



STATE OF WASHINGTON
SEX OFFENDER POLICY BOARD

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SEX OFFENDER POLICY BOARD

September 24, 2020 9:00am-12:00pm

Microsoft Teams Meeting

Members Present:

Elyse Balmert
Joshua Choate
Robert Gelder
Brad Manke
Brad Meryhew
Michael O'Connell
Jedd Pelander
Mac Pevey
Jennifer Ritchie
Stephanie Sacks
Richard Torrance

Members Absent:

Roger Rogoff

Members Represented By

Proxy:

Elyse Balmert (Jill Getty)
Linda Farmer – Late (Sharon Swanson)
Dave Flynn (Lowell Porter)

Staff:

Leah Landon

Guests: Jamie Weimer, WASPC; Shoshana Kehoe-Ehlers, ODP; Kelsey-anne Fung, Senate Committee Services; Sonja Hardenbrook, Snohomish County DPA; Devon Gibbs, King County DPD; Daniel Davis, Pierce County Prosecuting Attorney's Office; Kevin Black, Senate Committee Services; Jennifer Williams, DOC; Theo Lewis, DOC, Cathi Harris, DOC, Dominic Winter, DOC; Lowell Porter, SCC; Brandon Duncan, DOC; Rachael SeEVERS, Disability Rights Washington; Elena Lopez, SCC; Sophia Byrd McSherry, OPD; Dan Yanisch, SCC; Jacob Bezanson, SCC; Corey McNally, DOC; Terrina Peterson, WASPC

Meeting Notes

Welcome & Call to Order

Brad Meryhew called the meeting to order and asked everyone to introduce themselves. Meeting participants were asked to mute their microphones when not speaking, and asked to use the chat function through Microsoft Teams to ask questions, make comments, etc. The meeting was recorded and can be provided upon request.

Leah introduced Stephanie Sacks, WCSAP's new representative to the Board. Stephanie provided a brief introduction.

Leah provided a brief overview of tips for meeting participation and asked guests to allow board members to discuss and participate first, and reminded everyone that there is time for public comment at the end of the meeting.

Approval of Meeting Minutes

Brad Meryhew asked the Board to approve the meeting minutes from August 20, 2020.

MOTION #20-12: MOTION TO APPROVE THE JULY 16, 2020 MEETING MINUTES.

MOVED: Jedd Pelander

SECONDED: Rob Gelder

ABSTAINED: Stephanie Sacks

PASSED: Unanimously

Meeting Objectives

Objective 1: Sub-Committee Updates

- **Brad** asked **Terrina Peterson** for an update on the Community Notification sub-committee.
 - **Terrina** said there were no updates and that their final product had been submitted to the Board for approval.
- **Brad** invited **Michael O'Connell** to provide an update on the Treatment, Discharge Planning, and Conditions of Release sub-committee.
 - **Michael** said the group has currently identified 20 sticking points and the group has used HB 2851 from the 2020 legislative session as the basis for discussion. **Michael** said the group had come to agreement on the sticking points and associated recommendations.
 - **Brad** asked for more information on how the sub-committee used the structure and content of HB 2851.
 - **Michael** said they agreed the bill as written was a significant improvement over the status quo, and started at that point. The group recommended some tweaks and revisions, and feels the sub-committee got to a good place with it.
 - **Leah** put the sticking points and their associated recommendations on the screen, and **Michael** walked through each one with the Board.
 - On Item 7, **Mac Pevey** asked if there was an existing MOU with the SCC and DOL.
 - **Michael** said the wording suggests an existing one.
 - **Mac** said if there is not currently one, DOC has an agreement with DOL and they may be able to replicate what they have in place to help with this process.
 - **Dan Yanisch** said he does not know about the status of any MOU but said he would look into it.
 - **Brad Meryhew** asked if the Freedom Project does any programming on the island.
 - **Dan Yanisch** said not that he is aware.

- **Michael** asked for more information on the Freedom Project.
- **Brad** said it is a non-profit organization that has been teaching non-violent communications and other skills to those inside of institutions. They also provide circles of support outside of institutions. **Brad** added that they have a program model that may be excellent for this population.
- Regarding Item 18, **Brad Meryhew** said the difficulty in any step-down process is someone has to be the decision maker, and this discretion leads to liability. The way this was solved in the SSOSA world was to put it back before a judicial officer on a regular basis. If you have a system that asked a DOC or DSHS employee to make these decisions, it would probably be DOA in Washington policy.
 - **Jennifer Ritchie** said because there have been representatives from DOC and DSHS we have talked a lot more about discretion and how important it is for individuals to exercise discretion. Jennifer said in the King County cases she is seeing much more discretion exercised in SVP cases. She added that the transition team is much more willing to take risks now. The two goals of transition and community safety are being recognized more than they used to be.
 - **Michael** added that he was impressed by how the group came together on this issue, and that the group agreed that the successful transition was the goal.
 - **Brad** added that he has seen increasing discretion in certain areas, but he does not see flexibility in removing conditions.
 - **Corey McNally** added that a recent SGC report added that the lack of sovereign immunity poses problems.
 - **Jennifer Ritchie** said in every single community-based LRA order in King Co, it gives the transition team after 90 days, to lessen chaperones, to approve places, etc. these things don't go before the court again. Most of the people on these LRAs are traveling pretty freely in the community as long as they are doing point-to-point or sticking to their itinerary. The only order this may not be written into is one where the individual is in a housing environment specifically for people with cognitive issues who need the chaperones.
 - **Brad** said he is glad to hear about this, but the sovereign immunity and potential for liability is common and what every DOC officer mentions.
 - **Devon Gibbs** said she wanted to make sure it is clear what the position of the defense is. **Devon** said they agree with Brad that sometimes there are issues with the transition team, but they want the team to have discretion as they know the client best. It is helpful to have the courts though when the transition team is

stalled. Usually, setting a hearing has been the impetus for the transition team to make a move if they are stalled. Generally they are exercising more discretion than they have in the past. Having them use discretion with the court as a backup if they are not using it sounds good.

- **Brandon Duncan** said he has only be in the SVP world about 18 months but in his experience, there has been a substantial effort for collaboration and the idea for condition reduction and a tiered approach to release is an ongoing discussion that involves all the stakeholders. This really is something that people are anchored to and want to explore.
- **Michael** added that the fact that we are having a robust conversation about this is indicative of how sticky this sticking point was. There are clearly some things that should get flushed out more. To **Brad's** point about liability, in his experience, the most successful transitions have been the ones that build this into the court order. There is a combination of having the legal cover of a court order and working more collaboratively, that will help move forward.
 - **Brad** thanked **Michael**, and said what he just witnessed is a level of collaboration and shared goals that he has not often experienced in Washington government.
 - **Leah** said that **Sonja Hardenbrook** sent a message to the chat noting that it is the opinion of the AGO that the defense cannot go back to the court to get changes to the LRA order, unless the AGO agrees and for this reason they often need review hearings built into the roder.
 - **Michael** said this was something they had not considered and may be reason for additional discussion.
 - **Josh Choate** said this comes from the statute (RCW 71.09.098) which limit those who can come before the court. The treatment provider can make a request, but not the client or their representation. This might be what the Board might want to look at if they are interested in a change to this.
 - **Brad** asked if the AGO may be amenable to a change that says the defense can go back to the court in certain circumstances.
 - **Josh** said it is possible, especially if there is a logislatical reason or the plan is not working the way it should. The person on the LRA should be able to raise this. **Josh** added the AGO is open to these conversations and they do try to work with folks on these issues. They try to anticiapte in the original LRA as much as they can, and try to give the transition team as much discretion as they can so people do not return to court. **Josh** also complimented Brandon's

team and their use of discretion and said they appreciate the work they have done.

- **Brad** asked if the AGO would be amendable to the person on the LRA being able to return to the court with showing of good cause.
 - **Josh** said he personally would be, but there may need to be some sort of gatekeeping function, as this would help it gain traction.
 - **Jennifer Ritchie** said they already allow the defense to go to court to modify, and their LRA orders are almost always agreed. When there are orders, sometimes they just send them to the court to sign off about it.
- **Sonja Hardenbrook** said the statute didn't realize how great some of the clients would do and it might make sense to have a separate section that says if clients are doing well they can bring something before the court. She added that she has no objection to some type of good cause, but she does not want it to be something that gets abused and prevents them from coming before the court and exercising their clients due process rights. **Sonja** added she appreciates **Josh**, and they agree on most of the orders, band in those cases where they do not agree the fights are usually with the SCC.
- **Devon Gibbs** said she attached the section described in the chat, and it seems to only contemplate returning before the court when there are problems and the defense is not listed, but there are many people who are doing well and need decreased conditions. The statute only seems to contemplate if someone needs additional care or has violated something. Devon added that they have not had problems with Jennifer Ritchie preventing access to the court based on this, but if this is not happening for everyone it should.
- **Brad** asked the sub-committee to look at this item and see if a tweak to the language makes sense.
- **Stephanie Sacks** added that she understanding reducing barriers, but with the increased discretion there is an increased liability and maintaining the judicial oversight, instead of increasing discretion which is concerning to her, makes more sense. From a safety perspective it makes more sense to have discretion with judicial oversight.
 - **Brad** said allowing all parties to go back to court is a way to ensure that judicial oversight is potentially available.

- **Devon Gibbs** said her concern is that many clients may age out or have different needs by the time these are implemented. The defense likes the regional placement model, they are just anxious for these to be built so they can make use of the beds.
 - **Linda Farmer** said she agrees that the more we can frame up the conversation, the better chance we have of being acted upon.
 - It was agreed that **Leah** and **Lowell** would work on additional wording to express these concerns, and would forward an update to the Board in the coming days.
 - **Brad** asked members to send their concerns/comments in as soon as possible and that the 10/15 meeting would be for the vote, as most of the discussion has occurred.
- **Devon Gibbs** said she was proposing a goal of no more than 2 years for the completion of the first SCTF.
 - **Brad Meryhew** said a way to soften this may be to use the words “a couple”.
- **Brad** said these conversations have been very difficult and the work that has been done here is exemplary, and it is a rare moment that everyone comes together over a shared goal and works together to solve it.

Next Steps

- **Next Full Board Meeting**
 - Thursday, October 15, 2020 from 9:00am-12:00pm
 - Leah and Lowell will work together on additional language for the executive summaries.
 - Final recommendations from both the Treatment, Discharge Planning, and Conditions of Release sub-committee as well as the SCTF Siting and LRA Placements sub-committee will be sent to the Board prior to the 10/15 meeting so they can be reviewed prior to final votes during that meeting.

MOTION #20-13: MOTION TO ADJOURN

MOVED: Michael O’Connell
SECONDED: Brad Manke
ABSTAINED: None
PASSED: Unanimously

Meeting adjourned by Brad Meryhew at 11:30am.

APPROVED AND ADOPTED BY THE SEX OFFENDER POLICY BOARD

 /s/
 Chair Brad Meryhew

 10/15/2020
 Date