is essential.**

- We recommend addressing the identified barriers to our state's current provider shortage:
  - Amend RCW 18.155.020 to expand the definition of providers who are eligible for affiliate SOTP licenses
  - Allow SOTPs to supervise up to 4 affiliate SOTPs by amending RCW 18.155.020
  - Direct DOH to administer a funding program to assist in reducing costs associated with the SOTP licensure
- We recommend correcting the current contrast between RCW 4.24.550 and Washington's Public Records Act
  - This will have significant positive impact as it relates to information on compliant Level I offenders, of which most juveniles are leveled.



# Sex Offender Policy Board

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