RCW 71.09: Changes to Discharge Planning and Less Restrictive Alternative Placements in the Community

System overview, recommendations, and updates regarding implementation of Chapter 236, Laws of 2021

Sex Offender Policy Board

Report submitted to the Legislature
(Required by Chapter 236, Laws of 2021)

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5163 Implementation Subcommittee

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Introduction

In March 2020, the Senate Ways & Means Committee convened the Sex Offender Policy Board (SOPB) to review policies and practices related to sexually violent predators and their release from the Washington State Department of Social and Health Services (DSHS), Special Commitment Center (SCC). In December 2020, the SOPB submitted its report to the Legislature entitled *Recommendations and current practices for Special Commitment Center releases*[1] that consisted of 35 recommendations. In Chapter 236, Laws of 2021, the Legislature directed and provided funding for the SOPB, DSHS, and the Department of Health (DOH) to convene a workgroup to develop recommendations to increase the availability and quality of sex offender treatment providers in Washington. In December 2021, the SOPB submitted its report entitled *Recommendations to increase the capacity of Sex Offense Treatment Providers who serve Less Restrictive Alternative (LRA) clients*[2] that contained eight recommendations.

In Chapter 236, Laws of 2021, Sections 14 and 15[3] the Legislature directed the SOPB to meet quarterly during the 2021-2023 biennium to continue its review of sexually violent predators and less restrictive alternatives. Specifically, the Legislature tasked the board with the following:

- (Section 14) In accordance with RCW 9.94A.8673, the sex offender policy board shall meet quarterly during the 2021-2023 biennium to continue its review of sexually violent predators and less restrictive alternative policies and best practices, collaborate with stakeholders and the department, provide outreach to providers and stakeholders, and monitor implementation of this act. The board shall also explore and make recommendations whether to continue or remove the prohibition on a less restrictive alternative from including a placement in the community protection program pursuant to RCW 71A.12.230. The board shall provide semiannual updates to the appropriate committees of the legislature during the 2021-2023 biennium.
- (Section 15) In accordance with section 14 of this act, the sex offender policy board shall meet quarterly during the 2021-2023 biennium to continue its review of sexually violent predators and less restrictive alternative policies and best practices, collaborate with stakeholders and the department, provide outreach to providers and stakeholders, and monitor implementation of this act. The board shall provide semiannual updates to the appropriate committees of the legislature during the 2021-2023 biennium.

[1] *Recommendations and current practices for Special Commitment Center releases*
[2] *Recommendations to increase the capacity of Sex Offense Treatment Providers who serve Less Restrictive Alternative (LRA) clients*
[3] *Engrossed Second Substitute Senate Bill 5163, Chapter 236*

This report provides recommendations and updates to the Legislature for January through June 2023. It serves as a complementary report to the SOPB's 2022 reports entitled *Updates Regarding Implementation of Chapter 236, Laws of 2021, January – June 2022*[4], *Updates Regarding Implementation of Chapter 236, Laws of 2021, July – December 2022*[5] and our 2021 report entitled *Recommendations to increase the capacity of Sex Offense Treatment Providers who serve Less Restrictive Alternative (LRA) clients.*[6]

The Subcommittee Process

The SOPB has been working on issues related to LRAs at the request of the Legislature since 2020. The SOPB established subcommittees and a workgroup throughout these projects to bring together diverse stakeholders and experts in this area. Membership has included collaborative efforts between defense attorneys, prosecuting attorneys, deputy attorneys general, DSHS Services, Office of Public Defense, Department of Corrections (DOC), Developmental Disability Administration (DDA), sex offender treatment providers (SOTPs), social workers, a representative from the Association of Washington Cities, individuals with lived experience, and more. Stakeholders have worked collaboratively together in an effort to reach consensus, identify and work through challenges, and implement the legislative changes.

[4] *Updates Regarding Implementation of Chapter 236, Laws of 2021, January – June 2022*
[5] *Updates Regarding Implementation of Chapter 236, Laws of 2021, July – December 2022*
[6] *Recommendations to increase the capacity of Sex Offense Treatment Providers who serve Less Restrictive Alternative (LRA) clients*

Chapter I:
History of RCW 71.09

Background and History of RCW 71.09

This section serves to provide an update and high-level overview around the history of RCW 71.09 and recent statutory changes, and explains how the Less Restrictive Alternative (LRA) process currently works. We provide the following background information to assist the reader in understanding the history of this legislation and how it's been implemented.

*A note regarding language in this report: vocabulary and terminology changes as an individual moves throughout the criminal justice and/or civil system(s), which can be difficult to follow. For the purposes of this report, and to streamline vocabulary and reduce confusion, we utilize person-first language to the extent possible. We refer to the individual who sexually offended as "Individual" and then as "Resident" upon their commitment to the Special Commitment Center (SCC)[7].

Why RCW 71.09 was created

In 1989, Governor Booth Gardner formed the Community Protection Task Force. This task force was created primarily in response to two cases, one involving the kidnapping and murder of a woman by an individual on work release and the other involving the sexual assault and mutilation of a young boy.[8] The mission of the task force was to respond in a meaningful and responsible way to address the public outrage over violent individuals reoffending. The taskforce held public meetings throughout the state and considered numerous ways to strengthen Washington's laws concerning sex offenses. The task force especially noted that existing mental health laws were not sufficient to address the needs of individuals who had committed sexual offenses and needed longer-term treatment than was currently available, and who were deemed too dangerous to be held in state mental health hospitals. They also noted a need to strengthen sex offense laws, to develop a classification system, and to create a civil commitment process to provide long-term treatment after an individual's prison term is completed.

The task force's recommendations resulted in the 1990 Community Protection Act (CPA) which included developing a statewide sex offender registration and community notification process, increasing the penalties for sex offenses, and created Civil Commitment under RCW 71.09.[9]

The CPA established Washington's civil commitment program for the confinement and treatment of individuals with prior convictions for sexually violent offenses who were determined to be at high risk of reoffending upon release from incarceration. This group of individuals were labeled and referred to as "sexually violent predators", which was codified under RCW 71.09. Civil commitment is "civil" in nature and is therefore in addition to, and outside of, the criminal justice system and the criminal penalties for their criminal behavior. Before this act, such individuals were released from

[7] The SCC is located on McNeil Island in Pierce County, WA. More information on the SCC can be found here.
[8] See Appendix A "Creation of the Community Protection Act" for more details as to the crimes that were the reason for the act, the taskforce recommendations, and other changes in the law.
[9] At the same time, the legislature created the Sex Offender Treatment Provider certification as a credential under the Department of Health.

prison after serving their sentence in accordance with the determinant sentence structure mandated by the Sentencing Reform Act of 1984. Prior to the enactment of the CPA, individuals were released into the community without the possibility of the civil commitment program and extended treatment. With the enactment of the CPA, individuals could be civilly committed to the SCC following their prison sentence in order to receive additional treatment prior to their release to the community. Before being placed at the SCC for extended treatment, the individual needed to meet criteria for commitment including:

- the individual must have committed a crime that is defined to be a "sexually violent offense,"[10]
- be determined by a qualified professional to have a "mental abnormality" or "personality disorder" that causes serious difficulty controlling sexually violent behavior, and
- due to such condition be "more likely than not" to commit a "predatory act of sexual violence" in the future if not confined to a secure facility.[11]

Washington's civil commitment program was the first of its kind in the nation and served as an example both nationally and internationally.

The legislature made clear that civil commitment after prison is not for punishment, but for the purpose of specific treatment for sexual offending. Constitutional protections against double jeopardy preclude punishing individuals twice for the same crime. Therefore, when a person is committed under RCW 71.09 after their prison sentence, they are placed in the custody of the DSHS at the SCC "for control, care, and treatment" until they are unconditionally released. ***Unconditional release is not an LRA.*** Unconditional release means release without any additional conditions imposed by the court, the same as if the individual were released directly from prison,[12] and occurs when a person no longer meets criteria for commitment. In many cases, residents may be conditionally released, to a Less Restrictive Alternative (LRA) as a transition to allow them to practice their skills in community-based treatment while under supervision, with strict conditions, in the community before being unconditionally released.

[10] RCW 71.09.020(18)
[11] These terms have special legal definitions under RCW 71.09.020.
[12] RCW 71.09.060(1)

Why LRA releases are necessary

RCW 71.09 is intended to further treatment and facilitate successful transitions back to the community. Washington recognizes that individuals civilly committed have a constitutional right to treatment that provides for a realistic opportunity to be released.[13] Without a realistic opportunity for each individual civilly committed to be released, the statute would be unconstitutional as it would serve as an extension of the original prison sentence.

The main takeaway:

A realistic opportunity for release is necessary to be able to require anyone to be civilly committed for additional care and treatment. This constitutional right to treatment and release is further reinforced by the "Turay Injunction."[14]

Lesser-known characteristics of the LRA Population

As of June 29, 2023, there are 121 residents in the total confinement facility and 76 residing in LRA placements on and off the island.15 To understand LRAs, it is important to generally understand the population of people being released from the SCC. Individuals released on an LRA are confirmed to be 1) amenable to treatment and, 2) conditions can be imposed that are adequate to protect the community by multiple independent authorities.16 A DSHS evaluator or defense expert, a state's expert or jury, and the court all make findings on both criteria before an individual may be released. Further, a portion of the population of people who are being released to LRAs includes individuals who may:

- have experienced significant physical and/or sexual abuse and trauma;
- have significant cognitive, developmental, or intellectual disabilities;
- have dynamic and static risk factors and behavioral health issues/needs;
- be aging,[17] or have significant physical disabilities;
- have committed offenses decades ago;
- have committed their crimes as minors when little was known about juvenile brain development;

[13] *Youngberg v. Romeo*, 457 U.S. 307, 319-22(1982); *Ohlinger v. Watson*, 652 F.2d 775, 778 (9th Cir. 1980); *Sharp v. Weston*, 233 F.3d 1166 (9th Cir. 2000).

[14] Richard Turay, an SCC resident, brought forth a lawsuit: *Turay v. Seling* (Western Dist. Wash.) (1994-2007). At the 1994 trial, Turay won on his "denial of access to adequate mental health treatment" claim. Judge William Dwyer of the Federal District Court in Seattle issued an order for the SCC to submit a plan for an adequate treatment program and appointed a special master to offer the state expert advice on how to craft a satisfactory program. The special master issued 19 reports to the court over the next eight years, laying out specific recommendations and describing the state's attempts to achieve them.

[15] This number includes residents residing at SCTFs.

[16] The statute requires that at least one expert and a court determine that the LRA is both in the person's best interests *and* that conditions can be imposed that are adequate to protect the community. RCW 71.09.096.

[17] Research shows unequivocally that age is strongly correlated with a reduction in sexual recidivism, likely due to maturation and a reduction in testosterone, with a sharp reduction in risk after age 60.

- have been convicted in an era where race, gender, and LGBTQ+ identities may have prejudiced the outcomes of their case (or biases in the system related to those);
- have voluntarily completed decades of treatment;
- have offense history limited to when they were juveniles;
- have agreed to commitment at the SCC for care or treatment; and
- have been found NOT to meet criteria for civil commitment by experts but chose a gradual transition through an LRA for stability, support, and supervision.

The main takeaway:

Realistic opportunities for releases to LRAs and access to treatment are what makes the 71.09 statute constitutional.[18] Without those opportunities, then individuals who have committed sexually violent offenses would be released without the additional treatment and protections that this statute provides.

How an individual is prepared for release

An individual's legal right to treatment also includes the right to ongoing discharge planning.[19] Just because ongoing discharge planning is occurring does not guarantee that a resident will be released.[20] The following must be addressed in an individual's discharge plan:

- The individual's known physical health, functioning, and any need for health aid devices;
- The individual's known intellectual or cognitive level of functioning and need for specialized programming;
- The individual's known history of substance use and abuse;
- The individual's known history of risky or impulsive behaviors, criminogenic needs, and treatment interventions to address them;
- The individual's known ability to perform life skills and activities of daily living independently and the resident's known need for any disability accommodations;
- A summary of the known community services and supports the resident needs for a safe life in the community and the type of providers of such services and support; and
- A plan to mitigate the needs identified in this subsection that also addresses ways to develop or increase social supports, recreation opportunities, gainful employment, and if applicable, spiritual opportunities.[21]

[18] The Due Process Clause of the Fourteenth Amendment to the U.S. Constitution requires the State to "provide civilly-committed persons with access to mental health treatment that gives them a realistic opportunity to be cured and released." Sharp v. Weston, 233 F.3d 1166, 1172 (9th Cir. 2000).
[19] RCW 71.09.080(2)
[20] RCW 71.09.080(3)
[21] RCW 71.09.080(3)(a)(-(g)

Every resident committed at the SCC is entitled to an annual evaluation that determines: i) if the individual currently continues to meet the statutory definition for civil commitment and, if so, ii) whether 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.[22] Forensic psychologists employed by Department of Social and Health Services (DSHS) conduct these evaluations. Based on the results of that evaluation, the SCC may authorize a resident to petition for unconditional release or conditional release to an LRA.[23] Even if the CEO does not authorize a resident to petition for release, the resident may directly petition the court for release. The SCC is required to give the resident notice of their right to seek such a release.[24]

Only individuals who have been civilly committed under RCW 71.09 are eligible for an LRA (also known as a conditional release). Those who no longer meet the criteria are entitled to *un*conditional release. A person may only be released to an LRA if a court determines that the LRA is in the individual's best interests and adequate conditions can be imposed that protect the community.[25]

How the LRA process works in court[26]

When a resident petitions for release to any community-based LRA, including where the DSHS evaluator concludes that an LRA placement is appropriate, the prosecuting agency representing the State of Washington retains its own independent expert to evaluate the individual. If the state-retained evaluator concludes an LRA is not appropriate, the case proceeds to trial. At that trial, it is the state's burden to prove beyond a reasonable doubt that the proposed LRA is not in the best interest of the person or does not include conditions that would adequately protect the community.[27] It is only where the state-retained evaluator agrees that a person is appropriate for conditional release to a community-based LRA that the state does not object to a community LRA placement. In that scenario, the state lacks the evidence necessary to meet its burden of proving beyond a reasonable doubt that the LRA is not appropriate. Once the court makes a finding that conditional release to a LRA is appropriate, the court directs a conditional release. The court may impose any additional conditions to ensure compliance with treatment and to protect the community. The court must order DOC to investigate the plan and recommend any additional conditions to the court. Proposing conditions to the court is a collaborative process; stakeholders, including defense attorneys, prosecuting attorneys, SCC, DOC, SOTPs, and housing providers, meet to discuss proposed conditions.[28] These conditions must be "individualized, narrowly tailored, and empirically based."[29]

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[22] RCW 71.09.070
[23] RCW 71.09.090
[24] RCW 71.09.090(2)
[25] RCW 71.09.080(2). In 2017, Disability Rights Washington and the SCC entered into a settlement agreement in R.R. vs. DSHS, which requires the SCC to provide appropriate and individualized treatment to residents with cognitive disabilities, including discharge planning. It also requires the SCC to facilitate placement in the community when appropriate.
[26] For more details, see Appendix B.
[27] RCW 71.09.090(3)(d).
[28] RCW 71.09.096(4)(b)
[29] RCW 71.09.096(4)(b)

Conditionally released individuals

SCC residents conditionally released to less restrictive alternative placements are subject to stringent monitoring requirements and supervision.[30] Commitment courts will routinely order a long list of restrictions and requirements that the person must abide by. Residents conditionally released to LRAs are uniformly required to be on GPS monitoring. Additionally, they are often further required to be escorted by an approved monitoring adult during any trips outside of their immediate residence for a period of time determined by their transition team (made up of their DOC officer[31], a representative from DSHS[32], and their SOTP). They are required to attend treatment, report in person to their supervising DOC officer on a regular basis, submit travel plans in advance for any trips into the community, register as a sex offender with the county, and have the destinations site-surveyed by DOC and/or DSHS. They are also subject to a long list of court-imposed requirements related to their specific risks and offense patterns. This is a much higher level of supervision than what is imposed upon level three sex offenders who are not subject to civil commitment. If a person on an LRA violates any of these conditions, they may be taken to jail, total confinement at the SCC or an SCTF, and their LRA may be modified or revoked. For more information regarding current SCC residents, please see Appendix D.

The main takeaways:

- The law requires that individuals be civilly committed before being eligible for an LRA
- If an individual no longer meets the criteria for commitment, then the individual may choose an LRA or they may choose unconditional release
- All individuals on LRAs have met the criteria under RCW 71.09
- If an individual is unconditionally released, they are no longer eligible for LRA

[30] See Appendix C "Additional Transition Resources for Less Restrictive Alternatives" for more details as to the additional transition resources DSHS provides to residents on conditional release to LRAs.
[31] This person is similar to a parole officer or community corrections officer, but is referred to as a "corrections specialist (CS)" when monitoring this population.
[32] This is sometimes, but not always, one of the new SCC social workers.

How Chapter 236, Laws of 2021 (E2SSB 5163) changed the way the law works

Engrossed Second Substitute Senate Bill 5163, implemented in July 2021, did not change the frequency of LRA releases. Individuals have been conditionally released to LRAs for over 25 years. Releases have gradually increased over time due to many factors, such as the aging population of residents civilly committed at the SCC, the increase in the number of residents engaging in treatment, the research showing that recidivism rates are decreasing over time[33], and the treatment for sex offenders improving with addition of more empirically based studies. E2SSB 5163 changed how some LRA placements are created and where they are placed, and clarified the requirement that DSHS create discharge plans for each resident (described above), among other minor changes.

Historically, the process of creating plans for conditionally releasing residents to less restrictive alternative placements in the community was primarily the endeavor of the defense counsel and defense social workers and release planners. Defense teams arranged for housing, chaperones, and treatment providers for these LRAs. However, defense teams lacked many of the resources needed to carry out this responsibility and had no ability to distribute LRA housing fairly among the various counties in Washington. E2SSB 5163 was designed to address these problems.

As a result of the bill, the SCC was tasked with discharge planning for all residents at the SCC, and the LRA planning for residents where the DSHS evaluator agrees an LRA is appropriate and when ordered to do so by the court. E2SSB 5163 was explicit in defining two different plans to govern a resident's eventual release to the community. A "discharge plan" was defined in RCW 71.09.080(4) as a part of a resident's ongoing treatment plan, which is started upon intake at the facility. This plan helps guide the person's treatment and identify what skills and supports they will need for eventual release.[34] In contrast, a "proposed LRA Plan" under RCW 71.09.090(1) or (2) is a plan the SCC must create based on a court order, governing a resident's court ordered release to an LRA.

SCC is currently focused on clinically appropriate, comprehensive, ongoing discharge planning along with developing less restrictive alternative placements when ordered by the courts. Discharge planning encompasses evaluation(s) of discharge/transition needs and/or services and the availability of such services; or to identify comparable substitutions by assessing a multitude of factors including (among other individualized items):

- Level of care/functional status.
- Equipment needs.
- Resource eligibility and availability.
- Resident and/or legal representative and/or appropriate support person(s) discharge/transition desires as reasonable.

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[33] "There is considerable research suggesting that crime rates and recidivism rates are declining over time. This is true of all crimes, as well as sexual offences specifically." Helmus (2021). *Estimating the Probability of Sexual Recidivism Among Men Charged or Convicted of Sexual Offences- Evidence-Based Guidance for Applied Evaluators*. https://doi.org/10.5964/sotrap.4283

[34] A discharge plan must address RCW 71.09.080(4)(a-g) at minimum.

One goal of E2SSB 5163 was to share the burden of LRA placements solely from defense professionals to include DSHS-SCC. The Legislature has authorized the SCC to develop an LRA for residents regardless of their treatment status, as long as an LRA has been deemed appropriate pursuant to statutory criteria. These LRAs would help residents conditionally reconnect with their support systems and communities outside the SCC. LRAs can be either through a Secure Community Transition Facility (SCTF)[35] or community-based housing when ordered by the courts. The SCC was granted the resources it needed to do so effectively and in accordance with "fair share" principles.[36] "Fair share" means that each county has adequate options for conditional release housing placements in a number generally equivalent to the number of residents from that county who are subject to civil commitment.[37]

As a result of the new legislation, SCC has established a number of full-time positions to help with the development and implementation of discharge and LRA services for residents transitioning out of total confinement and maintaining residence in a community based LRA until unconditionally released. The new positions established at the SCC include:

- Director of Discharge Services
- Total Confinement Social Work Manager
- Community Program Social Work Manager
- Discharge Nurse Supervisor
- Community Psychologist
- Total Confinement Social Workers
- Community Social Workers
- Discharge Registered Nurses
- Discharge Management Analyst
- Administrative Assistants
- Project Manager

Housing

E2SSB 5163 created changes to streamline and equitably distribute LRA housing pursuant to legislative mandate. The SCC is tasked with soliciting and contracting with providers across the state in a manner that facilitates fair share principles and in an effort to increase community LRA resources.[38] The bill was intended to foster the expansion of LRA housing opportunities throughout Washington and to encourage the SCC to contract with new and existing housing providers. As the law recently went into effect, there has not been adequate time to track how these changes have affected LRA releases in the long term. However, the SCC has made extensive changes to promote resident transitions and continues to evolve the program. SCC's community program has been described as having the potential to become a national LRA model for other programs by a panel of external experts during an inspection of care.[39]

[35] SCC constructed two SCTFs, one in 2003 on McNeil Island, Pierce County and one in 2005 in South Seattle, King County.
[36] RCW 71.09.096(5)(b)(i)
[37] RCW 71.09.020(2)
[38] RCW 71.09.097(1)(2)
[39] RCW 71.09.080(3)

The main takeaways:

- LRAs are a necessary component, maintaining the constitutionality of the civil commitment process.
- LRAs are designed to protect the community with very strict conditions.
- Individuals on LRAs are closely supervised and monitored 24/7. This is the highest level of community supervision provided in Washington of any group of people.
- Gradual release through LRAs can promote safer and more successful reentry into society.
- Released individuals who undergo treatment and supervision pose a lower risk of re-offense.
- Without the civil commitment program, individuals who have committed violent sexual offenses, completed their prison sentences, and may pose a significant risk to the community, would be released directly to the community without the opportunity for extended treatment, services and supervision.
- There is no evidence that any resident has committed a new sexually violent offense while on an LRA in the over 25 years that the program has existed.
- LRAs are a key component of the constitutionality of the 71.09 statute. Without LRAs the statue would fail the test of constitutionality. The choice for policy makers is not between LRAs and incarceration, but between LRAs and the direct release of all sex offenders after their prison sentences end, without the possibility of RCW 71.09 commitment and treatment.
- Stakeholders should continue to work together and collaborate to ensure successful implementation of E2SSB 5163.

Chapter II:
Implementation of Chapter 236, Laws of 2021 (E2SSB 5163)

Implementation updates

Our response to: "the sex offender policy board shall meet quarterly during the 2021-2023 biennium to continue its review of sexually violent predators and less restrictive alternative policies and best practices, collaborate with stakeholders and the department, provide outreach to providers and stakeholders, and monitor implementation of this act. The board shall provide semiannual updates to the appropriate committees of the legislature during the 2021-2023 biennium."

E2SSB 5163 became effective in July 2021 and implementation is ongoing. As the Legislature directed, the SOPB has been monitoring the bill's implementation. This section highlights implementation updates between January 2023 through June 2023[40] and includes information gathered throughout the duration of our assignment.

Discharge planning for all residents of the SCC

The new Psychiatric Social Worker positions

E2SSB 5163 allocated 15 Psychiatric Social Workers (PSW), including 2 Psychiatric Social Work Managers to SCC. The social workers hired have diverse backgrounds, including experience with discharge planning, benefits coordination, patient/resident transition from state hospitals and local psychiatric facilities to the community, community mental health, aging and long-term personal care, and treatment and assessment of substance use disorders. While SCC is their employer, their clients are residents.

Social workers are required to have the following qualifications:

- Master of Social Work degree from an accredited college or university.
- Independent or Associate Social Work License or Agency Affiliated Counselor registration by the Department of Health in good standing.

Once hired, Social Workers are provided trainings which include: Dialectical Behavioral Therapy (DBT), Static 99R, Stable 2007, Dynamic Risk Factors (DRF) and Protective factors, Acute 2007, Structured Assessment of Protective Factors Against Sexual Offending (SAPROF-SO), Violence Risk Scale – Sexual Offense Version (VRS-SO) Psychopathy Checklist – Revised (PCL-R), and Acceptance and Commitment Therapy (ACT). Social Workers also receive clinical supervision from an independently licensed clinical Social Work Supervisor. Training on these risk tools is intended to help the SCC social workers understand each individual's unique risk factors and areas of strength. This information assists in developing the best approach for establishing rapport and working with individuals when developing individualized discharge plans.

[40] As of the time of the writing of this report.

How caseloads for SCC Psychiatric Social Workers are assigned

SCC assigns social workers to residents based on LRA location. This means that every resident in a community LRA has access to a SCC social worker statewide. This allows SCC social workers to become familiar with the resources available in the specific region and form relationships with providers in the region. This system also allows for sustainable state-wide coverage and offers continuity of care because every SCC social worker has access to any resident's clinical and medical information throughout the entirety of their treatment with the SCC. This model is intended to provide residents with resources needed for successful transition and rehabilitation while reducing the risk for dual relationships and exploitation. Once released on a less restrictive alternative, residents begin working with a new team of SCC social workers who are knowledgeable of their individualized needs.

The new SCC discharge nursing positions

E2SSB 5163 allocated a total of 4 nursing positions, which includes 3 Discharge Registered Nurses (RNs) and 1 Discharge Nurse Supervisor. These positions assist with medical support and consultation for residents living in LRAs. For example, nurses may conduct medication management checks to ensure residents understand the purpose and appropriateness of their medication. All Discharge Nursing staff are licensed as a Registered Nurse (RN).

How discharge planning works at the SCC

The SCC is tasked with creating clinically appropriate, individualized discharge plans throughout the course of care and treatment at the SCC. In its effort to meet this goal, the SCC has created psychosocial assessments. These assessments are first developed within 10 business days of admission, and then updated annually or sooner if needs change. These psychosocial assessments were created by the SCC to address RCW 71.09.080(3) and (4)(a)-(e).

The SCC incorporates interdisciplinary subject matter expert input from annual reviews, the medical team, and the senior clinical team into these assessments. In these assessments, the following are considered:

- The individual's physical health, functioning, and any need for health aid devices;
- The individual's intellectual or cognitive level of functioning and need for specialized programming;
- The individual's history of substance use and abuse;
- The individual's known history of risky or impulsive behaviors, criminogenic needs, and treatment interventions to address them;
- The individual's ability to perform life skills and activities of daily living independently and the individual's need for any disability accommodations;
- Summary of the community services and supports the person needs for a safe life in the community and the type of providers of such services and support;

- Plan to mitigate the needs identified that also addresses ways to develop or increase social supports, recreation opportunities, gainful employment, and if applicable, spiritual opportunities;
- Behavioral and mental health history; and
- Cultural considerations and preferences.[41]

How release planning works at the SCC

When ordered by a court, the SCC creates individualized LRA plans to meet a resident's specific needs. This process is the direct result of RCW 71.09.090(1)(b). LRA plans should address needs raised in the discharge plan and shall include:

- Applying for public benefits;[42]
- Identifying appropriate LRA housing provider in accordance with fair share;
- Identifying a SOTP (Sex Offender Treatment Provider) and procuring a treatment plan.

To ensure a smooth transition, the SCC will:

- Coordinate with community medical and mental health providers;
- Coordinate and cofacilitates chaperone trainings;
- Provide a list of approved media to SOTP;
- Complete a vendor payee registration if a resident is getting a stipend;
- Conduct a move-in readiness check;
- Schedule sex offender registration with release county;
- Coordinate with the Washington Association of Sheriff's and Police Chiefs (WASPC) for GPS;
- Schedule transportation for resident and property;
- Coordinate gate money;
- If applicable, obtain communication and technology resources; and
- Create a continuity of care plan.

[41] While these last two bullets are not required by law, they are a necessary component to discharge planning.
[42] RCW 71.09.096(6)(b)

To help remove barriers to release and discharge, the SCC established a memorandum of understanding with the Department of Licensing (DOL) that helps residents get state identification upon admission.[43] To increase access to services, the SCC has established relationships with Department of Vocational Rehabilitation (DVR) specifically to address vocational barriers for residents who meet the criteria. The SCC continues to actively research professional resources that contribute toward purposeful and relevant engagement opportunities for residents, such as the 2nd Opportunity program.[44]

Benefits

E2SSB 5163 requires the SCC to assist with establishing benefits on behalf of residents. SCC social workers have access to the following resources which are being utilized:

- A Memorandum of Understanding with Economic Services Administration (ESA) was established to allow SCC access to Barcode and designated Barcode subsystems for SCC to provide benefit and service coordination. This is used to help the residents understand what benefits and services they qualify for, to navigate the Medicaid and Medicare qualifications and requirements, to assist in applying for supplemental security income (SSI) benefits, and lastly to assist in Discharge Planning.
- Offender Management Network Information, which is hosted by DOC and provides historical information that may help with benefit eligibility information. Washington Connections, which is hosted by DSHS-ESA[45] and provides an avenue for SCC Social Workers to apply for, on behalf of residents, food stamps, cash assistance, long-term care, Medicaid savings programs, and medical assistance as applicable.
- SCC Social Workers are trained Healthcare Navigators for WashingtonHealthPlanFinder, which offers health care coverage for eligible residents.
- ProviderOne is a Medicaid payment system managed by the Health Care Authority (HCA). The SCC utilizes it to determine if a resident has active insurance and streamline coordination of care.
- SCC allocated funding for a full-time Home and Community Services (HCS) staff member to complete care assessments, which serve to determine eligibility for HCS personal care services.[46]
- SCC has funded the establishment of a dedicated Financial Resource Enforcement Officer position responsible for navigating identified financial needs and benefits for discharge/transition planning.

[43] RCW 71.09.370
[44] 2nd Opp
[45] For more information on DSHS-ESA, see link.
[46] For more information on Home and Community Services see link.

Discharge and Transition Resources for High Acuity (HA) Residents at the SCC

The High Acuity (HA) program was created for individuals with serious mental illness, intellectual disabilities, traumatic brain injuries, and other cognitive conditions that make it difficult to meaningfully engage in the general track programming at the SCC. The program was created as a result of the settlement in R.R. vs. DSHS, a federal lawsuit challenging the conditions of care and confinement for residents with cognitive disabilities. The major components of the HA program include a therapeutic milieu and specialized staff training, sex offense treatment programming targeted to the high acuity population, positive behavior support planning for high acuity residents, and a token economy.

Secure Community Transition Facility – Pierce County (SCTF-PC)

The Secure Community Transition Facility – Pierce County (SCTF-PC) has a cottage with eight beds designated for HA residents. The cottage is staffed with at least one staff member 24/7. Additionally, programming support is offered by a high acuity milieu specialist to assist with the positive-behavioral support model. There is also supplemental structured engagement with social workers and residential counselors on a recurring basis.

Groups and Classes Offered

Residents residing at the SCTF-PC are offered rehabilitative sessions such as Bridging Transitions, Budgeting, Social Skills Practice, and Healthy Cooking. Residents are also offered organized group activities that allow them to practice prosocial behavior such as Arts and Crafts, Gaming Group, Gardening and Pool Class. Pond walks are an additional opportunity for exercise and mindfulness. Residents engage in supervised community trips to practice learned risk intervention techniques to be safe in the community.

Functional Assessment (FA)

A functional assessment and corresponding functional behavior data chart is developed in collaboration with the sex offense treatment provider. The data chart lists the challenging behaviors currently targeted for tracking. This list would include all behaviors listed as target behaviors on the positive behavioral support plan (PBSP) and will include, when indicated, new behaviors that the provider is wishing to track to determine if it needs to be targeted for intervention.

Stage of Change (SOC)

The PBSP includes the resident's Stage of Change (SOC), which is based on the SOTP review of the resident's progress. The SOC is updated every time the PBSP is updated. The SOC is based on review of five domains including: Cooperation with Supervision, Activities of Daily Living, Coping Skills, Transparency, and Core Sex Offender Treatment. Assessing for SOC is a fluid process.

Acute Care Plan (ACP)

Some HA residents have an acute care plan. The ACP is a document that details intervention strategies for high-risk behaviors, such as physical aggression, assaultive behavior, and self-harm behavior. The ACP addresses immediate intervention strategies.

Environment of Care

The cottage is intentionally designed to align with therapeutic coping skills. A mindfulness room and a quiet room are available for resident use. The quiet room assists with keeping the resident safe while they are experiencing behavior dysregulation. The mindfulness room encourages use of mindful activities to assist with reducing risk of dysregulation.

Opportunities for HA residents in SCTF-PC

Residents residing in the SCTF-PC are offered to attend habilitative classes such as Bridging Transitions, Stepping Stones, and Healthy Relationships. High Acuity residents are also offered classes on Activities of Daily Living (ADLs), budgeting, social skills, money management, job skills, and cooking in the STCF. Social workers engage one-on-one with residents to address and support individualized needs for community preparation.

Efforts made in the contracting process

The SCC has utilized a Request for Proposal (RFP) process to solicit for housing providers.[47] The SCC had the RFP posted for 8 months without yielding results. The SCC has also researched comparable costs of care for community residents who utilize other DSHS resources. Differences remain between the stakeholders regarding the need for varying levels of services and costs within a diverse population.

The SCC has updated their contracts to include:

- For new housing providers, once the housing provider has secured all required approvals to operate the residence, the SCC may pay rent for up to a maximum of three months while the housing provider awaits their first placement.
- If a resident is returned to the SCC pending a court decision on whether to revoke the resident's conditional release, the SCC continues to pay the housing provider a determined amount for up to 90 days. This allows the housing provider to keep a resident's placement available.
- If a resident has insufficient resources to pay for unexpected expenses that are not covered by the contract, and that are agreed to by the SCC, the housing provider can request SCC approval for reimbursement with adequate written documentation.

[47] RCW 71.09.097(1)

Stakeholders continue to have different perspectives on remaining contract requirements. RCW 71.09.092 states that housing providers must agree to provide the level of security required by the court in the resident's condition orders. All contracted homes are prepared to provide the level of security ordered by the court. The SCC's goal with contracting is to provide oversight of LRA housing pursuant to RCW 71.09.097(1). The courts provide oversight over non-contracted housing.

Collaboration by Stakeholders

Periods of transition are often challenging even when there is broad consensus that important changes are needed. E2SSB 5163 is relatively new and processes are still being developed. The SCC has embraced its new primary role in release planning by recruiting many staff, drafting new policies, and implementing new procedures. The SCC is now present and active in the LRA process. The SCC has accepted responsibility for payment of many LRA resources. However, litigation in new areas has developed, including the SCC contesting specific financial obligations or amounts. Stakeholder collaboration on conditions remains a strong point of the E2SSB 5163 process although it has yet to achieve individualization.[48] In a proactive effort to build relationships, the SCC, along with many other stakeholders, have done the following:

- Organized and/or participated in tours of the SCTF, McNeil Island, and offered full access to line, senior, and executive staff. This was offered to defense attorneys, defense transition specialists, SOTPS, select housing providers, and elected officials.
- In collaboration with the 5163 Implementation Subcommittee, SCC hosted a town hall style workshop to discuss roles, responsibilities, and mutual goals regarding the implementation of E2SSB 5163. Multiple stakeholders participated in this town hall.
- SCC hosted three workshops with SOTPs.
- SCC increased fee schedules for SOTPs.
- The Office of Public Defense (OPD) and SCC reinstated monthly meetings.
- SCC and prosecutors reinstated monthly meetings.
- SCC hosts monthly meetings with DOC.
- SCC invited stakeholders to case consultation meetings.
- SCC requested and received feedback regarding LRA housing from some defense attorneys. This included meetings early on in implementation to discuss the process of finding housing providers, and a more recent meeting to discuss areas of improvement.
- SCC established an invoice payment system for medical services, LRA service providers, and SOTPs to better streamline payment.
- Defense social workers have spent years developing professional relationships with SOTPs, housing providers and SCC staff. This supports community safety and successful transitions to the community. It is crucial SCC social workers, defense social workers, and other stakeholders work collaboratively.

[48] RCW 71.09.096(4)(b) requires LRA conditions to be "individualized, narrowly tailored, and empirically based".

Current Challenges with E2SSB 5163 Implementation

Zoning and 500ft rule restrictions

There are still ongoing challenges with zoning requirements and restrictions. The current 500ft distance restriction and the zoning requirement have impeded fair share. The primary objectives of E2SSB 5163 were increasing LRA options and fair share distribution throughout State of Washington. However, two amendments added on the House floor restrict placements within 500 feet of certain areas and require compliance with local zoning ordinances have had unintended consequences and impacted fair share. The goal of increasing safe and clinically appropriate LRA placements across the state is being undermined by discriminatory zoning ordinances and local community threats against providers and residents. Some of the issues identified have included:

- There remains confusion between a privately owned and contracted LRA house with a state owned and operated Secure Community Transition Facility (SCTF). SCTF requires siting pursuant to RCW 71.09.250.-290 while a privately owned LRA house is regulated by RCW 71.09.097.
- Since the law's passage, multiple municipalities have attempted to zone out LRA placements. In recent months at least one housing provider has cancelled its contract with the SCC as a result of community hostility, delaying the release of residents deemed safe to return to the community. In 2021, the Office of the Attorney General (AGO) issued an opinion outlining the myriad ways in which counties and municipalities may be violating the law by pursuing zoning laws and other local restrictions intended to prevent community placements from state facilities like the SCC.[49] If local communities continue to pursue these ordinances, they risk running afoul of the AGO's guidance on this issue. Moreover, if such actions result in community-based placements becoming so limited that residents with disabilities who are ready for release are instead warehoused at the SCC, the State and the SCC risk violating the integration mandate of the Americans with Disabilities Act.
- Community housing code and zoning code complaints, when baseless, cause delays and inconvenience to housing providers, DSHS, and DOC, as well as increased expenses to taxpayers.
- The 500ft restriction has necessitated housing in more rural locations, which can be harder to staff with chaperones, further from necessary services and SOTPS, and subject to increased scrutiny of community members.

[49] See Appendix E for further information.

- Various legislative initiatives were introduced in 2023 that would restrict, if not entirely eliminate, SCC's ability to create LRAs. These attempts to undermine the success of E2SSB 5163 and legislatively limit or prohibit LRAs not only fail to make the community safer, but they threaten the constitutionality of the entire civil commitment scheme. Such restrictions would also likely result in a violation of the settlement terms in *R.R. v. DSHS*, which require discharge planning and LRA facilitation for residents with cognitive disabilities.

The SOPB made three unanimous recommendations to the Legislature in December 2022 regarding zoning requirements and restrictions: [50]

Previous Recommendation Number 1:

- **The SOPB recommends that the 500ft rule in RCW 71.09.096(4)(a) be stricken.**

    - RCW 71.09.096
      (4)(a) Prior to authorizing any release to a less restrictive alternative, the court shall impose such conditions upon the person as are necessary to ensure the safety of the community. In imposing conditions, the court ~~must~~ **may** impose a restriction on the proximity of the person's residence to public or private schools providing instruction to kindergarten or any grades one through 12 ~~in accordance with RCW 72.09.340. Courts shall require a minimum distance restriction of 500 feet on the proximity of the person's residence to child care facilities and public or private schools providing instruction to kindergarten or any grades one through 12.~~ The court shall order the department of corrections to investigate the less restrictive alternative and, within 60 days of the order to investigate, recommend any additional conditions to the court.[51]

Previous Recommendation Number 2:

- **The SOPB recommends that the blanket rule for zoning requirements in RCW 71.09.097(2)(a) be removed.**

    - RCW 71.09.097
      (2) To facilitate its duties required under this section, the department shall use the following housing matrix and considerations as a guide to planning and developing less restrictive alternative placements. The following considerations may not be used as a reason to deny a less restrictive alternative placement.
      (a) Considerations for evaluating a proposed vendor's application for less restrictive alternative housing services shall include ~~applicable state and local zoning and~~

[50] *Updates Regarding Implementation of Chapter 236, Laws of 2021, July – December 2022*
[51] The reference to distance restrictions in 71.09.092(3) would also need to be stricken: "housing exists in Washington that ~~complies with distance restrictions,~~ is sufficiently secure to protect the community, and the person or agency providing housing to the conditionally released person has agreed in writing to accept the person, to provide the level of security required by the court, and immediately to report to the court, the prosecutor, the supervising community corrections officer, and the superintendent of the special commitment center if the person leaves the housing to which he or she has been assigned without authorization"

~~building codes,~~ general housing requirements~~,~~ **and** availability of public services~~, and other considerations identified in accordance with RCW 71.09.315.~~[52] ~~The department shall require the housing provider to provide proof that the facility is in compliance with all local zoning and building codes.~~[53]

Previous Recommendation Number 3:

- **The SOPB recommends that the definition of "secure community transition facility (SCTF)" under 71.09.020(16) and the definition of "secure facility" under 71.09.020(17) be clarified to provide a clearer distinction between SCTFs and community LRA housing.**

    - RCW 71.09.020
      (16) "Secure community transition facility" means 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.~~ **to be an SCTF. A facility or housing location under contract, or operated by the secretary, is not an SCTF unless the contract or the secretary indicate that the location is intended to be designated as an SCTF. Only SCTFs need to comply with the residential conditions listed in RCW 71.09.250 through RCW 71.09.330 and RCW 71.09.341 through RCW 71.09.344.**
      (17) "Secure facility" means a residential facility for persons civilly confined under the provisions of this chapter 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. **Secure facilities under RCW 71.09 are not necessarily designated as secure facilities under other statutes.**

[52] RCW 71.09.315 only applies to SCTFs as specified under RCW 71.09.315(4), not other contracted housing.

[53] This section should be removed as contrary to the provision in Title 9 which codifies that state laws regarding the residency of sex offenders preempt and supersede all local ordinances and regulations. RCW 9.94A.8445

The SOPB and 5163 Implementation Subcommittee unanimously support these recommendations. Detailed information is provided in our previous reports around the background and support for these recommendations.[54] The main takeaways include:

- The 500ft restriction is not evidence-based. After reviewing the research, the evidence suggests that placing a 500-foot rule is unrelated to safety and risk. There is no particular increase in risk associated with proximity to the location where individuals who have committed sexual offenses are housed.[55]
- Striking the 500ft rule will not negatively impact community safety because the current statute already requires the DOC to investigate a housing location for each LRA.[56]
- Fair share requires the SCC to negotiate with housing providers to provide housing in lesser-served counties. The 500ft rule undermines and discourages housing providers from contracts with the SCC.
- The 500ft rule and zoning restrictions undermine "fair share principles of release". "Fair share principles of release" means that each county has adequate options for conditional release placements in a number that is generally equivalent to the number of residents from that county who are committed.[57]
- The current 500-foot rule and zoning restrictions make it nearly impossible to place LRA housing in more urban areas, such as Seattle and other cities.
- It is likely that the new zoning restrictions violate federal and state constitutional and statutory law. This was the primary conclusion of the opinion letter from the AGO.[58]
- The definition of "SCTF" is distinct from the definition of "secure facility", and both definitions are being conflated with non-SCTF community LRA housing in the community, so further clarification is needed within the statutory language.

Despite that the recommendations were unanimous across the SOPB and 5163 Implementation Subcommittee, zoning requirements and restrictions remains a challenging topic, particularly for the community. There has been substantial public outcry on LRA housing and extensive efforts made at the community level to block LRA housing from being able to be established. As of this writing of this report, there has not yet been legislative action on these recommendations. We continue to recommend that the Legislature review and adopt these recommendations.

[54] *Updates Regarding Implementation of Chapter 236, Laws of 2021, January – June 2022* and *Updates Regarding Implementation of Chapter 236, Laws of 2021, July – December 2022*

[55] Please see the SOPB's 2014 report entitled *Review of Policies Relating to the Release and Housing of Sex Offenders in the Community*

[56] RCW 71.09.096(4)(a)

[57] RCW 71.09.020, *as amended by* Laws of 2021, Ch. 236, § 2

[58] Please see Appendix E for the full opinion by the Attorney General of Washington.

Housing provider shortages[59]

The Request for Proposal process has proved a difficult way to procure housing providers for this population. There is not a pool of providers actively seeking to serve this population. Rather, recruiting housing providers has been a long-term and painstaking process of relationship building and mutual trust. There are several established LRA housing providers across the state, however they are concentrated in a small number of counties: Pierce, King, Kitsap, Walla Walla, Spokane, Snohomish. Since E2SSB 5163 passed, DSHS has contracted with two new LRA homes, one in King County and one in Thurston County.[60] Unfortunately, the Thurston County home has withdrawn. Currently, three LRA homes in operation are contracted with the SCC. The remaining LRA homes house residents pursuant to court order. Nearly all counties are underserved in terms of the number of LRA placements available.

Some of the challenges identified include:

- The overall housing shortage statewide has resulted in frequent rental increases in LRA housing. SCC does not always agree to these increases despite rising costs.
- Contracting for housing of individuals with disabilities is difficult as a blanket one-size-fits-all contract cannot account for individual needs
- The structure and timing of LRAs are not easily translated into already established community housing practices, like leases, evictions, etc.
- As of yet, only 1 person has been successfully placed in a newly contracted LRA home since the passing of E2SSB 5163.
- SCC is new to the LRA housing process, and the understandable learning curve has compounded the frustration felt by new providers.
- Policy restrictions limit SCC's ability to contract with providers who have a criminal history, limiting their ability to contract with those with lived experience.

If SCC can contract with more housing providers in more areas, that would further the fair share goals of E2SSB 5163 and significantly reduce litigation.

Chaperone shortages

The SCC is working on recruiting community chaperones. This continues to be an area of needed growth. There remains a shortage of chaperones and the practice of using SCTF/SCC staff or utilizing existing staff as stop gaps has caused numerous problems. Likely the overall employee shortage is contributing to these difficulties.

[59] Information accurate as of the time of the writing of this report.
[60] For more information on how contracting between the SCC and housing providers currently works, please see Appendix I.

Treatment provider shortages

Washington has a shortage of certified Sex Offense Treatment Providers (cSOTPs) across the state. All providers working with 71.09 clients are currently under contract with the SCC. SOTPs are crucial in providing effective treatment to individuals who have committed sex offenses. The SOPB made recommendations to increase the capacity of SOTPs in our reports in 2021.[60] We continue to emphasize the crucial need for SOTPs in our state and encourage efforts to expand Washington's treatment provider pool.

The need for IT and intra-agency records-sharing

The Community Protection Act identified the importance of information sharing between agencies, to include DOC, DSHS, and law enforcement. The law also noted that "overly restrictive confidentiality and liability laws governing the release of information about sexual predators have reduced willingness to release information that could be appropriately released under the public disclosure laws, and have increased risks to public safety". [61] RCW 71.09 requires multiple agencies to share data classification Category 3 Confidential Information and Category 4 Confidential Information Requiring Special Handling documentation/data to follow the law. Currently the securities and firewalls of multiple agencies' Information Technology makes sharing this level of documentation difficult and creates slowdowns and limitations within the process.

In 2019, a LEAN project had been established between DOC and DSHS Special Commitment Center (SCC) that identified information sharing amongst agencies as a hurdle in continuity of care for residents as they transfer through the system under RCW 71.09. Participants included records staff from DOC's End of Sentence Review Committee (ESRC), DOC Civil Commitment program, paralegals from King County Prosecutor's office, paralegals from the AGO, Juvenile Rehabilitation Administration, DSHS SCC records, and DSHS Western State Hospital.

Some of the results and examples of issues identified through the project that involve Information Technology (IT) and records sharing include, but are not limited to[62]:

- Challenges with information sharing amongst all identified agencies including during referral, intake, transitioning, release to Less Restrictive Alternative (LRA) and release to Unconditional Discharge
- Referral for Sexually Violent Predator under RCW 71.09 by releasing agency.
- Residential Community Transition Team (SCC, DOC, and Community Treatment) document and information sharing/storage.
- Lack of resident documentation shared between agencies during LRA supervision.

[60] *Recommends to Increase the Capacity of Sex Offender Treatment Providers who serve Less Restrictive Alternative (LRA) clients* and *Recommendations and current practices for minors who have committed sex offenses*

[61] RCW 4.24.550: Finding ---Policy—1990 c 3 § 117

[62] For more information on the LEAN project, please see DOC's Proposal Request located in Appendix F.

- LRA discovery challenges including subpoena's being requested by multiple stakeholders to SCC and DOC, creating a duplication of work and potential for different records provided.
- Multiple agencies documenting and providing data for SVPs to media, community, legislators, and the Office of Financial Management.

Currently each agency uses different technology to share, track and store information. This is potentially risky as business workarounds may include information sharing practices that are not meeting security requirements for Category 3 and 4 data. Storage and retention is in multiple locations/agencies. A seamless IT approach to sharing information for individuals/residents as they transition from state facilities to the SCC DSHS back to DOC supervision under an LRA is needed. RCW 71.09 cases are statutorily mandated to be supervised by DOC; however, DSHS holds jurisdiction, ultimately creating a continuous need to share information throughout the process. Currently each agency has different approaches to identifying the Category of documentation and how to securely transfer that material from one entity to another. There is not a unified system for records sharing or storage and each agency has its own IT department that follows different guidelines (policies). This creates hurdles in the daily business practices. including extensive staffing costs across agencies and the potential for increased risks due to "work arounds" that may not provide the level of security necessary. Agencies impacted by the statutory records-sharing requirements include DOC, DSHS Western State Hospital, DSHS Eastern State Hospital, DSHS Special Commitment Center, AGO, King County Prosecuting Attorney, Department of Children Youth and Families Juvenile Rehabilitation, contracted community SOTPs, and defense council (multiple entities).

There is a need for a unified records system to address these concerns, which are only increasing due to the aging population of the SCC and given the rise of the pattern of releases. Washington needs to have a records-sharing system specific to the 71.09 process that is secure and reduces staffing burdens across agencies. This will allow the necessary information to be shared so that all the entities involved in the process are notified and able to apply that information, which ultimately protects the community and assists in a smooth transition for the individual. In order to reach the goal of a unified records system, the Legislature could consider continuing with DOC's proposed LEAN project to identify current business practices of each stakeholder group involved, create system-wide retention policies, and provide potential solutions to reduce staffing ad resource costs. Including WATech in this process could be helpful to see if, and which, resources exist and/or what system requirements would need to be met to make this project successful.

Recommendation (New):

- The SOPB recommends that a secure unified record system be developed that serves as a centralized hub for all records related to LRAs under RCW 71.09. This will help reduce staffing burdens across agencies, increase information sharing among stakeholders, and assist in protecting the community and providing a smooth transition for residents. WATech would be an appropriate entity to assist with this development. A unified system would need to protect confidential client information where applicable.

Clarity of roles is still necessary and in progress

With the changes of E2SSB 5163 and the relatively short time that has lapsed since the law took effect, the roles of each stakeholder in the 71.09 process are evolving and have continued to be discussed and defined. Role expectations is an area that all stakeholders continue to identify as a challenge and there is a need for continued and ongoing improvement and clarification.

Social workers

E2SSB 5163 established many new positions at the SCC, including the new job classification of psychiatric social workers. The role of the social worker is particularly unique in that the client of the social worker, regardless of who they are employed by, is the individual committed under RCW 71.09. Prior to the law changes in 2021, there were fewer resources available and social workers were limited to those employed by defense. With the resources allocated in E2SSB 5163, social workers have expanded to be employed by both the SCC and defense. The addition of the new psychiatric social workers employed by the SCC, along with the SCC's new role in discharge planning, has created a new dynamic that stakeholders are still adjusting to and learning to understand. This period of transition has been challenging for all stakeholders and is still ongoing. One of the main contributing factors is aligning stakeholder expectations of what the social worker role would be with the reality of the new social workers onboarding. Growing pains related to this process have occurred and are likely to continue until roles are fully clarified and defined. Delineation of differences in roles should be collaborative and worked out between the stakeholders and prioritize community safety and the resident's needs. It is likely going to continue to take time for the roles of each stakeholder to continue to become clarified, defined, and delineated.

Amend public disclosure of sex offender registry information without impacting public safety

Implementation of SB 5163 has highlighted concerns about public records requests and the safety of clients in the community. Individuals wishing to stop the release of LRAs have requested protected patient information and published it online. This is of concern given the number of online threats against residents and the property crimes that have occurred against proposed housing, including gunfire. The SOPB has submitted recommendations to the Legislature on this topic in three separate reports and we continue to recommend amendment of public disclosure of sex offender registry information in ways that will not impact public safety.

Previous Recommendations

- The SOPB recommends the following in order to correct the current contrast between RCW 4.24.550 and Washington's Public Records Act:
    - We recommend that RCW 4.24.550 be amended to add a new section: (12) Sex offender and kidnapping offender registration information is exempt from public disclosure under chapter 42.56 RCW, except as otherwise provided in 4.24.550.

- We recommend that RCW 42.56.240 be amended to add a new section: Information compiled and submitted for the purposes of sex offender and kidnapping offender registration pursuant to RCW 4.24.550 and 9A.44.130, or the statewide registered kidnapping and sex offender website pursuant to RCW 4.24.550, regardless of whether the information is held by a law enforcement agency, the statewide unified sex offender notification and registration program under RCW 36.28A.040, the central registry of sex offenders and kidnapping offenders under RCW 43.43.540, or another public agency

Public perceptions

There has been considerable community concern over the past several years with regards to individuals on LRAs returning to the community. The SOPB and stakeholders recognize that understanding the LRA process can be challenging and that there is concern from the community with regards to residents releasing from the SCC. SCC has had significant community pushback in successfully planning and executing LRAs. What has been alarming is the form that community outcry against this population has taken to, including picketing of landlord private homes, social media attacks and threats, and physical intimidation including gunfire. DSHS, along with WASPC, DOC, and local law enforcement, should continue to make education the primary focus of community notification and engagement to reduce fear and provide communities with the tools to keep themselves safe.

Continuing measures of accountability

The SOPB's oversight and monitoring of the implementation of the recent law changes related to E2SSB 5163 expired June 30, 2023. There are existing measures in place that continue to provide structures of oversight and both internal and external accountability:

Ongoing reporting to the legislature by the SCC

SCC Specialized Equipment and Medical Staff Report

This is a one-time report identified in ESSB 5092 due by November 1, 2023. Funds were allocated within the bill for the purchase of specialized equipment and additional medical staff. This would allow individuals housed at the Total Confinement Facility to receive treatment on island instead of off island.

LRA Regulatory Framework

This is a one-time report identified in ESSB 5187 due by December 1, 2023. Within this report, the SCC must:

- Explore regulatory framework options for conditional release to LRA placements,
- Make recommendations for a possible future framework,
- Review and refine agency policies regarding communication and engagement with local governments impacted by LRA placements,
- Identify opportunities for greater collaboration and possible fiscal support for local government entities regarding LRA placements, and
- Provide recommendations to improve cost-effectiveness of all LRA placements.

Statewide Accounting of SVP Housing and Treatment Providers

This is a bi-annual report required by RCW 71.09.097. This report requires the department to maintain a statewide accounting of contracted community and treatment providers in each county. This identifies the availability and adequacy of LRA placements and the ability to comply with fair share principles.

Violations, Penalties, and Actions Report

This is an ongoing annual report required by RCW 71.09.325. This report is a compilation of violations, penalties, and actions by DSHS to remove persons from an SCTF or terminate contracts.

SCC WiFi Assessment Report

This is a one-time report identified in ESSB 5187 due by December 15, 2023. This report will assess wireless internet implementation needs and options as well as estimated implementation time frames and costs for SCC.

Disability Rights Washington (DRW) lawsuit

In 2017 DRW filed *R.R. v. DSHS*, a federal lawsuit regarding the care and treatment of SCC residents with cognitive disabilities. The settlement in that case requires the creation of a therapeutic milieu, specialized sex offender treatment programming, and individualized treatment planning, including discharge planning, for class members. The settlement also requires ongoing monitoring by DRW as well as periodic review by a three-expert panel until the SCC is found in substantial compliance with the terms of the settlement.

Accreditation for the SCC's treatment program

The SCC is in the process of pursing accreditation through the Commission on Accreditation of Rehabilitation Facilities (CARF)[63]. This is a rigorous process that involves external oversight and the implementation of CARF best practice standards for at least 6 months prior to a thorough initial assessment for accreditation. The goal of seeking CARF certification is to have a treatment program that meets or exceeds the best practice standards established by a nationally recognized accrediting body. Achieving the standards of accreditation through CARF will demonstrate that the SCC program is in alignment with industry best standards and is committed to habilitation of residents and community safety.

There are essentially three overarching components of the accreditation process that are being pursued First is the set of CARF standards that specifically address business practice quality improvement. The CARF manual indicates "This quality framework focuses on integrating all organizational functions while effectively engaging input from all stakeholders, including persons served" [64] Next is the set of CARF General Program Standards that all programs seeking accreditation under the behavioral health category must meet. Some of the standards include components such as program/service structure, screening and access, person-centered plan, and more. Essentially, this set of standards are concerned with the program in general, the components of the program, and ensuring CARF best practices are implemented through policies, procedures, and the work being done. The final set of CARF standards are specific to Residential Treatment facilities. They include CARF best practice standards for components such as the physical environment, resident privacy and dignity, and services offered. In the simplest terms, CARF provides a measure of external oversight by assessing the program and service structure as a whole against the established standards of CARF best practice and providing assessment results including potential areas in need of improvement to the participating facility.

SCC is poised to meet the standards of CARF accreditation through effective sponsorship, project management, and change management efforts. The SCC is currently in the planning stages of seeking accreditation. The CARF 2023 standards manual has been purchased and disseminated to the appropriate staff, project tracking instruments have been developed into draft versions, and a timeline for project kickoff will be determined by SCC Leadership. At this time there is no

[63] For more information on CARF accreditation, see here.
[64] Commission on Accreditation of Rehabilitation Services. (2023). *Behavioral Health Standards Manual.* (p.27).

prediction regarding the exact timeline the application for certification to be submitted as a comprehensive assessment of the current state as compared to the CARF accreditation standards must be completed as a first step.

Inspection of care (IOC) team[65]

External individuals who are recognized as experts in the field provide thorough reports to the SCC analyzing the facility and program. The reports include recommendations for areas of improvement. These reports follow a weeklong visit where the experts have access to the facility, staff, and residents. The visits take place twice a year. One visit is dedicated to inspecting the total confinement facility, treatment, and resident care. The second visit is dedicated to inspecting the discharge program, including the SCTF-PC and high acuity program.

LRA process includes court oversight

When a resident is released on an LRA, it is pursuant to a court order. Only a superior court judge can order a person to be conditionally released.[66] That Court orders many conditions of release - usually around 20 pages that govern the persons residence, supervision, treatment and movement into the community.[67] Prior to ordering conditional release, the Court must address whether the release comports with fair share principles, if DSHS/SCC planned the LRA.[68] The court must also determine that the minimum conditions in RCW 71.09.092 are met and that conditions exist that will both ensure the individual's compliance with treatment and protect the community.[69] The treatment provider must file regular updates with the Court, keeping it apprised of treatment progress.[70] At least once a year the Court must hold a hearing to review the conditional release to ensure it remains in the person's best interest and adequate to protect the community.[71] The Court can review the LRA more frequently on its own or a party's motion.[72] During the LRA the Court retains the power to modify or revoke the LRA if circumstances warrant.[73] The prosecuting agency, DOC, SOTP or the SCC can request an immediate hearing if they think a violation has occurred or the person is in need of additional care, monitoring, supervision or treatment. [74] If DOC, the SCC, or law enforcement reasonably believe that a violation or additional need is because the person presents a danger to themselves or others, then the person can be arrested and held until a hearing occurs.[75]

[65] IOC process/scope is found at WAC 388-881
[66] RCW 71.09.096(1)
[67] RCW 71.09.096(2) & (4)
[68] RCW 71.09.096(5)
[69] RCW 71.09.096(2)
[70] RCW 71.09.092(2)
[71] RCW 71.09.098
[72] RCW 71.09.096(8)
[73] RCW 71.09.0986 & .098
[74] RCW 71.09.098(1)
[75] RCW 71.09.098(2)

Chapter III:
Community Protection Program

Community Protection Program (CPP) Prohibition

Our response to: "The board shall also explore and make recommendations whether to continue or remove the prohibition on a less restrictive alternative from including a placement in the community protection program pursuant to RCW 2271A.12.230."

The Community Protection Program

The Community Protection Program (CP) is a community-based program administered by DSHS, Developmental Disabilities Administration (DDA). It receives significant federal funding through a Home and Community Based Services (HCBS) waiver that is periodically reviewed by the Center for Medicaid Service (CMS) under §1915(c) of the Social Security Act. Under RCW 71.09.020(7), sexuall violent predator (SVP) LRAs cannot "include placement in the community protection program."[76] Practitioners have interpreted this provision as prohibiting LRA placements in CP, whether or not CP is expressly included in the LRA conditions of release. The Legislature tasked the SOPB to "explore and make recommendations" as to whether to continue or remove this prohibition.[77]

CP provides "a structured, therapeutic environment" for qualifying persons "in order for them to live safely and successfully in the community while minimizing the risk to public safety."[78] To be eligible for CP, a person must have a developmental disability, have a history of sexual or violent acts, and pose a continued risk to others.[79] A qualifying offense under the SVP statute is also a qualifying offense for CP. [80] CP provides a robust array of supportive living services, including, where appropriate, 24-hour supervision, ongoing sex offense treatment, day programming, supportive employment services, positive behavioral support and assistive technology.[81] Enrollment and participation is voluntary (a necessary requirement for any HCBS waiver) but if a qualifying participant refuses to engage with the program then they lose all DDA-paid residential, employment and day programming services.[82]

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[76] RCW 71.09.020(7)
[77] E2SSB 5163 §14
[78] RCW 71A.12.200
[79] RCW 71A.12.210.
[80] RCW 71A.12.210(1)(a)(i)(A)
[81] WAC 388-845-0220; DDA reports that it financially supports sex offense treatment when a participant is supervised by DOC or enrolled in a state medicaid plan program.
[82] WAC 388-831-0250. DDA administers other HCBS waiver programs but if the person is determined to need a CP-level of care then they are generally ineligible for all other waivers administered by DDA. If they decline CP they can still "receive case management services and community first choice or medicaid personal care services," if otherwise eligible. WAC 388-831-0160.

History of CP and the RCW 71.09 Prohibition

CP began as a "Community Protection Initiative" proposed by DDA in its 1997 Supplemental Operating Budget request. DDA sought to "move 40 developmentally disabled clients currently residing in community settings into more secure Intensive Tenant Support settings with 24-hour supervision," noting that "these clients have histories of sexual violence, physical assault, and arson and are considered high risks to the communities where they live."[83] The legislature funded the original initiative, continued the funding in the 1997-1999 Biennial Operating Budget, and then tripled the size of the program in the 1998 Supplemental Operating Budget. The Community Protection Initiative still did not exist in statute and was simply administered internally by DDA. In 2001, the agency issued a chapter in its Policy Manual governing the program, setting out criteria that would later be adopted in statute (including that a qualifying offense under the SVP law was also a qualifying offense for the initiative).[84]

CP aimed to reduce the unnecessary institutionalization of this subset of persons while safely managing their risk of violent or sexually aggressive behavior. This proved to be a natural fit with medicaid waiver funding. Beginning in the early 1980's, Congress began providing matching funds to support community-based care of disabled persons ("medicaid waiver" programs).[85] These medicaid wavier programs exist to support aged, disabled or mentally ill persons that would otherwise be institutionalized.[86] The Community Protection Initiative was formally approved as a medicaid waiver program in 2004. The initiative became a statutorily-authorized program with the enactment of Senate Bill 6630, originally entitled "Protecting communities from individuals with behaviors that pose a threat of violence or sexual violence".[87] Persons with sex offense history were a key target population for the program. Per one bill report, among the roughly 400 total program participants at that time, 80% demonstrated sexually aggressive behavior and 25% were already registered as sexual offenders.[88]

The original 10 sections of the bill (formally adding the Community Protection Program to RCW 71A.12) were considered by committees in both the House and Senate and were subject to a public hearing in the House. But an additional 2 sections of the bill (§10 and §11) were inserted by a floor amendment just before final passage in the House, meaning their text was never reviewed in committee or subject to any public hearing.[89] The new language in §10 was the RCW 71.09 LRA exclusion that the SOPB has been asked to re-evaluate here. No other group or class was excluded by the text.

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[83] Budget request archived at: https://www.digitalarchives.wa.gov/GovernorLowry/bud97/suppbud/300040rx.htm
[84] Archived manual available at link.
[85] See SSA §1915(c) (enacted as 42 USC 1396n)
[86] SSA §1915(c)(1) and (d)(1), 42 CFR 441.301(b)(6)
[87] Chapter 303, Laws of 2006
[88] Second Substitute House Bill Analysis for E2SSB 6630, available at: https://lawfilesext.leg.wa.gov/biennium/2005-06/Pdf/Bill%20Reports/House/6630-S2.HBA.pdf?q=20230629105713
[89] House Journal, 59th Legislature, at 939

Since the revised §10 was adopted by a floor amendment late in the process its rationale is difficult to discern. When SB 6630 returned to the Senate—after §10 had been amended by a floor vote in the house—only cursory consideration of the amendment occurred before it was adopted by a voice-vote on the Senate floor.[90] There was no floor discussion of the SVP law or Medicaid waiver requirements. Only one Senator—the prime sponsor of the bill—briefly spoke on the amendment, inaccurately stating (emphasis added):

> Their amendments do two things and they were well-worked by all of the stakeholders in the House. *We made some clarification that Community Protection placements will not be a place for sex offenders.* And we also made some technical amendments. I urge a yes vote.[91]

This was a curious statement given that people with sexually aggressive behavior were the primary population served by the existing initiative, and the floor amendment did not, in fact, actually exclude all persons with sex offense history from the program—just RCW 71.09 LRAs. No other legislative history has been located to understand the origin of the amendment to §10 or why RCW 71.09 LRAs were singled out at that point in time.

[90] Senate Journal, 59th Legislature, at 1258
[91] video available via TVW

Recommendation

Recommendation (New)

The SOPB recommends that the prohibition in RCW 71.09.020(7) that prevents placement of a less restrictive alternative in the community protection program be stricken.

Background

The SOPB finds that there are significant potential benefits in allowing persons committed under RCW 71.09 to be authorized to participate in CP while on LRA. First, permitting access to CP services while on LRA would leverage CP-contracted programs and State-operated Living Alternatives (SOLA) that have an established track-record of safely supporting persons with similar history in community-based settings. Second, supportive living costs for such persons are often very expensive. CP participant costs are substantially off-set by federal medicaid funding. These federal benefits are currently utilized in multiple legal contexts, both in Washington[92] and in at least one other SVP program[93] Nevertheless, some stakeholders have expressed concern that allowing RCW 71.09 LRAs to access CP services may jeopardize the waiver granted by CMS because of the restrictiveness of standard LRA conditions. Such an outcome cannot be risked given our State's reliance on this waiver to safely serve many Washingtonian citizens who have a history of sexual or violent criminal acts. The SOPB sought a conclusive answer from CMS on this question.

Compliance with CMS HCBS Waiver Requirements

CMS has adopted numerous regulations to ensure that waiver programs adhere to best-practices in the field. These generally ensure a person-centered process, a person-centered service plan and a true home and community-based setting.[94] These regulations require voluntary participation by the person and respect for individual autonomy and privacy. Participation in a waiver program cannot be court-ordered, and the program cannot abridge the person's individual right to privacy nor their right to have guests and keep their own schedule.

In contrast, RCW 71.09 LRAs are all court-ordered and routine supervision conditions include searches by DOC at any time and pre-approval of all guests and community travel, among many other conditions. But some persons currently in CP (and other HCBS waiver programs) are subject to conditions of sentence or other court-ordered requirements that would also run afoul of HCBS regulations. The key distinction is that an external authority imposes and enforces these rules rather than the CP program or setting itself. Indeed, stakeholders must exercise care in implementing this option for LRAs as court-ordered participation in CP and CP enforcement of routine LRA conditions would violate federal regulations and jeopardize CMS approval of the CP waiver. But a

[92] RCW 71.05 LRAs and Special Sex Offender Sentencing Alternative (SSOSA) cases
[93] Minnesota. Scott Halvorson, Reintegration Director of the Minnesota Sex Offender Program, confirms that MSOP clients on provision discharge from their total confinement facility have accessed services under their state's Elderly Waiver and Community Access for Disability Inclusion (CADI) Waiver. Per the Minnesota House Research Department these are both HCBS waiver programs: https://www.house.mn.gov/hrd/pubs/ss/sshcbswv.pdf
[94] See 42 CFR 441.301

person's LRA status while participating in CP services is not inherently in conflict with federal regulations if court-ordered conditions are not enforced by CP but instead by DOC, which is consistent with the existing law.[95]

The SOPB asked CMS to confirm this analysis by posing two inquiries with examples. The inquiries and CMS responses are included here in-full:

Question 1	**If an authority independent of a HCBS-funded program imposes conditions on a person that are more restrictive than permitted by HCBS regulations—but the program/residential setting do not impose or enforce those conditions—can the person receive services from the HCBS-funded program?** Example: Independent of a HCBS-funded program, a judge requires that a person is not allowed to have visitors in their home unless approved by a probation/parole officer and further authorizes that the officer can randomly search the person's living spaces at any time to monitor compliance with the judge's other conditions. These conditions presumptively violate 42 CFR § 441.301(c)(4)(vi)(D) (right to visitors of their choosing) and (4)(iii) (individual right to privacy). So long as the HCBS program (and the residential setting, in particular) are not imposing or enforcing such conditions, can this person be served by a HCBS-funded program?
CMS Response	Since the setting in question has not imposed the restrictions and they are not blanket restrictions, the participant can receive HCBS services. The state will need to codify restrictions/modifications in the PCSP otherwise, there is no settings violation so long as the state and setting follows the Medicaid regulations on PCSP and implements the modified plan as found at 42 CFR 441.301(c)(2)(xiii). The following requirements must be documented in the person-centered service plan: (A) Identify a specific and individualized assessed need. (B) Document the positive interventions and supports used prior to any modifications to the person-centered service plan. (C) Document less intrusive methods of meeting the need that have been tried but did not work. (D) Include a clear description of the condition that is directly proportionate to the specific assessed need.

[95] See RCW 71.09.096(4)(a), all LRAs are required to be supervised by DOC.

(E) Include a regular collection and review of data to measure the ongoing effectiveness of the modification.

(F) Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.

(G) Include informed consent of the individual.

(H) Include an assurance that interventions and supports will cause no harm to the individual.

Question 2	**If the answer to (1) is yes, can a HCBS-funded setting observe and report compliance with these more restrictive conditions to the third-party authority (court or probation/parole officer) without jeopardizing compliance with HCBS regulations?** Example: Staff for a HCBS-funded residential setting agree to notify a court or probation/ parole officer if they become aware of a violation of the judge's conditions. Against the judge's orders, a person has a guest at the home that has not been pre-approved by their probation/parole officer. The setting staff call the officer and tell them this has occurred, refraining from requesting or recommending any action but knowing that the officer might independently decide to arrest the person and return them to custody for the violation.
CMS Response	Medicaid regulations do not contemplate any requirements for the setting or the state to report to a third party. This is outside of the regulations/scope of the Medicaid program. This decision is up to the state.

Conclusion

The answers received from CMS confirm that the restrictiveness of standard LRA conditions are not inherently in conflict with receiving services under a medicaid waiver program, provided that stakeholders are careful to respect the voluntary nature of CP participation and ensure that CP services are not deputized in the enforcement of more restrictive LRA conditions. While there are further implementation questions to be resolved by stakeholders, striking the ban in RCW 71.09.020(7) would allow for the CP program to be considered as a potential placement option for residents who could benefit from the increased services and support of CP.

Chapter IV:
Additional Recommendations

What we recommend

This is the SOPB's final report in response to the Legislature's request in Chapter 236, Laws of 2021. In addition to the implementation updates provided in the proceeding sections, we list our 2 supplementary recommendations below.

Icon key
Next to each recommendation, you will see an icon that indicates:

 We need action from Legislature

 We need additional funds from Legislature

 We need internal agency action

 We had unanimous support

No. 1



The SOPB recommends that a secure unified record system be developed that serves as a centralized hub for all records related to LRAs under RCW 71.09. This will help reduce staffing burdens across agencies, increase information sharing among stakeholders, and assist in protecting the community and providing a smooth transition for residents. WATech would be an appropriate entity to assist with this development. A unified system would need to protect confidential client information where applicable.

No. 2


The SOPB recommends that the prohibition in RCW 71.09.020(7) that prevents placement of a less restrictive alternative in the community protection program be stricken.

Chapter V:
Status Update on Previous SOPB Recommendations (2020-2023)

A status update on
Previous SOPB recommendations (2020-2023)

2020 Recommendations

No. 1

The SCC should incorporate a statement into each individual's treatment plan that addresses their potential release. The Legislature would need to allocate funding for this to happen.

Legislature adopted

See RCW 71.09.080 ▶

No. 2

DSHS and the SCC should explore how to develop community transition facilities**.** This may include community-based, state-operated living alternatives such as the current SOLA model.

Legislature adopted

See RCW 71.09.250 ▶

No. 3

The Legislature should allocate funding for SCC social worker positions. This will offer various services to an individual before their release.

Legislature adopted

See RCW 71.09.096 ▶

No. 4

The clinical pass off between the community SOTP and the last treating clinician at the SCC should occur no later than 15 days before an individual's release from the SCC.

Adopted without Legislative action

See RCW 71.09.096(6)(b)(ii) ▶

No. 5

A Memorandum of Understanding should be created between the SCC, the Office of Public Defense, and the prosecutorial agencies. This would ensure we could disseminate records/discovery as quickly as possible to minimize delays around DOC discoveries relevant to its investigation of the LRA plan.

Current status:

SCC, DOC and the state are working on process improvement and continue to update and address needs in this area as necessary without legislative action. There are barriers and challenges with resources related to records, record sharing and technology restraints.

No. 6

The SCC should make changes to, or enter into, any MOU between the SCC and the Department of Licensing. This could help SCC residents obtain a state ID with their SCC ID badge and a SCC verification letter (the DOC currently allows this).

Legislature adopted

See RCW 71.09.370 ▶

No. 7

The SCC should include an ala carte type of self-referral or opt-in for adjunct classes (such as ADLs, cooking, budgeting, etc.) that relate to more general community issues. This would be in addition to Bridging Transitions and the core group of classes that apply to all releases.

Current status:

SCC offers a number of weekly classes for residents whether in the secure community transition facility (SCTF) or total confinement facility (TCF). These classes are designed to prepare the resident for transitioning back into the community, without legislative action.

No. 8

The clinical team should administer a comprehensive needs assessment before an individual's release from the SCC. This assessment helps the SCC identify skills the individual needs to help them be successful in the community.

Legislature adopted

See RCW 71.09.097: (LRAs only) ▶

See RCW 71.09.080: (All civilly committed persons) ▶

No. 9

The SCC should create a document checklist for SCC staff to use during intake.

Current status:

SCC adopted this recommendation and created a document checklist, without legislative action.

No. 10

The SCC should update Policy 202 with the procedure for their staff to follow if they receive a photo ID in the mail. This includes how to store documents and how to return the documents to the resident during their discharge.

Current status:

SCC has begun updating policy 202, without legislative action

No. 11

The defense, prosecution, community SOTP, SCC clinical staff, and DOC should meet in advance of the conditions hearing and then work together to craft individualized, narrowly tailored and empirically-based conditions. These conditions will help the client more successfully transition to the community. Moving the meeting up in the process (it currently occurs *after* the LRA has been agreed to or ordered) could also help diminish liability concerns.

Legislature adopted

See RCW 71.09.096 ▶

No. 12

The SCC should have the primary responsibility for LRA planning. This will require funding for additional SCC staffing. Specifically, we recommend adopting the language in HB 2851, Section 3 (Page 9). The language states that the court will order the SCC to develop an LRA placement for the resident after a show cause hearing.

We estimate a 90-day maximum allotment for the SCC and DOC to investigate and contract the relevant LRA components (housing, SOTP, etc.). If they do not recommend release, they can still put the proposed LRA plan together. But the SCC must note that they're submitting it because of a court order and not because of a clinical determination.

Legislature adopted

See RCW 71.09.090 ▶

No. 13

We believe that all LRAs should have an individualized case plan that lessens the resident's conditions or removes obstacles as they successfully transition into the community. The board agrees that stakeholders can develop better step-down procedures that promote community safety, are clinically sound, and are in the individual's best interest. This may include statutory revisions around SCTFs, interagency memorandums about the transition process, and removing obstacles to successful transitions.

Current status:

SCC has taken steps to create individualized case plans, but the recommendation has not been fully implemented

No. 14

The SOPB recognizes there is a potential issue with the availability and quality of SOTP providers as LRA numbers increase. Stakeholders noted that there are ongoing issues that need to be resolved. However, these issues were not fully developed during the subcommittee discussions and would require further data gathering and analysis before the full board could make recommendations.

Current status:

The SOPB required further data and analysis before making recommendations during its 2020 session. During the 2021 session, the SOPB made several recommendations to the legislature for improvements to increase the availability and quality of SOTP providers, including recommendations regarding funding and education. The legislature has not yet considered the 2021 recommendations.

No. 15

The SOPB recommends the state adopts and uses the SCC's Regional Placement Model.

Adopted without legislative action

No. 16

The SOPB recommends the state adopts and uses the SCC's SCTF Siting Matrix.

Legislature adopted

See RCW 71.09.097 ►

No. 17

The SOPB recommends the state adopts and uses the SCC's SCTF Community Engagement Strategy.

Adopted without Legislative action

No. 18

The SOPB recommends that the SCC document and formalize a process that details when to present ESRC with cases to review.
The SCC presents a case for review to the ESRC when 1) the court orders DOC to investigate a proposed placement and 2) the SCC gets notice that a resident is likely to unconditionally release.

Current status:

SCC has formalized a process that details when to present ESRC with cases to review without legislative action

No. 19

The SOPB recommends that the DOC Civil Commitment Unit add an educational component around the state sex offender public website to use during discussions with community members. The unit may consider formalizing this recommendation by adding it to their training and investigation guideline materials. The SOPB also recommends that the DOC's CCU develop a consistent approach to interviews with community members. This includes the primary factors that clearly distinguish the process from the community notification process.

The public website (www.wasor.org) was updated to provide additional educational information and the link for the FAQ was moved to be more accessible. The WASPC website also was updated to include the FAQ so that community members could locate it easily. WASPC created and printed the brochures for Law Enforcement. WASPC also provided our Civil Commitment Unit Specialists with the public brochures to provide to any concerned community members during their investigation. DOC's Civil Commitment Unit Specialists follows the WASPC model policy when working with Law Enforcement during Community Notification meetings.

Adopted without Legislative action

DOC and WASPC adopted this without Legislative action.

No. 20

The SOPB recommends that the SCC document and formalize its process for submitting cases to ESRC for review.

Current status:
SCC has formalized a process that details when to present ESRC with cases to review without legislative action

No. 21

The SOPB recommends that the King County Prosecutor's Office and the Office of the Attorney General notify the SCC of upcoming trials. This will better prepare the SCC for potential releases.

Adopted without Legislative action

Attorney General and King County prosecutor's offices had adopted this practice without Legislative action

No. 22

The SOPB recommends that the SCC should document and formalize various resources they may use to obtain a resident's release address (i.e., defense attorney, prosecutor, DOC, etc.) when a resident is unwilling or unable to provide this information.

Current status:

SCC has an informal process for obtaining a release address without legislative action. The SCC utilizes resources from the defense, the State and DOC to obtain residents' release addresses.

No. 22a

The SOPB also recommends that the SCC formalize its law enforcement notification process. This helps ensure that release information is sent to the Washington Association of Sheriffs and Police Chiefs, and other entities listed in law (RCW 71.09.140).

Current status:

SCC is in the process of creating a new policy regarding law enforcement notifications. SCC met with a doc and WASPC representative to discuss what changes they would like to see without legislative action.

No. 23

The SOPB again recommends that the SCC formalize its law enforcement notification process. This will ensure that the SCC releases information to the Washington Association of Sheriffs and Police Chiefs, and other entities listed in law (RCW 71.09.140).

Current status:

SCC is in the process of creating a new policy regarding law enforcement notifications. SCC met with a doc and WASPC representative to discuss what changes they would like to see without legislative action.

No. 24

The SOPB recommends that the AGO and the KCPAO provide notice of upcoming hearings. This will help the SCC properly prepare for potential 24-hour dismissals.

Adopted without Legislative action

Attorney General and King County prosecutor's offices had adopted this practice without Legislative action.

No. 25

The SOPB recommends that the SCC further discuss if securing its emails is necessary, and if so, in what instances.

Adopted without Legislative action

SCC adopted this recommendation without Legislative action. The SCC follows BHA policy 9.04 "Secure Application, Development, and Administration" in deciding when to use secure emails. Pursuant to that policy, the SCC sends secure emails when emailing external stakeholders and using a resident's full name or other sensitive information. An email is sent as secure by adding [Secure] to the subject line.

No. 26

The SOPB recommends that the SCC include (in its written and formal law enforcement notification policy) that pre-registration should be used to provide an updated final release address to the correct law enforcement agency.

Current status:

This is being formally addressed in the new policy addressed in No 22.

No. 27

The SOPB recommends that the DSHS Victim/Witness Notification Program coordinate with WASPC to include more about how program participants can access the state sex offender public website and obtain additional information. This can best support victims and witnesses after a resident's release.

Adopted without Legislative action

WASPC created and made available handouts to be sent to enrollees with their notification letters without Legislative action

No. 28

The SOPB recommends that the SCC add a line to their notification emails to request that the reader does not send the email to other people.

Adopted without Legislative action

Although not adopted by the legislature, SCC has incorporated this recommendation by adding the following to its notification emails:

"This e-mail communication and any attachments may contain confidential and privileged information for the use of the designated recipients named above. Information regarding this notification should not be distributed or forwarded to parties outside of the distribution list and is for official business only. (Emphasis in original)."

No. 29

The SOPB recommends that WASPC reviews the existing state sex offender public website and works with their vendor to more prominently display information, facts, and FAQs on the registered sex offender population. In addition, WASPC may consider developing additional information and resources for appropriate groups so those groups can give the information to community members.

Adopted without Legislative action

WASPC updated its public websites for every county, the generic page, updated the main website to include an updated FAQ sheet, and brochures have printed and available at no cost without Legislative action.

No. 30

The SOPB recommends that WASPC adds information about community notification to the public website and include this information in the additional resources they may develop in response to recommendation 29**.**

Adopted without Legislative action

WASPC updated its public websites for every county, the generic page, updated the main website to include an updated FAQ sheet, and brochures have printed and available at no cost without Legislative action

No. 31

The SOPB recommends that WASPC includes more information on the public registry website about the purpose of community notification, and in any documents they may develop in response to Recommendation 29.

Adopted without Legislative action

WASPC updated its public websites for every county, the generic page, updated the main website to include an updated FAQ sheet, and brochures have printed and available at no cost without Legislative action

No. 32

The SOPB recommends that WASPC updates their model policy to reflect the need to use current photographs on the state public website, notification bulletins, flyers, and other materials intended for public information.

Adopted without Legislative action

WASPC updated their model without legislative action

No. 33

The SOPB recommends that WASPC adds additional information to their model policy to standardize community notification meetings. The board also recommends that WASPC continues to update their resources page for local law enforcement and adds any additional resources, such as educational flyers (if/when they are created). Finally, we recommend that WASPC considers providing additional training/discussion at SONAR meetings.

Adopted without Legislative action

WASPC is in an ongoing process to add information to their model without Legislative action

No. 34

The SOPB recommends the SCC has additional involvement in LRAs. When that does happen, the SCC should use an LRA Housing Matrix to find housing for residents releasing to an LRA.

Legislature adopted

See RCW 71.09.090 ▶

See RCW 71.09.097 ▶

No. 35

The SOPB recommends that the Legislature request that the board continues to provide input and guidance for these recommendations. This can happen through SOPB quarterly meetings, for example**.**

The SOPB understands the dire financial situation the state faces because of COVID-19. While it is unlikely the Legislature can fully and timely fund the necessary investments we mention in this report, the SOPB recommends that the Legislature pursue incremental investments. This can help stakeholders incorporate these recommendations.

We recognize it will take time to implement these changes, bring about the necessary rule changes, hire staff and conduct the recommended outreach to providers and stakeholders. Plus, the collaboration with SCC and other stakeholders, will facilitate communication across all spectrums of this community. Finally, we believe the board's semiannual updates to the Legislature should continue. We can do this through supplemental reports and meetings with Legislative leadership.

Legislature adopted

RCW 71.09.810 ▶

2021 Recommendations

No. 1

Option A: For defense-proposed LRAs Sex Offender Treatment Providers (SOTPs) shall be required to contract with DSHS' Special Commitment Center prior to being Court Ordered to provide treatment for a Sexually Violent Predator under a Less Restrictive Alternative.

Option B: For defense-proposed LRAs Sex Offender Treatment Providers (SOTPs) should not be required to contract with DSHS' Special Commitment Center prior to being Court Ordered to provide treatment for a Sexually Violent Predator under a Less Restrictive Alternative.

Current status:

As of the writing of this report, all treatment providers working with LRA clients are under contract with the SCC, though this is not currently a requirement under RCW 71.09.

No. 2

The SCC and DOC should conduct a comprehensive review of the implementation of SB 5163, in consultation with the Office of Public Defense, the Attorney General's Office, Treatment Providers, and other RCW 71.09 stakeholders, and report back to the SOPB in two years (24 months).

Current status:

Update: In Chapter 236, Laws of 2021, the Legislature directed the Sex Offender Policy Board to monitor implementation of the legislation and provide semiannual reports to the Legislature. Please see the following reports regarding implementation in addition to this report:

- *Updates Regarding Implementation of Chapter 236, Laws of 2021, January – June 2022*[1],
- *Updates Regarding Implementation of Chapter 236, Laws of 2021, July – December 2022*[2]

[1] *Updates Regarding Implementation of Chapter 236, Laws of 2021, January – June 2022*

[2] *Updates Regarding Implementation of Chapter 236, Laws of 2021, July – December 2022*

No. 3

The SCC and DOC should conduct a review of billing practices in other states and to consult with other stakeholders in Washington about these issues, in order to make recommendations regarding changes to LRA SOTP reimbursement rates and the scope of billable work. Those recommendations should be included in future budget requests to ensure adequate funding of any changes. An increase in pay rates has been identified by SOTPs and the SOPB as a necessary change to attract and retain qualified providers. An increase in pay rates should be adopted given the financial constraints identified by the SOTPs and the imminent need for more providers to serve LRA clients.

Adopted without Legislative action

All SOTP hourly rates have been increased and have been incorporated into the contract.

No. 4

Annual or biannual trainings should not be mandatory for prospective and existing SOTPs who work with LRA clients. However, there is a need to expand the number of professional development trainings and CEU opportunities available for contracted providers.

Current status:

SCC and treatment providers are working together to ensure compensation for providers during SCC hosted trainings and events.

No. 5

The SOPB recommends that a cost-of-living pay increase be considered as an incentive for providers who work with LRA clients.

Current status:

This has been discussed but not implemented.

No. 6

The SCC should incentivize providers who contract with them by paying for a portion of their continuing education units (CEUs) specific to their SOTP credential and/or trainings that may be necessary for treatment of LRA clients or the specialized population.

Current status:

At this time, CEUs are not covered or reimbursed. In the future, the SCC hopes to conduct these trainings but has not done so yet. If the SCC is overseeing the training to the SOTPs, the SCC will compensate the providers for their time per their contract.

No. 7

Cover costs associated with traveling to McNeil Island while carrying out LRA treatment.

Adopted without Legislative action

The SCC will cover costs associated with traveling to McNeil Island under the guidelines below:

a) **Travel Expenses Requiring Preapproval.** The following types of travel expense reimbursement shall be subject to preapproval and are subject to State of Washington Travel Reimbursement guidelines (http://www.ofm.wa.gov/resources/travel.asp) in effect at the time of service for the county in which Services are provided and shall be limited to the following:

   (1) Lodging at a commercial lodging facility.

   (2) Up to three (3) meals per day as actually purchased, during the period in which the Contractor is providing Services.

   (3) Air fare for travel between the Contractor's place of business and the location where Services are provided. (Note: Preapproved air travel shall be reimbursed at coach or economy rates, whichever is least expensive. The Contractor shall not be reimbursed for any insurance the Contractor purchases from the airline, ticket vendor, or any other provider of travel insurance.)

   (4) Parking of the Contractor's personal vehicle at a parking facility serving the airport of departure, at the most economical rates available.

   (5) Car rental while at the destination location, at either economy or mid-sized rates, for the days when services are provided. (Reimbursement shall not include any insurance the Contractor purchases from the car rental company/vendor.)

   (6) Up to $20 reimbursement for automobile fuel, or as otherwise approved by the DSHS Contract Manager.

b) **Receipts.** Receipts for all lodging, air fare, parking, car rental, and automobile fuel expenses to be considered for reimbursement must be attached to invoices submitted to SCC.

No. 8

NEEDS LEGISLATIVE ACTION

The Legislature should create a temporary funding stream or grant to subsidize the cost of SOTP licensure fees for new and renewing providers who treat LRA clients. High costs of obtaining certification is cumbersome and a barrier.

2022 Recommendations

No. 1

NEEDS LEGISLATIVE ACTION

The SOPB recommends that the 500ft rule in RCW 71.09.096(4)(a) be stricken.

No. 2

NEEDS LEGISLATIVE ACTION

The SOPB recommends that the blanket rule for zoning requirements in RCW 71.09.097(2)(a) be removed.

No. 3

NEEDS LEGISLATIVE ACTION

The SOPB recommends that the definition of “secure community transition facility (SCTF)” under 71.09.020(16) and the definition of “secure facility” under 71.09.020(17) be clarified to provide a clearer distinction between SCTFs and community LRA housing.

2023 Recommendations

No. 1

NEEDS LEGISLATIVE ACTION

The SOPB recommends that a secure unified record system be developed that serves as a centralized hub for all records related to LRAs under RCW 71.09. This will help reduce staffing burdens across agencies, increase information sharing among stakeholders, and assist in protecting the community and providing a smooth transition for residents. WATech would be an appropriate entity to assist with this development. A unified system would need to protect confidential client information where applicable.

No. 2

NEEDS LEGISLATIVE ACTION

The SOPB recommends that the prohibition in RCW 71.09.020(7) that prevents placement of a less restrictive alternative in the community protection program be stricken.

Appendices

Appendix A

Creation of the Community Protection Act

Between 1988 and 1989, violent sexual crimes in Washington State led to the enactment of the 1990 Community Protection Act. These three cases were the basis for the Act. This information comes from Supreme Court decision *State v. Dodd*, 120 Wash.2d 1, 838 P.2d 86 (1992), DOC criminal history summaries, and is representative of general facts. ***Warning: The below material may be triggering for some readers and is being included in an effort to provide historical context.**

- Gene Raymond Kane: In July 1976, Mr. Kane threatened a woman with a knife and she escaped. The next day, he threatened another woman with a knife and attempted to rape her. He was convicted of Assault in the First Degree and Attempted Assault in the Second Degree and sentenced to maximum twenty years in prison. DOC did not have a sex offender treatment program until 1989 and Mr. Kane did not receive treatment. In 1988, he was found not to meet the statutory criteria for mental health civil commitment under RCW 71.05 and was placed in work release. He failed to return to work release, and attempted to rape a woman and murdered her. He was convicted of Aggravated Murder in the First Degree and sentenced to life without parole.
- Earl Shriner: In 1977, Mr. Shriner pleaded guilty to assaulting two 16-year-old girls. He was sentenced to ten years in prison. DOC did not have a sex offender treatment program at the time. Mr. Shriner had previously been in juvenile detention and Western State Hospital. In 1987, Mr. Shriner was found not to meet the statutory criteria for mental health civil commitment under RCW 71.05 and was released, despite his stated intention to torture children. In May 1989, Mr. Shriner kidnapped and raped a 7-year-old boy, sexually mutilated and attempted to murder him. Mr. Shriner was convicted of First Degree Attempted Murder, two counts of Rape in the First Degree and Assault in the First Degree. Due to the brutality of the assault, Mr. Shriner was given an exceptional sentence of one-hundred thirty-one years in prison.
- Westly Allan Dodd: Over three months in 1989, Mr. Dodd murdered three children and attempted to murder a fourth child. He raped two of the children. In September 1989, Mr. Dodd kidnapped two brothers aged 10 and 11. He raped one of the boys and murdered both boys. In October 1989, Mr. Dodd kidnapped a 4-year-old boy and raped and murdered him. In November 1989, Mr. Dodd attempted to kidnap a 6-year-old boy and the boy escaped. In 1990, Mr. Dodd pleaded guilty to three counts of Aggravated First Degree Murder and one count of Attempted First Degree Murder. Mr. Dodd waived the right to present mitigating evidence at his death penalty hearing and was sentenced to death. He declined the right to appeal and was executed.

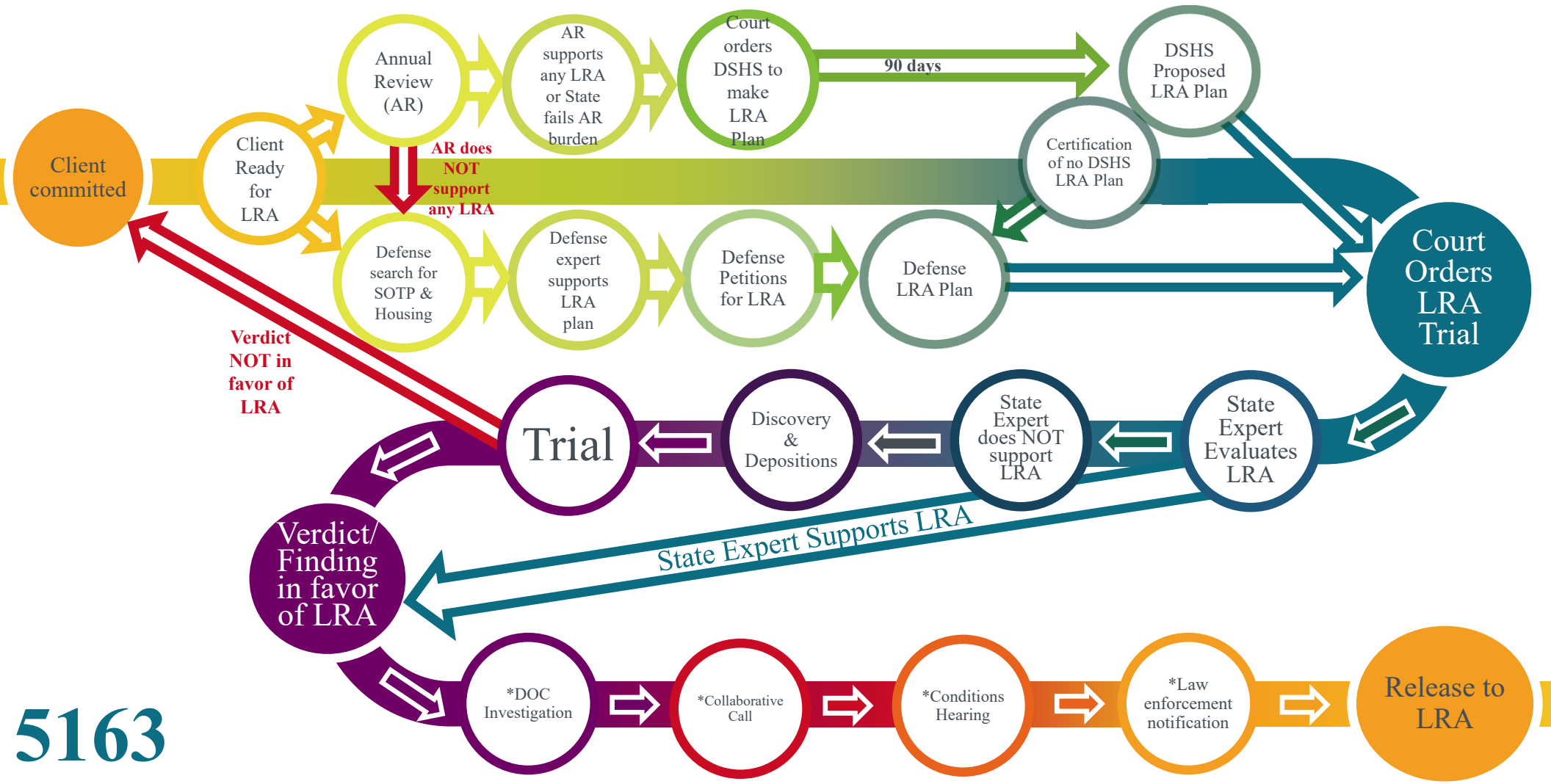
In 1989, community members established the "Tennis Shoe Brigade." The Tennis Shoe Brigade was named because they sent thousands of small shoes to the Governor's office to represent victims and lobby for higher sentences for violent sex offenses. The Governor put together a task force to address the issue. The taskforce gathered information and made recommendations to the legislature.

As a result of those recommendations, the Community Protection Act of 1990 was passed. The Community Protection Act (CPA) did six major things:

- Washington became one of the first states to require sex offender registration.
- Washington became the first state to allow law enforcement to notify the community regarding individuals who have been convicted of sex offenses.
- Washington became the first state with the ability to civilly commit individuals who posed a risk to sexually reoffend after their criminal sentence was complete.
- Made changes to sentences for sex offenses, reduced good time and created supervision.
- Provided funding for prison-based sex offender treatment.
- Created the Office of Crime Victim Advocates and provided funding for enhanced victim services and funded the Victim's Compensation Fund.

Appendix B

How the LRA process works in court



5163 LRA Process

* The timing and chronology of these steps varies with litigation.

Appendix C

Additional Transition Resources for Less Restrictive Alternatives (LRAs)

Since the implementation of Senate Bill 5163, the Department of Social and Health Services (DSHS) Special Commitment Center (SCC) established additional resources to facilitate a resident's safe transition into the community. Social workers, a discharge/transition nursing team and community rehabilitation counselors are now available to work with SCC residents within total confinement and individuals who are conditionally released into the community under a Less Restrictive Alternative (LRA). With these additional resources, SCC is able to engage more fully in creating safe transition plans as residents move into the community and throughout their LRA.

Assistance with discharge/transition planning includes, but is not limited to, obtaining a resident's state identification card, applying for public benefits, scheduling follow up medical services, training chaperones, providing a resident's approved media lists to community sex offender treatment providers, and ensuring sex offender registration is completed. Chaperones provide direct, line-of-sight supervision. SCC community rehabilitation counselors can also provide direct supervision and help the resident with tasks such as setting up a bank account or grocery shopping. These positions are in addition to the services provided by defense social workers and help coordinate any additional needs with the resident's Transition Team.

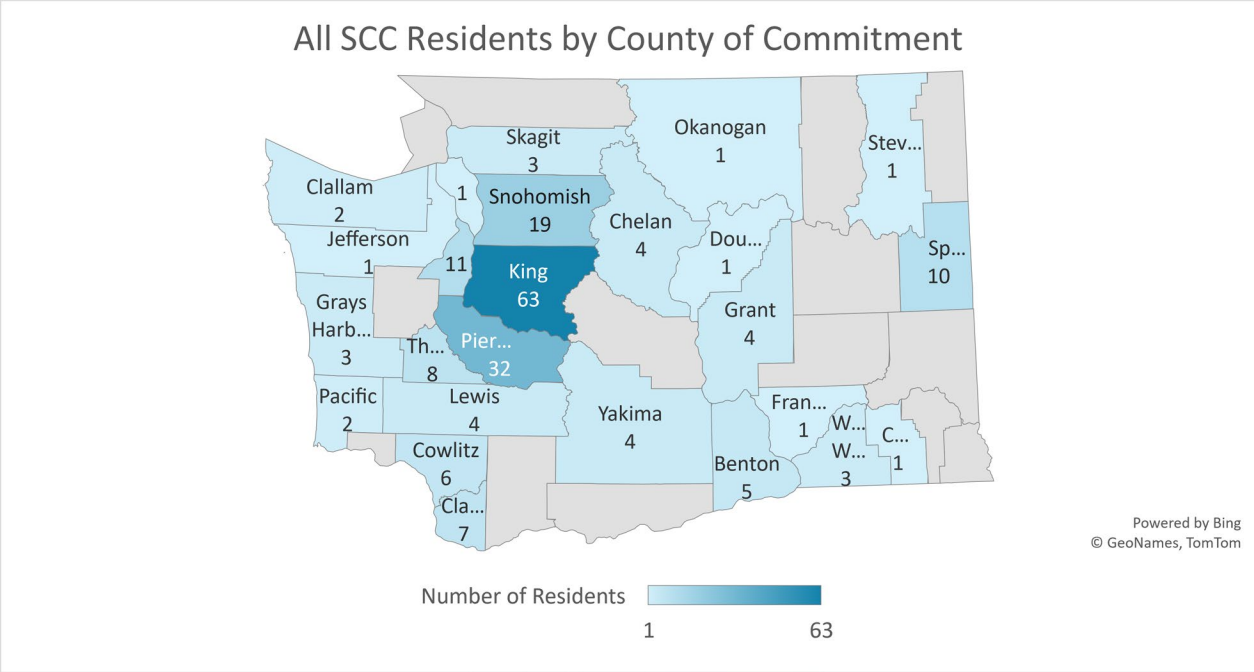
The Transition Team includes a representative from the SCC, an assigned Department of Corrections (DOC) Corrections Specialist (CS), and the Sex Offender Treatment Provider. Team members work collaboratively as a support system for the resident as they move into the community under an LRA until their unconditional release.

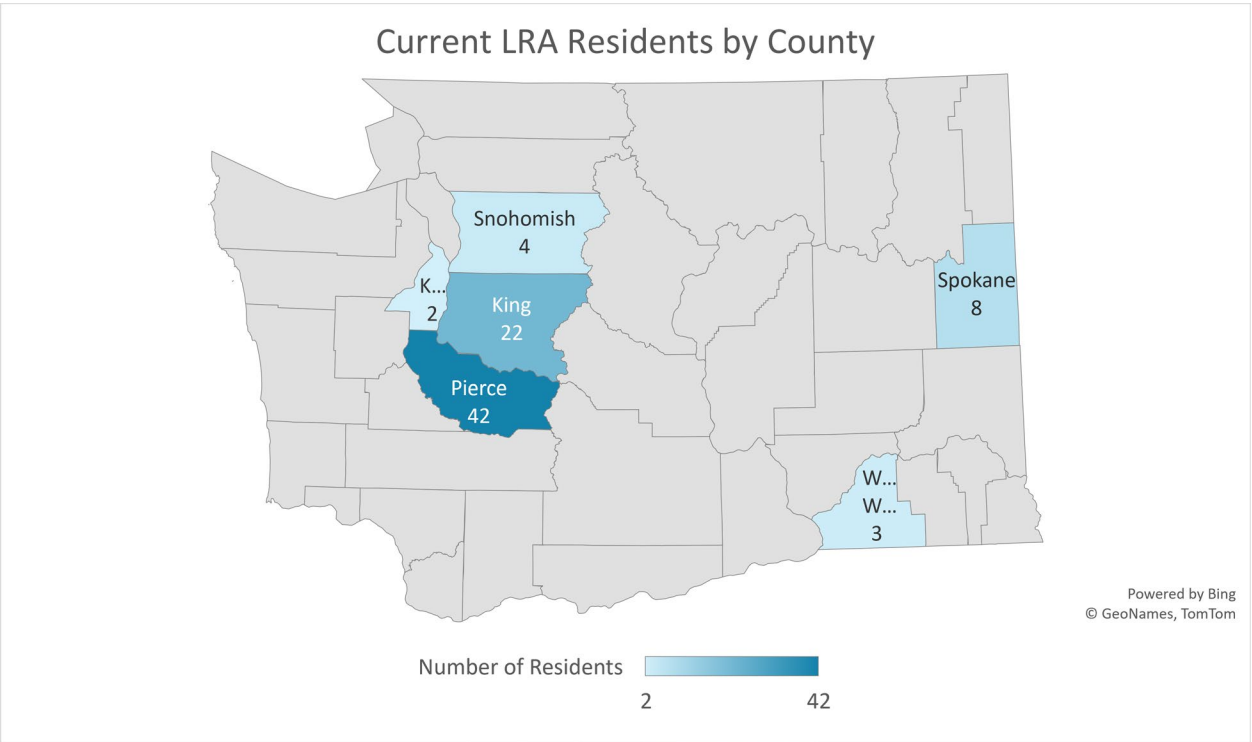
The DOC provides supervision of conditions as ordered by the court. A close partnership with the Transition Team assists the resident with determining the appropriateness of each step in their transition and works closely with the individual. The CS is responsible for monitoring court ordered conditions, 24/7 monitoring of the resident's movement using Global Positioning System (GPS) software, providing guidance and working towards a successful transition of the resident into the community while maintaining community safety.

Historical and procedural links that may be helpful for additional information:

- The End of Sentence Review Committee (ESRC)
- The End of Sentence Review Committee (ESRC) Law Enforcement Notification Annual Report (2018)
- Sex Offender Information (Washington Association of Sheriffs and Police Chiefs website information)
- Model Policy for Washington State Law Enforcement – Adult and Juvenile Sex Offender Registration and Community Notification

Appendix D[97]





[97] Information accurate as of the time of the writing of this report

Appendix E

Opinion by the Attorney General of Washington entitled Mental Health Treatment – Cities and Towns – Counties – Release to Less Restrictive Alternative.

Opinion
Robert W. Ferguson
Attorney General of Washington

MENTAL HEALTH TREATMENT—CITIES AND TOWNS—COUNTIES—Release To Less Restrictive Alternative

Local governments may not categorically prohibit or restrict the release or less restrictive alternative placement of a person involuntarily committed to a state hospital or facility under RCW 71.05, RCW 10.77, or RCW 71.09. Attempts to do so through local ordinance may risk violating state or federal constitutions or statutes.

July 27, 2021

The Honorable Dan Bronoske
State Representative, District 28
PO Box 40600
Olympia, WA 98504-0600

Cite As:
AGO 2021 No. 4

Dear Representative Bronoske:

By letter previously acknowledged, you requested our opinion on the following question[1]:

> **May a local government prohibit or contest the release or less restrictive alternative placement of a person involuntarily committed to a state hospital or facility under RCW 71.05, RCW 10.77, or RCW 71.09 to a less restrictive setting, including an adult family home, when the person otherwise qualifies for release or a less restrictive alternative? Please consider in your answer at a minimum the Americans with Disabilities Act and the Federal Fair Housing Act.**

BRIEF ANSWER

State law allows a county, through its county prosecutor, to intervene in the process of releasing or placing in a less restrictive alternative (LRA) a person that the county has committed under RCW 71.05, RCW 10.77, or RCW 71.09. As part of this process, the prosecutor may present evidence indicating that the committed person should not be released or receive an LRA.

There is no provision, however, that allows a local government to categorically prohibit or block a committed person's release or LRA placement. If a local government enacted such a

[1] You also asked a question about the extent to which state laws may restrict release of persons without violating federal law. This question potentially implicates the validity of enacted state laws, which our Office—by longstanding policy—does not opine in Attorney General Opinions, because it would be our job to defend them in court if they were ever challenged. We have therefore concluded that we cannot answer your second question in the form of an Attorney General Opinion. Our Office is available to advise on these issues in the context of attorney-client privileged advice.

provision, it would be preempted to the extent it applied to sexually violent predators (SVP), whose placement is exclusively controlled by state law. As to other committed persons, such a provision would risk violating statutory and constitutional protections against discrimination on the basis of disability, including the Americans With Disabilities Act (ADA), Federal Fair Housing Act (FFHA), Washington Law Against Discrimination (WLAD), Washington Housing Policy Act (WHPA), equal protection clause of the U.S. Constitution, and privileges and immunities clause of the Washington Constitution.

BACKGROUND

A person may be involuntarily committed by the state for a variety of reasons. *See* RCW 71.05 (providing for commitment of persons who are gravely disabled or suffer from a mental disorder, substance use disorder, or developmental disability that creates a likelihood of serious harm); RCW 10.77 (providing for commitment of persons who are found not guilty of a crime by reason of insanity); RCW 71.09 (providing for commitment of SVPs). A person committed under any of these chapters has certain constitutional and statutory rights to be considered for treatment in a setting less restrictive than total confinement. "Commitment for any reason constitutes a significant deprivation of liberty triggering due process protection." *In re Det. of Thorell*, 149 Wn.2d 724, 731, 72 P.3d 708 (2003) (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). The Due Process Clause of the Fourteenth Amendment to the U.S. Constitution requires the State to "provide civilly-committed persons with access to mental health treatment that gives them a realistic opportunity to be cured and released." *Sharp v. Weston*, 233 F.3d 1166, 1172 (9th Cir. 2000). Further, the Equal Protection Clause prohibits the state from categorically withholding less restrictive alternate treatment from some classes of committed persons while offering it to others. *Thorell*, 149 Wn.2d at 745-46.

In addition to these constitutional protections, the ADA guarantees individuals with developmental disabilities "appropriate treatment, services, and habilitation" that are "provided in the setting that is least restrictive of the individual's personal liberty." 42 U.S.C. § 15009(1), (2). Public entities are required to administer their services, programs, and activities in "the most integrated setting appropriate to the needs of qualified individuals with disabilities." 28 C.F.R. § 35.130(d). This means that individuals with disabilities must be allowed to "interact with nondisabled persons to the fullest extent possible[.]" 28 C.F.R. pt. 35, App. B. The "[u]njustified isolation" of a patient constitutes "discrimination based on disability" and is unlawful under the ADA. *Olmstead v. Zimring ex rel. L.C.*, 527 U.S. 581, 597 (1999).

State law requires the State to create a conditional release or discharge plan for persons committed under RCW 71.05, RCW 10.77, or RCW 71.09. RCW 71.05.365 (persons committed under RCW 71.05 must receive an individualized discharge plan when they no longer require inpatient care); Laws of 2021, ch. 263, § 4 (E2SSB 5071) (requiring persons committed under RCW 10.77 to receive conditional release planning starting at admission); RCW 71.09.080, *as amended by* Laws of 2021, ch. 236, § 3 (E2SSB 5163) (any person committed under RCW 71.09 is entitled to an ongoing, clinically appropriate discharge plan). One type of treatment that may be

available to persons committed under these chapters is a less restrictive alternative, or LRA. RCW 71.05.240(4)(c) (person may receive an LRA if "treatment in a less restrictive setting than detention is in the best interest of such person or others"); RCW 71.05.320 (same); RCW 10.77.110 (defendant who is a substantial danger to others, unless kept under control by the court or other persons or institutions, must be hospitalized or given an appropriate LRA treatment); RCW 71.09.090 (person may receive an LRA if an LRA would be in the best interest of the person and conditions can be imposed that would adequately protect the community).[2] A person found not guilty of a criminal offense by reason of insanity, or committed because they were charged with a violent criminal offense but found incompetent to stand trial, may be released to an LRA only under the continued supervision of a multidisciplinary treatment team. RCW 10.77.150(4), *as amended by* Laws of 2021, ch. 263, § 1; RCW 71.05.320(6), *as amended by* Laws of 2021, ch. 263, §§ 2, 3.

Options for LRA treatment may include placement in an adult family home. *See* RCW 70.128. An adult family home is a business located in a residential home that provides long-term care services. *See* RCW 70.128.010(1). Any "adult in need of personal or special care" may be a "resident" of an adult family home. RCW 70.128.010(10). A person requires personal care if that person needs physical or verbal assistance with daily living due to a functional disability. RCW 74.39A.009(24). A functional disability is "a recognized chronic physical or mental condition or disease, including chemical dependency or developmental disability . . . ." RCW 74.39A.009(23). Adult family homes are licensed and regulated by the Department of Social and Health Services (DSHS). RCW 70.128.050. So long as an applicant and home meet the statutory and regulatory requirements to be certified as an adult family home, DSHS is required to issue a license. RCW 70.128.060(2). In addition, adult family homes are deemed a residential use of property, and must be permitted in all residential and commercial zones, including zones otherwise reserved for single-family homes. RCW 70.128.140. However, persons committed under RCW 71.09 are subject to additional residency restrictions as may be ordered by a court, including but not limited to a minimum distance restriction of 500 feet on the proximity of their residence to child care facilities and public or private schools providing K-12 education. RCW 71.09.096(4)(a), *as amended by* Laws of 2021, ch. 236, § 6 (E2SSB 5163).

LRA treatment may also take place in an enhanced services facility. *See* RCW 70.97. Enhanced services facilities are intended for patients who are "inappropriate for placement in other licensed facilities due to the complex needs that result in behavioral and security issues." RCW 70.97.010(5). A person is eligible for treatment in an enhanced services facility if that person has "(a) a mental disorder, chemical dependency disorder, or both; (b) an organic or traumatic brain injury; or (c) a cognitive impairment that results in symptoms or behaviors requiring supervision and facility services . . . ." Former RCW 70.97.030(2) (2018), *amended by* Laws of 2020, ch. 278, § 2. Enhanced services facilities are licensed and regulated by DSHS. *See* WAC 388-107. An existing nursing home, assisted living facility, or adult family home may be

[2] Alternatively, a person who no longer fits the definition of an SVP is eligible for an unconditional release. RCW 71.09.080(7).

converted into an enhanced services facility, and is "deemed to meet the applicable state and local rules, regulations, permits, and code requirements." RCW 70.97.060(4).

Finally, persons committed under RCW 71.09 may receive LRA treatment in a secure community transition facility.[3] RCW 71.09.250. Secure community transition facilities are required to have "supervision and security, and either provide[ ] or ensure[ ] the provision of sex offender treatment services." RCW 71.09.020(15). Secure community transition facilities are highly regulated and must comply with various security and placement requirements. *See* RCW 71.09.250-903. DSHS must ensure that placements in secure community transition facilities are "equitably distributed among the counties" to the greatest extent possible. RCW 71.09.265(2). Similarly, whenever DSHS proposes to release a person committed under RCW 71.09 outside of the county where they were committed, a court must consider whether such release or placement would be consistent with fair share principles of release. RCW 71.09.092, *as amended by* Laws of 2021, ch. 236, § 5. Fair share principles of release means that each county has adequate options for conditional release placements in a number generally equivalent to the number of residents from that county who are committed under RCW 71.09. RCW 71.09.020, *as amended by* Laws of 2021, ch. 236, § 2.

ANALYSIS

May a local government prohibit or contest the release or less restrictive alternative placement of a person involuntarily committed to a state hospital or facility under RCW 71.05, RCW 10.77, or RCW 71.09 to a less restrictive setting, including an adult family home, when the person otherwise qualifies for release or a less restrictive alternative? Please consider in your answer at a minimum the Americans with Disabilities Act and the Federal Fair Housing Act.

a. A county prosecutor may participate in the release or LRA process for a person committed by that county

State law defines the process for considering a release or LRA for persons committed under RCW 71.05, RCW 10.77, or RCW 71.09. While the specifics of the process vary depending on which chapter the person was committed under, all three chapters permit the county responsible for the person's commitment to participate and oppose the release or placement.

First, a person may be committed under RCW 71.05.280(3) for committing a felony, where the person has been determined to be incompetent to stand trial and as a result of behavioral health disorder, presents a substantial likelihood of re-offending. When a person committed in this way is considered for a temporary leave from the treatment facility, an early release from involuntary treatment, a modification of a commitment order, or a conditional release into outpatient care, the

[3] This is not to say that secure community transition facilities are the *only* facility where an SVP may be placed. *See* RCW 71.09.345 ("Nothing in chapter 12, Laws of 2001 2nd sp. sess. shall operate to restrict a court's authority to make less restrictive alternative placements to a committed person's individual residence or to *a setting less restrictive than a secure community transition facility*." (Emphasis added.)).

prosecutor of the county where the criminal charges were dismissed (for incompetency to stand trial) must receive advance notice. RCW 71.05.325(2)(a), .330(2), .335, .340(1)(b). The prosecutor may then intervene in any motion to modify a commitment under RCW 71.05.280(3) that includes an LRA. RCW 71.05.335. (Note that the person may be placed in a different county from the county responsible for the original commitment.) The county prosecutor may also petition for a hearing prior to the conditional release of a committed person. RCW 71.05.340(1)(b). "The issue to be determined at the hearing is whether or not the person may be conditionally released without substantial danger to other persons, or substantial likelihood of committing criminal acts jeopardizing public safety or security." RCW 71.05.340(1)(b). When the commitment is based on a violent felony as defined in RCW 9.94A.030, in addition to notifying the county prosecutor, the proposed release or discharge is reviewed by the Independent Public Safety Review Panel. RCW 71.05.280(3)(b); RCW 10.77.270. In addition, when the commitment is based on a sex, violent, or felony harassment offense, the treatment facility must notify not only the county prosecutor, but also the chief of police of the city where the person will reside and the sheriff of the county where the person will reside. RCW 71.05.425(1).

Similarly, whenever a person committed under RCW 10.77 petitions for a conditional release, or DSHS recommends such a release, a hearing must be held to determine "whether or not the person may be released conditionally without substantial danger to other persons, or substantial likelihood of committing criminal acts jeopardizing public safety or security." RCW 10.77.150(3)(c). The prosecutor for the county that ordered the person's commitment is responsible for representing the State in this hearing, and has the right to order an examination of the committed person. RCW 10.77.150(3)(a)-(b).

Finally, a person committed under RCW 71.09 may petition for an LRA. This may be done with or without the approval of DSHS. DSHS may authorize the committed person to petition for an LRA if DSHS determines that the person's condition has so changed that release to an LRA is in their best interest and conditions can be imposed that adequately protect the community. RCW 71.09.090(1)(b), *as amended by* Laws of 2021, ch. 236, § 4. Upon such a petition, DSHS must identify an LRA placement for the person and notify the prosecuting attorney responsible for the original commitment. Alternatively, the person may petition for an LRA without the approval of DSHS, which triggers a show cause hearing at which the state must produce prima facie evidence that an LRA is not appropriate. RCW 71.09.090(2). If the state is not able to do so, or if DSHS authorizes the petition, then the court holds a hearing to consider the committed person or DSHS's proposed plan for an LRA release. At this hearing, the prosecutor responsible for the original commitment may represent the State (although in practice most counties contract with the Attorney General's Office to provide this representation) and has the right to demand a jury trial. RCW 71.09.090(3)(a).

These statutes give a county government, through its prosecutor, the opportunity to participate in the process for release or LRA placement of a person that the county has committed. However, no statute permits a county or other local government to categorically prohibit the placement of a committed person. Any such prohibition by a local government would raise a number of statutory and constitutional issues, which are discussed below.

b. State law preempts any local law pertaining to residency restrictions for sex offenders and SVPs

The State reserves exclusive authority to decide where SVPs committed under RCW 71.09 may reside.[4] Release of an SVP to an LRA requires several judicial findings, including that

> housing exists in Washington that complies with distance restrictions is sufficiently secure to protect the community, and the person or agency providing housing to the conditionally released person has agreed in writing to accept the person, to provide the level of security required by the court, and immediately to report to the court, the prosecutor, the supervising community corrections officer, and the superintendent of the special commitment center if the person leaves the housing to which he or she has been assigned without authorization[.]

RCW 71.09.092(3), *as amended by* Laws of 2021, ch. 236, § 5. Further, "if the department [of social and health services] has proposed housing that is outside of the county of commitment, a documented effort was made by the department to ensure that placement is consistent with fair share principles of release[.]" RCW 71.09.092(4), *as amended by* Laws of 2021, ch. 236, § 5. The question of whether an LRA proposed by an SVP meets statutory requirements is a question for a court or jury. RCW 71.09.094(2). If a court or jury approves a release to an LRA, then the court shall direct such a release upon imposition of conditions that the court finds would adequately protect the community. RCW 71.09.096(1). Such conditions must include a restriction on the proximity of the SVP's residence to K-12 schools as well as child care facilities, and may also include other distance restrictions based on the person's specific risk factors and criminogenic needs. RCW 71.09.096(4)(a), *as amended by* Laws of 2021, ch. 236, § 5. If the court approves such a plan, the Department of Corrections will further investigate the LRA, which may include a report back to the court recommending additional LRA conditions for the court to incorporate if the court so chooses. RCW 71.09.096(4).

Release of an SVP to an LRA, as well as the conditions on the SVP's residency, is a matter for determination in the specific judicial proceeding governing that person's civil commitment. A local ordinance purporting to provide differently as to LRAs for SVPs would accordingly conflict with the court's statutory role in approving such a plan.

[4] We understand this question to relate to those individuals civilly committed as SVPs pursuant to RCW 71.09. However, a separate statutory scheme addresses persons criminally convicted of sex crimes and in the custody of the Department of Corrections. Under RCW 9.94A.8445, the Department of Corrections' placement process supersedes and preempts any local rules, regulations, codes, statutes, or ordinances regarding residency restrictions for anyone who has been convicted of a sex offense upon release from total confinement. A local law on the same subject matter, that is, on where a sex offender may or may not reside, would run afoul of RCW 9.94A.8445, so long as it was passed on or after march 1, 2006.

c. Committed persons are protected from discrimination under state and federal statutes

A committed person is likely to have, or to be perceived as having, a disability protected by statutes like the ADA, Rehabilitation Act, FFHA, WLAD, or WHPA. This may be particularly true of those committed under RCW 71.05 or RCW 10.77, but could include some committed under RCW 71.09 as well. Any action that intentionally discriminates against persons with disabilities would risk violating these statutes unless it could be established that the action was in fact beneficial to persons with disabilities, or that the individual posed a direct threat. Any action that disproportionately impacts persons with disabilities—regardless of the government's intent—would risk violating these statutes unless it could be established that the action was justified by a substantial, legitimate, and non-discriminatory government interest.

(1) Persons with a qualifying disability are protected by the ADA, Rehabilitation Act, and FFHA

The ADA, 42 U.S.C. §§ 12101-12213, provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. This means that a public entity may not "utilize criteria or methods of administration: (i) [t]hat have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability[.]" 28 C.F.R. § 35.130(b)(3)(i).

Similarly, the Rehabilitation Act of 1973 provides:

> No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service.

29 U.S.C. § 794(a). The Rehabilitation Act and the ADA provide substantially the same rights, so they are typically read in tandem. *Vinson v. Thomas*, 288 F.3d 1145, 1152 n.7 (9th Cir. 2002).

The FFHA, 42 U.S.C. §§ 3601-3609, as amended by the Fair Housing Amendments Act of 1988, Pub. L. No. 100-430, § 6(a), 102 Stat. 1619 (1988), makes it unlawful to

> discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of—(A) that buyer or renter, (B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or (C) any person associated with that buyer or renter.

42 U.S.C. § 3604(f)(1); *see Larkin v. Mich. Dep't of Soc. Servs.*, 89 F.3d 285, 288 (6th Cir. 1996). The FFHA is a broad remedial statute intended to "protect the right of handicapped persons to live

in the residence of their choice in the community." *City of Edmonds v. Wash. State Bldg. Code Council*, 18 F.3d 802, 806 (9th Cir. 1994) (citing H.R. Rep. No. 711 (1988), *reprinted in* 1988 U.S.C.C.A.N. 2173, 2185). The FFHA preempts any state law that "purports to require or permit any action that would be a discriminatory housing practice under this subchapter[.]" 42 U.S.C. § 3615.

Like the Rehabilitation Act, the FFHA is typically read in tandem with the ADA. *Pac. Shores Props., LLC v. City of Newport Beach*, 730 F.3d 1142, 1157 (9th Cir. 2013) (citing *Tsombanidis v. West Haven Fire Dep't*, 352 F.3d 565, 573 n.4 (2d Cir. 2003)). Accordingly, we will analyze the ADA, Rehabilitation Act, and FFHA together.

(a) Definition of "disability" under ADA or "handicap" under FFHA

The ADA defines a "disability" as "(A) a physical or mental impairment that substantially limits one or more major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment (as described in paragraph (3))." 42 U.S.C. § 12102.[5] A "mental impairment" may include "[a]ny mental or psychological disorder such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disability." 28 C.F.R. § 35.108(b)(1)(ii). Similarly, the FFHA defines a "handicap" as "(1) a physical or mental impairment which substantially limits one or more of such person's major life activities, (2) a record of having such an impairment, or (3) being regarded as having such an impairment[.]" 42 U.S.C. § 3602(h)(1)-(3). The courts regard the terms "handicap" or "handicapped" and "disability" or "disabled" as interchangeable. *Giebeler v. M&B Assocs.*, 343 F.3d 1143, 1146 n.2 (9th Cir. 2003). This analysis will use the preferred terms, "disabled" and "disability." *See id.*

In order to be committed under RCW 71.05, a person must suffer from a mental or substance abuse disorder, and as a result be gravely disabled or a danger to self or others. RCW 71.05.150, .153, .280, .320. Under RCW 71.05.020:

> (23) "Gravely disabled" means a condition in which a person, as a result of a behavioral health disorder: (a) Is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety; or

[5] The ADA excludes a number of conditions from the definition of "disability," including "sexual behavior disorders" and "psychoactive substance use disorders resulting from current illegal use of drugs." 42 U.S.C. § 12211; *see also* 42 U.S.C. § 3602(h) ("handicap" under the FFHA excludes "current, illegal use of or addiction to a controlled substance"). Therefore, this analysis does not apply to the extent persons are treated differently because of a sexual behavior disorder. We note, however, that a person may suffer from both a sexual behavior disorder and also a qualifying disability under 42 U.S.C. § 12211. Such a person would still be protected by the ADA and related laws to the extent they are treated differently as a result of a qualifying disability and not a sexual behavior disorder. In addition, while current drug or alcohol use is not a protected disability, substance use *treatment* programs and facilities are protected by both the ADA and the FFHA. *See City of Edmonds*, 18 F.3d at 804; *Bay Area Addiction Research & Treatment, Inc. v. City of Antioch*, 179 F.3d 725 (9th Cir 1999); *Pac. Shores Props.*, 730 F.3d 1142.

> (b) manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions and is not receiving such care as is essential for his or her health or safety;
>
> . . .
>
> (37) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on a person's cognitive or volitional functions;
>
> . . .
>
> (52) "Substance use disorder" means a cluster of cognitive, behavioral, and physiological symptoms indicating that an individual continues using the substance despite significant substance-related problems . . . .

Under RCW 71A.10.020:

> (5) "Developmental disability" means a disability attributable to intellectual disability, cerebral palsy, epilepsy, autism, or another neurological or other condition of an individual found by the secretary to be closely related to an intellectual disability or to require treatment similar to that required for individuals with intellectual disabilities, which disability originates before the individual attains age eighteen, which has continued or can be expected to continue indefinitely, and which constitutes a substantial limitation to the individual. . . .

Because these conditions constitute mental or physical impairments that substantially limit various aspects of a person's basic life functions, a court would likely find that any of them constitutes a "disability" as that term is used within the ADA. *See Wagner ex rel. Wagner v. Fair Acres Geriatric Ctr.*, 49 F.3d 1002, 1010 (3d Cir. 1995); *Pac. Shores Props.*, 730 F.3d at 1156-57.

In order to be committed under RCW 10.77, a person must be "criminally insane," meaning that person has been "acquitted of a crime charged by reason of insanity, and thereupon found to be a substantial danger to other persons or to present a substantial likelihood of committing criminal acts jeopardizing public safety or security unless kept under further control by the court or other persons or institutions." RCW 10.77.010(4). In turn, a person may be acquitted by reason of insanity only if

> [a]t the time of the commission of the offense, as a result of *mental disease or defect*, the mind of the actor was affected to such an extent that: (a) He or she was unable to perceive the nature and quality of the act with which he or she is charged; or (b) He or she was unable to tell right from wrong with reference to the particular act charged.

RCW 9A.12.010(1)(a)-(b) (emphasis added). An acquittal by reason of insanity, standing alone, does not constitute a mental impairment under the ADA. *Josephs v. Pac. Bell*, 443 F.3d 1050, 1062 (9th Cir. 2005). However, a person who has been acquitted by reason of insanity—as anyone committed under RCW 10.77 has been—is still protected by the ADA to the extent that person is *perceived* as having a substantially limiting mental disability. *Id.* at 1063. Assuming that a person is dangerous because of a previous acquittal by reason of insanity, and discriminating against the person on that basis, violates the ADA. *Id.* at 1063-64.

There are two ways in which a law or policy can discriminate against people with disabilities in violation of the ADA and FFHA. First, the law may call for "disparate treatment": it may intentionally discriminate against people with disabilities. *Ave. 6E Invs., LLC v. City of Yuma*, 818 F.3d 493, 502 (9th Cir. 2016). Disparate treatment may include, but is not limited to, a government blocking the construction of housing for a disfavored group, or imposing requirements on such housing that are not imposed upon housing for similarly situated persons outside the disfavored group. *See, e.g.*, *Pac. Shores Props.*, 730 F.3d 1142 (holding that moratorium on group homes was disparate treatment); *Ave. 6E Invs.*, 818 F.3d 493 (holding that denial of rezoning for developer perceived as catering to Hispanics was disparate treatment); *Child.'s All. v. City of Bellevue*, 950 F. Supp. 1491, 1499-1500 (W.D. Wash. 1997) (holding that occupancy limit on group homes for homeless youth was disparate treatment). Disparate treatment is unlawful whether the challenged law explicitly applies less favorably to people with disabilities, or is merely motivated by a discriminatory intent or applied in a discriminatory way. *Bangerter v. Orem City Corp.*, 46 F.3d 1491, 1500 (10th Cir. 1995); *Pac. Shores Props.*, 730 F.3d at 1158-60.

Second, the challenged law may have a "disparate impact" on people with disabilities, meaning that it has a "disproportionately adverse effect on minorities" and is not justified by a legitimate rationale. *Tex. Dep't of Housing & Cmty. Affairs v. Inclusive Cmtys. Proj.*, 576 U.S. 519, 524-25 (2015) (citing *Ricci v. DeStefano*, 557 U.S. 557, 577 (2009)). Disparate impact may include, but is not limited to, disproportionately approving tax credits for low-income housing within areas populated by minorities, or making zoning decisions that prevent a higher proportion of minorities from purchasing homes. *Id.* at 524-25; *Ave. 6E Invs.*, 818 F.3d at 511. We explain the differing legal tests below.

(b) Disparate Treatment

(i) Facial discrimination

A law that discriminates on its face against a member of a protected class is invalid unless the government can show either "(1) that the restriction benefits the protected class or (2) that it responds to legitimate safety concerns raised by the individuals affected, rather than being based on stereotypes." *Cmty. House, Inc. v. City of Boise*, 490 F.3d 1041, 1050 (9th Cir. 2007) (citing *Larkin*, 89 F.3d at 290; *Bangerter*, 46 F.3d at 1503-04). Evidence of the government's discriminatory animus against people with disabilities is not required. *Child.'s All.*, 950 F. Supp. at 1495 (citing *Bangerter*, 46 F.3d at 1500-01). Rather, the government would bear the burden of

proving that the restriction benefited people with disabilities, or was based on documented safety concerns. *Cmty. House, Inc.*, 490 F.3d at 1051.

Whether a hypothetical law would be justified under this test cannot be answered in the abstract, and is beyond the scope of this opinion. We point out, however, that the psychological profession generally considers treatment in a community setting as beneficial to rehabilitation. *See, e.g.*, Rohini Pahwa, Ph.D., et al., *Relationship of Community Integration of Persons with Severe Mental Illness and Mental Health Service Intensity*, 65 Psychiatric Servs. 822 (Jun 2014), https://doi.org/10.1176/appi.ps.201300233 ("Community integration has been recognized as an essential component of recovery, an important outcome of mental health treatment . . . ."); *see also* K.S. Jacob, *Recovery Model of Mental Illness: A Complementary Approach to Psychiatric Care*, Indian J. Psychol. Med. 117 (Apr-Jun 2015), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4418239/. A locality attempting to block a committed person's or group of persons' release or placement would need to overcome this scientific evidence and show that continued treatment within an institutional setting would benefit people with disabilities. Alternatively, the locality would need to demonstrate the existence of a legitimate safety concern through documentation like police reports, incident reports, or other evidence demonstrating the danger that the challenged law would avoid. *Cmty. House, Inc.*, 490 F.3d at 1051. A "[g]eneralized interest[ ] in public safety, stability, and tranquility" is not enough, absent a showing that these interests are actually threatened by the person burdened by the challenged law. *Child.'s All.*, 950 F. Supp. at 1498.

(ii) Facially neutral measures

A law that purports to be neutral on its face, but that operates to bar group homes for people with disabilities from operating in certain areas, may violate the FFHA. *City of Edmonds*, 18 F.3d at 805. A plaintiff may prove that a facially neutral law is in fact discriminatory in two ways. First, the plaintiff may show that a similarly situated entity was treated more favorably than the plaintiff. *Pac. Shores Props.*, 730 F.3d at 1158 (citing *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973)). For example, a law that imposes occupancy limits on group homes for youths, but not on family homes, violates the FFHA. *Child.'s All.*, 950 F. Supp. at 1499-1500.

Second, the plaintiff may "'simply produce direct or circumstantial evidence demonstrating that a discriminatory reason more likely than not motivated' the defendant and that the defendant's actions adversely affected the plaintiff in some way." *Pac. Shores Props.*, 730 F.3d at 1158 (quoting *McGinest v. GTE Serv. Corp.*, 360 F.3d 1103, 1122 (9th Cir. 2004)). To determine whether a challenged law is motivated by discriminatory intent, the courts consider

> whether the defendant's actions were motivated by a discriminatory purpose by examining (1) statistics demonstrating a "clear pattern unexplainable on grounds other than" discriminatory ones, (2) "the historical background of the decision," (3) "the specific sequence of events leading up to the challenged decision," (4) the defendant's departures from its normal procedures or substantive conclusions, and (5) relevant "legislative or administrative history."

Pac. Shores Props., 730 F.3d at 1158-59 (quoting *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266-68 (1977)).

Again, whether some hypothetical law would pass this test is beyond the scope of this opinion. We point out, however, that the events leading up to a challenged law and the legislative history behind it may serve as evidence of whether the law has a discriminatory purpose. *Ave. 6E Invs.*, 818 F.3d at 504. For example, when a city has previously attempted to pass a moratorium against group homes for persons with disabilities, that history may be evidence that an otherwise facially neutral law was enacted for a discriminatory purpose. *Pac. Shores Props.*, 730 F.3d at 1162. For example, because the City of Lakewood has previously attempted to pass a moratorium on new adult family homes, there is a risk that a court may find further actions against adult family homes or their residents to be motivated by discriminatory intent. *See* City of Lakewood Substitute Ordinance No. 682 (2018), https://lakewood.municipal.codes/enactments/Ord682/media/original.pdf.

Where a purportedly neutral law is disproportionately enforced against group homes, that disparity can also help to show discriminatory intent. *Pac. Shores Props.*, 730 F.3d at 1162. Therefore, governments should ensure that housing laws are applied in an evenhanded way that does not single out adult family homes or other facilities for persons with disabilities.

(c) Disparate Impact

Even if a law is not facially discriminatory or motivated by discriminatory intent, it may still violate the FFHA if it causes or predictably will cause a discriminatory effect on a protected class without sufficient justification. 24 C.F.R. § 100.500(c)(1). A law causes a disparate impact when it bears more heavily on a minority group than on other groups. *Ave. 6E Invs.*, 818 F.3d at 508. A disparate impact may exist even when similar housing is available in the general area: a law violates the FFHA even if it only contributes to making housing unavailable to protected individuals. *Id.* at 509 (citing *Pac. Shores Props.*, 730 F.3d at 1157). However, the existence of "truly comparable housing" in close proximity to the housing being denied to a protected individual may be evidence against disparate impact. *Id.* at 512.

When a law causes a disparate impact on persons with disabilities or another minority group, the government must prove that the law is necessary to achieve a substantial, legitimate, and non-discriminatory interest. 24 C.F.R. § 100.500(c)(2). A law that causes a disparate impact may still be permissible if it is aimed at achieving legitimate objectives, such as compliance with health and safety codes, and there is no alternative means that has less disparate impact. *Tex. Dep't of Hous.*, 576 U.S. at 533, 543-44 (citing *Ricci*, 557 U.S. at 578). Conversely, a law is invalid if it imposes an "artificial, arbitrary, and unnecessary barrier[ ]" to protected individuals finding housing. *Id.* at 540 (quoting *Griggs v. Duke Power Co.*, 401 U.S. 424, 431 (1971)).

It is difficult to say in the abstract whether a court would determine that some hypothetical law is sufficiently justified by a non-discriminatory interest to survive the disparate impact test. To manage the risk of a disparate impact challenge, governments should carefully consider

whether their housing-related regulations disproportionately affect residences for persons with disabilities, and whether there are ways to meet their goals that have less of an impact on such persons.

(d) Direct threat exception

The fact that a policy or law discriminates against, or has a disparate impact upon, persons with disabilities does not end the ADA or FFHA inquiry. The ADA excludes from its protection individuals who "pose[ ] a direct threat to the health or safety of others." 28 C.F.R. § 35.139(a). Similarly, the FFHA provides that a dwelling need not be made available to "an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others." 42 U.S.C. § 3604(f)(9). As an exception to the broad remedial scheme of the FFHA, the direct threat exception is read narrowly. 42 U.S.C. § 3601; *Bangerter*, 46 F.3d at 1503 (citing *Elliott v. City of Athens, Ga.*, 960 F.2d 975, 978-79 (11th Cir.) (1992)). Furthermore, because the direct threat exception is an affirmative defense, the government bears the burden of proving that the person it is trying to exclude is a direct threat. *See Nunes v. Wal-Mart Stores, Inc.*, 164 F.3d 1243, 1247 (9th Cir. 1999).

A direct threat is defined as a "'significant risk to the health or safety of others that cannot be eliminated or reduced to an acceptable level by the public entity's modification of its policies, practices, or procedures, or by the provision of auxiliary aids or services.'" *Bay Area Addiction Research & Treatment, Inc. v. City of Antioch*, 179 F.3d 725, 736 (9th Cir. 1999) (quoting *The Americans with Disabilities Act: Title II Technical Assistance Manual* § II–2.8000 (1993)). A significant risk under this test may include "a reasonable likelihood of a significant increase in crime." *Id.* at 737. However, the government may not rely on a "hypothetical or presumed risk." *Id.* Rather, the government must make an

> individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk.

28 C.F.R. § 35.139(b). The government may satisfy this test by producing "objective evidence from the person's prior behavior that the person has committed overt acts which caused harm or which directly threatened harm." H.R. Rep. No. 711 (1988), *reprinted in* 1988 U.S.C.C.A.N. 2173, 2190. However, in evaluating a person's prior overt acts, the government must also consider whether the person has received intervening treatment or medication that would eliminate the threat. *Simmons v. T.M. Assocs. Mgmt., Inc.*, 287 F. Supp. 3d 600, 605 (W.D. Va. 2018).

Once a significant risk has been established, the court must determine whether a reasonable modification can counteract the risk. *Bay Area Addiction Research*, 179 F.3d at 736; *see* 42 U.S.C. § 3604(f)(3)(B) (requiring reasonable accommodations in rules, policies, practices, or services, where necessary to afford persons with disabilities equal opportunity to use and enjoy a dwelling).

Whether a particular person poses a direct threat, such that the person is not protected by the ADA or FFHA, is a factual question that is beyond the scope of this opinion. As a general matter, we point out that any action to prohibit a person from taking residence in a group home would require—at a minimum—a showing through objective and individualized evidence that a person poses an actual and significant risk to the health or safety of the community, and that this risk is not mitigated by the treatment the person is receiving, in order to survive ADA and FFHA review. We also note that we have found no case in which a court has applied the direct threat defense on a group basis. A law that purported to exclude whole categories of persons with disabilities, without taking into account their individual circumstances, would probably not be supported by the direct threat defense.

(2) The WHPA prohibits different treatment of structures occupied by people who are "disabled" under the FFHA and ADA

In addition to the ADA and FFHA, another statute to consider is the WHPA, RCW 35A.63.240. This statute prohibits a city from treating structures occupied by disabled people (as defined in the FFHA) differently from other, similar structures. Unlike the FFHA, however, the WHPA does not consider whether the government intended to discriminate against persons with disabilities, nor does it require the government to reasonably accommodate a person's disability. *Sunderland Family Treatment Servs. v. City of Pasco*, 107 Wn. App. 109, 119, 26 P.3d 955 (2001). The WHPA considers simply whether a city ordinance, practice, or policy treats a dwelling occupied by handicapped persons "differently" from a similar dwelling. *Id.*

For WHPA purposes, two dwellings are similar if the physical characteristics of the structure are similar: the "living arrangements and supervision" within the dwelling are not relevant. *Sunderland Family Treatment Servs.*, 107 Wn. App. at 124. Therefore, the fact that a group home may require more supervision than a family home, standing alone, does not make it dissimilar and does not justify differential treatment. *Id.* A regulatory scheme that imposed additional burdens on residential care facilities for disabled persons, versus similar homes for families, would violate the WHPA. *Id.* at 122-23.

(3) Persons protected by the ADA and FFHA, and potentially some who are not, are protected by the WLAD

One final statute to consider is the WLAD, RCW 49.60. Like the ADA, the WLAD protects people from discrimination on the basis of mental or physical disabilities, among other protected traits. RCW 49.60.030(1). And like the FFHA, the WLAD makes it unlawful for any "person" (including state or local governments) to "make unavailable or deny" a dwelling on the basis of disability. RCW 49.60.222(1)(f); RCW 49.60.040(19); *see Sunderland Family Treatment Servs.*, 107 Wn. App. at 112.

The WLAD defines a "disability" as "the presence of a sensory, mental, or physical impairment that: (i) Is medically cognizable or diagnosable; or (ii) Exists as a record or history; or (iii) Is perceived to exist whether or not it exists in fact." RCW 49.60.040(7)(a). An "impairment" may include "[a]ny mental, developmental, traumatic, or psychological disorder, including but not limited to cognitive limitation, organic brain syndrome, emotional or mental illness, and specific learning disabilities." RCW 49.60.040(7)(c)(ii). A disability under the WLAD may be temporary or permanent, and unlike federal law, there is no requirement that the disability impair a major life activity. RCW 49.60.040(7)(b). We conclude that a person who has a disability under the FFHA and ADA would also have a disability under the WLAD.

The WLAD is generally at least as protective as its equivalent federal statutes. *Kumar v. Gate Gourmet, Inc.*, 180 Wn.2d 481, 491, 325 P.3d 193 (2014). Therefore, if a government violates the FFHA, it probably also violates the WLAD. *See Child.'s All.*, 950 F. Supp. at 1495 n.3 (determination that city violated FFHA by blocking children's group care facility applied equally to claims arising under WLAD).

There may also be circumstances where the WLAD protects persons or groups who are *not* protected by the equivalent federal statutes. *See, e.g.*, *Taylor v. Burlington N. R.R. Holdings, Inc.*, 193 Wn.2d 611, 617, 444 P.3d 606 (2019) (holding that obesity is a disability that is always covered by the WLAD, even though it is not under federal law); *Phillips v. City of Seattle*, 111 Wn.2d 903, 910, 766 P.2d 1099 (1989) (holding that whether alcoholism is a disability under RCW 49.60 is a jury question, even though it is excluded under federal law). Considering the scarcity of case law interpreting the WLAD in the context of restrictions on group homes, we will not comment in the abstract on the merits of a hypothetical WLAD challenge by a person not otherwise within the scope of the FFHA and ADA, other than to point out that governments should be aware of the legal uncertainty surrounding the issue.

d. Constitutional issues

In addition to the statutes described above, any action to block or prohibit a committed person from placement within a locality would implicate the state and federal constitutions.

The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." Similarly, the Washington Constitution provides that "[n]o law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations." Const. art. I, § 12. Outside the context of special-interest legislation, the Equal Protection Clause of the federal constitution and the privileges and immunities clause of the state constitution apply in substantially the same way. *Schroeder v. Weighall*, 179 Wn.2d 566, 577, 316 P.3d 482 (2014) (when "addressing laws that burden vulnerable groups . . . our state equal protection cases based on article I, section 12 . . . have characterized article I, section 12 analysis as 'substantially similar' to federal equal protection analysis" (quoting *Seeley v. State*, 132 Wn.2d 776, 787 n.7, 940 P.2d 604 (1997))).

The Equal Protection Clause demands that "all persons similarly situated should be treated alike." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439, 105 S. Ct. 3249, 87 L. Ed. 2d 313 (1985). This means that laws that distinguish between persons with intellectual disabilities and persons without "must be rationally related to a legitimate governmental purpose." *Id.* at 446. It is not permissible to treat a home for persons with intellectual disabilities differently from other homes based on "mere negative attitudes, or fear . . . ." *Id.* at 448. Rather, the municipality must show that residents with intellectual disabilities would present some "different or specific hazard" that other persons not subject to the restriction do not. *Id.* at 449. Whether this standard can be met with regard to a particular committed person is beyond the scope of this opinion, but local governments should be mindful of these principles and ensure that they act evenhandedly, on the basis of documented evidence, when dealing with committed persons.

Whether a particular person may be lawfully excluded from adult family homes or similar facilities is a fact-specific question that is beyond the scope of this opinion. As a general matter, we reiterate that governments should be careful to ensure that any restrictions on the residency of a committed person are grounded in objective evidence of the person's treatment needs and risk to the community.

We trust that the foregoing will be useful to you.

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Appendix F

Department of Corrections' Proposal Request

Department of Corrections
WASHINGTON STATE

Proposal Request

This form is used for initiating a new project or requesting a key decision.

1. Please complete every section of this form.
2. Submit to your immediate supervisor for review and routing.

For Enterprise Level decisions and projects only:

- ✓ Request time on Executive Strategy Team (EST) agenda via email to the Secretary's Executive Assistant.
- ✓ Attach this form and any supporting documents to the email request.
- ✓ Present this proposal request to EST. Please bring hard copies to the meeting.
- ✓ If IT resources are involved in the proposal, please ensure Information Technology is scheduled to attend EST to provide information on current and future projects.

Section 1

Decision Request		**Date:** 6/11/2019
Project Level	☒ Project Proposal ☐ Decision Proposal *Indicate level of impact:* ☒**Level 1 – Enterprise** ☐**Level 2 – Division** ☐**Level 3 - Program**	
Background	1-3 sentences to inform those unfamiliar with the topic. Community Protection Act of 1990 was unanimously passed by the Legislature and signed into law on February 28, 1990 and included groundbreaking changes due to Community outrage regarding Sex Offenders releasing and committing new crimes. The changes included Sex Offender Registration, Community Notification and Civil Commitment of Sexually Violent Predators under RCW 71.09. The Community Protection Act Section 119 identified the importance of information sharing between agencies to include Department of Corrections, Department of Social and Health Services, and law enforcement. A current LEAN project has been established between DOC and DSHS Special Commitment Center that has identified information sharing amongst agenices as a hurdle in continuity of care for Residents as they transfer through the system under RCW 71.09 Civil Commitment of Sexually Violent Predators. RCW 71.09 requires multiple agencies to share Level 3 and 4 documentation/data in order to be in compliance with the law. Some examples of identified "Problems to be Solved" that involve IT based issues include but are not limited to: Information sharing amongst all identified agencies to include referral, intake, transitioning, release to LRA and release to Unconditional. • Referral for Sexually Violent Predator under RCW 71.09 by releasing agency • Residential Community Transition Team (SCC, DOC and Community Treatment) document and information sharing/storage • Lack of Resident documentation shared between agencies during LRA supervision • LRA Discovery -Subpoena's being requested by Defense to SCC and DOC creating a duplication of work and potential for different records provided • Multiple agencies documenting and providing data for Sexually Violent Offenders to Media, Community, Legislators, and Office of Financial Management.	

Department of Corrections
WASHINGTON STATE

Proposal Request

	Currently each agency uses different technology to share, track and store information. This is potentially risky as Business work arounds may include information sharing practices that are not meeting Security Requirements for Category 3 and 4 data. Stored and Retention is in multiple locations/agencies. This project would look at a seamless IT approach to sharing information for residents as they transition from state facilities to the Special Commitment Center Department of Social and Health Services (DSHS) back to Department of Corrections (DOC) Supervision under a Less Restrictive Alternative. The cases are statutorily mandated to be supervised by DOC however, DSHS holds jurisdiction ultimately creating a continuous need to share information throughout the process. Agencies involved would include DOC, DSHS Western State Hospital, DSHS Eastern State Hospital, DSHS Special Commitment Center, Attorney General's Office, King County Prosecuting Attorney, Department of Children Youth and Families Juvenile Rehabilitiation, Contracted Community Sex Offender Treatment Providers, and Defense Council (multiple enties). The project would work to identify current business practices, create systemwide retention and provide potential solutions working to save agencies time and resources. This proposal would include costs, and identified resources to be supported by each agency that is impacted ultimately presenting to the Legislature for funding.	
Proposal	What is the proposed business need or business process that is being addressed? Why is now the appropriate time to address this? Currently each agency has different approaches to identifying the Catagory of documentation and how to securely transfer that material from one enty to another. Each agencies IT speaks differently and follows different guidelines (policies) that creates hurdles in the daily business practice. Ultimately costing extensive staff hours and potentially risky business work arounds that may not provide the level of security necessary. The ultimate goal would be to have a system that is secure that would require less staff time to share information so that all the entities are notified and able to apply that information to ultimately protect the Community and provide smooth resident transition.	
Timeline	What is the start date of the project or date the decision is required? **8/1/2019** Enter details for urgent requests: The current ask is to continue using Dan King as a facilitator to work with the other agencies to determine what systems they are currently using and identify resource savings. It has been suggested that perhaps we involve WATech in the conversation to see if resources exist and/or what system requirements would need to be met to make this project successful.	
Strategic Alignment *Check all that apply and provide details* *Click Here to view Fundamentals Map*	☒ Improve Lives ☒ Keep People Safe ☒ Engage and Respect Employees	☒ Achieve Organizational excellence ☐ None
	Details: Cite Outcome Measure and/or Supporting Processes by number and name.	
Why must this go forward? *Check all that apply and provide details*	☒ Legislative Mandate ☐ RCW Change ☐ Court Decision/Legal Mandate	☐ Cost avoidance *(must be substantiated by Budget Office staff)* ☒ Process Improvement Recommendation ☐ Other Click here to enter text.

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Details: This project is necessary as the population of Sexually Violent Predators under Less Restrictive Alternative in the Community has increased significantly and will continue to rise given the pattern of releases and the aging population at the Special Commitment Center.

Stakeholders

Which functional areas will be impacted by this request? *Check all that apply.*

☐Prisons	☒Community Corrections	☐Reentry
☐IT	☒Public Disclosure	☐Records
☐Human Resources	☐Training and Development	☒Technology Review Board
☐Financial Services	☐Hearings	☐Click here to enter text.

What are the potential impacts on internal stakeholders?
End of Sentence Review/Law Enforcment Notification program
Civil Commitment Program
Public Disclosure

What are the potential impacts on external stakeholders? (Other state or federal agencies, community partners, other law enforcement agencies, etc.)
Agencies involved would include DOC, DSHS Western State Hospital, DSHS Eastern State Hospital, DSHS Special Commitment Center, Attorney General's Office, King County Prosecuting Attorney, Department of Children Youth and Families Juvenile Rehabilitiation, Contracted Community Sex Offender Treatment Providers, and Defense Council (multiple enties)

Staff			
Classification Title	Number of FTEs	Hours/FTE	Total Hours
			0.00
			0.00
			0.00
			0.00
			0.00
			0.00
Totals:	**0.00**	**0.00**	**$ -**

Risks if not approved

#	Risk	Strategy
1	Inadequate information sharing	
2	Non-secured data transfer	
3	Community Saftey impacts	

Work Around/ Alternatives Considered

#	Alternative	Analysis
1		
2		
3		

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Proposal Request

<table>
<tr><td rowspan="2">Cost/Budget Requirements</td><td>What are the estimated costs? Is budget identified and/or verified? Is Budget being requested through a decision package? What resources and funding is the requesting division willing to provide (e.g. pay for additional staff or equipment costs; allocating staff time)

This project will ultimately put a decision package together with all agencies proposing. The resources required to initiate and proceed with be through allocating staff time by the Civil Commitment Program and LEN staff attendance and participation.</td></tr>
<tr><td>Initiator fills out the estimated requirements. What are the estimated costs? (Staff, dollars needed for implementation, and see items listed below. Any other costs? The Budget unit will review and update.

<table>
<tr><th colspan="4">Goods and Services</th></tr>
<tr><th rowspan="2">Item</th><th rowspan="2">Brief Description</th><th colspan="2">Estimated Amount</th></tr>
<tr><th>One Time</th><th>Ongoing</th></tr>
<tr><td>Contracts</td><td></td><td></td><td></td></tr>
<tr><td>Equipment</td><td></td><td></td><td></td></tr>
<tr><td>Programming Client Services</td><td></td><td></td><td></td></tr>
<tr><td>Programming Offender Services</td><td></td><td></td><td></td></tr>
<tr><td>Travel</td><td></td><td></td><td></td></tr>
<tr><td>Vehicles</td><td></td><td></td><td></td></tr>
<tr><td></td><td></td><td></td><td></td></tr>
<tr><td></td><td>Totals:</td><td>$ -</td><td>$ -</td></tr>
</table>
</td></tr>
<tr><td>Information Technology
(Contact the Business Relationship Manager, Mary-Jane Arnold at (360) 725-8492)</td><td>Provide IT costs for:
• One-time cost: _____
• On-going maintenance: _____
Does this request involve an existing DOC application(s)?
☐ Yes. Please indicate the application(s) Click here to enter text.
☒No Mary Jane Arnold has been contacted and suggested involving WATech</td></tr>
</table>

Section 2 – Complete this section to document approval.			
Authorization			
Position	**Signature/Name**	**Date**	**Routing**
Supervisor	Brandon Duncan	6/12/2019	*Route to Appointing Authority*

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Appointing Authority	Click here to enter name.	Date	*Route to Executive Strategy Team Member for Enterprise Level Projects or Decisions*
Executive Strategy Team Member	Click here to enter name.	Date	Route back to originator
Comments:			

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Proposal Request

FOR EST DECISIONS ONLY

Discussion	This section captures EST discussion details, concerns, risks, dissent, support, and relevant details leading to the decision by EST. This may be copied from EST meeting notes.

Vote detail:

Checked box indicates a vote FOR the proposal. Absentees are indicated by ~~strikethrough~~. Majority vote will prevail with a required quorum of 8 votes.

☐ Administrative Operations	☐ Communication	☐ Community Corrections
☐ Deputy Secretary	☐ Executive Policy Office	☐ Health Services
☐ Human Resources	☐ Prisons	☐ Reentry
☐ Secretary		

Next Steps	**What**	**Who**	**When**

All EST decisions will be documented on the Office of the Secretary's SharePoint site in the EST Decision Log. This form will be archived in the Office of the Secretary SharePoint document library.

Sex Offender Policy Board
Office of Financial Management
P.O. Box 43113
Olympia, Washington
98504-3113
360-995-3847