



Less Restrictive Alternative - LRA

Sex Offender Management Conference
May 9, 2018

Focus of this Training

- **Sexually Violent Predators – RCW 71.09**
- **What is a Less Restrictive Alternative**
- **How an LRA Trial Gets Set**
- **Requirements of LRA Plan**
- **DOC's Role**
- **DSHS/SCC Role**
- **Transition Team**
- **Approved Monitoring Adults**
- **Revocation/Modification**

SEXUALLY VIOLENT PREDATOR

In order to be on an LRA , a person must first be an SVP:

- Has been convicted of or charged with a crime of sexual violence;
- Suffers from a mental abnormality or personality disorder which causes him serious difficulty in controlling his sexually violent behavior; and
- The mental abnormality or personality disorder makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility

RCW 71.09.020(18)

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RCW 71.09.020(18)

TOTAL CONFINEMENT FACILITY

- A secure facility that provides supervision and sex offender treatment services in a total confinement setting. Total confinement facilities include the special commitment center and any similar facility designated as a total confinement facility by the secretary.

RCW 71.09.020(19)

SECURE FACILITY

- A residential facility for persons civilly confined under the provisions of chapter 71.09.020 that includes security measures sufficient to protect the community. Such facilities include total confinement facilities, secure community transition facilities, *and any residence used as a court-ordered placement* under RCW 71.09.096

RCW 71.09.020(16)

SECURE COMMUNITY TRANSITION FACILITY

- A residential facility for persons civilly committed and conditionally released to a less restrictive alternative under this chapter. A secure community transition facility has supervision and security, and either provides or ensures the provision of sex offender treatment services. Secure community transition facilities include but are not limited to the facility established pursuant to RCW 71.09.250(1)(a)(i) and any community – based facilities established under this chapter and operated by the secretary or under contract with the secretary

RCW 71.09.020(16)

LESS RESTRICTIVE ALTERNATIVE

- Court-ordered treatment in a setting less restrictive than total confinement *which satisfies the conditions set forth in RCW 71.09.092*. A less restrictive alternative may not include placement in the community protection program as pursuant to RCW 71A.12.230.

RCW 71.09.020(16)

Three roads to an LRA trial

- SCC authorizes and Respondent petitions
- Deficiency of the State's proof at a show cause hearing
- Sufficiency of the Respondent's proof at a show cause hearing
- LRA cannot be considered at the initial commitment trial and must wait until the first annual review. *In re Det. of Thorell*, 149 Wash. 2d 724, 753, 72 P.3d 708, 724 (2003)

RCW 71.09.090(1)

SCC Secretary's Designee's Authorization (SCC CEO)

- If the SCC's CEO determines the person's condition has so changed that conditional release to a less restrictive alternative is in the best interest of the person and conditions can be imposed that adequately protect the community the CEO *authorizes the SVP to petition* the court for a full evidentiary hearing
- The SVP must file a petition with the court and serve it on prosecuting agency
- The court, upon receipt of the petition "shall within forty-five days order a hearing."
- No Show Cause Hearing is necessary

RCW 71.09.090(2)(c)

■ **Annual Review – State’s Burden**


- Deficiency of the Petitioner’s proof on each of the following:
 - 1) no proposed LRA is in the Respondent best interest; and
 - 2) no proposed LRA contains conditions adequate to protect the community
- The standard of proof is “prima facie evidence”
- If the court finds the State has failed to present prima facie evidence, then the court shall set a trial (no time requirement)
 - Both parties entitled to have current evaluation by expert
 - Clinical interview
 - Psychological testing
 - PPG & Polygraph

RCW 71.09.090(2)(c)

- **Respondent's Burden**
- Sufficiency of the Respondent's proof of each of the following:
 - 1) the proposed LRA is in the Respondent best interest;
 - 2) the proposed LRA contains conditions adequate to protect the community; and
 - 3) the proposed LRA meets the requirements of RCW 71.09.092 requirements
- The standard of proof is “probable cause”

One Free Bite – RCW 71.09.0902(d)

- Respondent must also show he has “so changed” if the Court has previously considered an LRA through 1) Trial or 2) Summary Judgment through RCW 71.09.094
- Must be evidence from a “licensed professional” that the change is either:
 - A **permanent** physiological change that **renders them unable to reoffend**
 - A change in mental condition brought about through positive response to continuing participation in **sex-offender specific treatment**
- It cannot be only change in age, gender, or other demographic factor.
- It has to be a change since the SVP’s most recent commitment trial or LRA revocation



“The focus of this determination is therefore on the plan, not the person...”

RCW 71.09.092 and *In re Det. of Bergen*, 146 Wash. App. 515, 533, 195 P.3d 529 (2008)

What is “The Plan”

- **Must include RCW 71.09.092**
 - Certified SOTP (or affiliate) who has
 - Agreed to be responsible for the treatment
 - Agreed to report progress to the court
 - Agreed to report violations immediately
 - Developed a specific course of treatment
 - Person agrees to comply with treatment provider and all requirements imposed by the treatment provider and the court
 - Specified Housing
 - Sufficiently secure
 - Person or agency has agreed (in writing) to:
 - Accept the person
 - Provide level of security required by the court
 - Immediately report if the person leaves without authorization
 - Person under supervision of DOC and agrees to comply with DOC supervision requirements

Best Interest/Adequate to Protect the Community



- **Not defined terms:** *In re Detention of Bergen*, 146 Wn. App. 515, 529, 195 P.3d 529 (2008).
 - A trial court commits error if it gives definition
 - It's proper to consider:
 - Treatment
 - Employment
 - Safety
 - Likelihood of success
 - Community support
- **Is NOT a comparison of treatment programs**
 - Community v. SCC – Focus on Proposed Plan
 - Special Needs – Developmental Disability

Summary Judgment RCW 71.09.094

- Upon the conclusion of the evidence or through summary judgment proceedings, “if the court finds that there is no legally sufficient evidentiary basis for a reasonable jury to find that the conditions set forth in RCW 71.09.092 have been met, the court shall grant a motion by the state for a judgment as a matter of law.”
- *In re Det. of Jones*, 149 Wash. App. 16, 28–29, 201 P.3d 1066, (2009): “Discovery [can] affect the sufficiency of an SVP's proposed LRA. For instance, a proposed treatment or housing provider may decline to participate in an SVP's proposed LRA during the course of discovery. Alternatively, the State may learn that an SVP's proposed supervisor cannot provide the level of supervision that the Department of Corrections (DOC) requires of all LRAs—a situation reflected in *In re Detention of Campbell*.” 130 Wash.App. 850, 124 P.3d 670 (2005)



Department of Corrections Role

RCW 71.09.096 and DOC Policy

DOC Supervision

- **DOC will supervise SVPs conditionally released from SCC to LRA**
- **If court grants conditional release to LRA, CCO will provide ongoing supervision per court order until the offender is either:**
 - **Granted an unconditional discharge by the court**

OR

 - **Returned to the SCC and the LRA Order is revoked**

DOC Policy 380.370

Court Ordered LRA Investigation

- **Prior to authorizing release, the court shall order DOC to investigate the LRA and recommend additional conditions**
 - **Conditions shall include, but not limited to:**
 - **Specification of Residence**
 - **No contact with potential or past victims**
 - **No alcohol and other drug use**
 - **Participation in specific course of treatment**
 - **Polygraph & PPG monitoring**
 - **GPS monitoring**
 - **Supervision by DOC CCO**
 - **Restriction to Washington State unless has prior court authorization**
 - **Any other conditions the court determines in best interest of the person or others**

RCW 71.09.096(4)

LRA Conditions

▪ **Standard Conditions**

- Often overlap with supervision conditions required by DOC
- Primary focus on restricting movement, prohibiting contact, limiting places that can be visited, prohibiting substance use and types of materials possessed

▪ **Residential Conditions**

- Cover the person's living situation

▪ **Treatment Conditions**

- Sex offender treatment
- Compliance with verbal and written rules
- Monthly compliance reports from the SOTP

▪ **Special Conditions**



SCC/DSHS Duties

Statutes and WACs

Sexual Predator Program Mandates

- Custody, supervision and evaluation of those detained pending commitment
- Treatment, care, evaluation and control of those found to be SVP
- Evaluations and evaluation procedures established through coordination with DSHS, DOC and ESRC
- Operate secure facilities (SCC and SCTF)
- Provide escorted leave
- Complete Annual Reviews
- Develop individual treatment plan (ITP) for residents
- Maintain records
- Senior clinical team

WAC 388-880

SCTF Requirements

- Direct care staffing levels
- Residents and escorts
 - Wear electronic monitoring devices
 - At least one staff or authorized escort must accompany resident for appointments, employment, treatment or other approved activities
 - Escort shall supervise closely and maintain close proximity
 - Escort shall immediately notify law enforcement of any violation
 - Escort may not be a relative or someone whom resident had a dating relationship
 - Escort shall carry a cell phone at all times

RCW 71.09.110 to end of Chapter

Who Pays For What?

- **DSHS**

- Custody, care, treatment
- Cell phone & minutes
- Installation & maintenance of telephone land line for GPS
- Monthly stipend for living essentials
- ORCA bus pass
- \$15.00/hour plus mileage at federal rate for chaperones

- **Reimbursement from resident depending on resources/ability to pay**

- **The Big Debates**

- First 48 – 72 hours upon release
- Who identifies chaperones and how they're paid
- The process of terminating or reducing payments



Transition Team (RCTT)

Historical Collaboration

Members and Responsibilities

- **Comprised of CCO, SOTP and SCC/SCTF Representative**
- **Pre-transition meetings with attorneys**
- **Evaluate treatment performance, behavior, compliance with court ordered conditions and use of relapse prevention skills**
- **Regular meetings to discuss progress, violations, and conditions**
- **Make recommendations**



Approved Monitoring Adults

Chaperones

Requirements, Training, Duties

- Primary goal is to keep the community and resident safe through adequately trained chaperones
- Objective
 - Support resident through the process of transitioning
 - Support resident in an existing community placement
 - Assist resident apply self-regulation and control techniques to experiences in the community on a regular basis
- Formalized Training protocol
 - Chaperone criteria and duties
 - Offender pattern
 - Incident response
 - Communications plan
 - Community outings
 - Violation reporting



Revocation/Modification

RCW 71.09.098

Revocation/Modification Process

- SOTP, CCO, Prosecutor, or Secretary's designee may petition for a hearing on revocation or modification – **NOT RESPONDENT**
 - CCO or secretary's designee restrict movement in the community
 - Before a hearing, both parties have right to request an immediate mental examination
 - Respondent may be taken into custody if:
 - CCO, secretary's designee or law enforcement believe person has violated or is in violation of court's order
 - CCO, secretary's designee reasonably believe person is in need of additional care, monitoring or treatment because person presents danger to himself or others
 - Person taken into custody shall not be released before hearing
 - May be held at county jail, SCTF or total confinement

Revocation/Modification Hearings

- **State's burden to prove by preponderance of the evidence person has violated or is in violation of court order**
 - Hearsay is admissible if the court finds it is otherwise reliable
- **If court finds the State met its burden, the court shall consider:**
 - Nature of condition violated
 - Degree to which violation intentional or grossly negligent
 - Ability of person to strictly comply with court's order
 - Degree of progress made in community-based treatment
 - Risk to the public or particular persons
 - Any factor alone, or in combination sufficient
- **Court may add/modify conditions**
 - Substitute SOTP, require new housing or impose additional supervision conditions
 - Person revoked shall be remanded to total confinement at SCC



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