



STATE OF WASHINGTON
SEX OFFENDER POLICY BOARD

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SEX OFFENDER POLICY BOARD
Treatment, Discharge Planning, and Conditions of Release
Sub-Committee Meeting
June 1, 2020 1:00pm-3:00pm
Microsoft Teams Meeting

In Attendance: Leah Landon, Staff; Michael O'Connell, Chair; Jennifer Williams, DOC; Terrina Peterson, WASPC; Shoshana Kehoe-Ehlers, OPD; Dan Yanisch, SCC; Andrew Morrison, Contract Attorney; Sonja Hardenbrook, Snohomish Co. Public Defender; Jennifer Ritchie, King County Prosecuting Attorney's Office; Jamie Weimer, WASPC; Jedd Pelander, DCYC-JR; Corey McNally, DOC; Rachael SeEVERS, Disability Rights Washington; Shawn Candella, SCC; Zainab Ghazal, SCC; Daniel Davis, Pierce County Prosecutors Office

Meeting Notes

Welcome & Call to Order

Leah Landon (staff) called the meeting to order and discussed tips for participating in the virtual meeting. Meeting participants were asked to mute their microphones when not actively participating. The meeting was recorded (this includes the chat function) and can be provided upon request. Leah introduced Michael O'Connell as the sub-committee Chair. Michael introduced himself and then Leah invited other sub-committee members to introduce themselves.

As this was the first time using Microsoft Teams, Leah asked participants to provide feedback after the meeting on how it worked for them, in hopes that it works better for everyone than Skype. Leah also let people know that if they use the web app, they may not be able to use the chat function and to just unmute themselves when they want to speak.

Approval of Meeting Minutes

The sub-committee was asked to approve the meeting minutes from May 6, 2020.

MOTION 20-1-1: MOTION TO APPROVE THE MEETING MINUTES FROM MAY 6, 2020 AS WRITTEN.

Moved: Jedd Pelander

Seconded: Dan Yanisch

Passed: Unanimously

Abstained: None

Meeting Objectives

Objective 1: Review LRA Process Map

- Leah worked with Andrew Morrison and Devon Gibbs to develop an LRA Process Map so that meeting participants had a better understanding of the current process. This could then be used to more accurately identify areas for improvement. Sonja Hardenbrook sent Leah edits as the meeting was starting, so it was decided that the group would work from Sonja's edited version.
- Sonja Hardenbrook walked the group through her proposed changes to the process map.
 - Both the original process map and the proposed edits are available upon request.
- Corey McNally asked if the LRA trial is to decide if the LRA is appropriate or if it is to determine what conditions are set. Sonja said that the state bears the burden at trial to prove that the LRA proposed by the person is not in their best interest, or that the conditions proposed are not enough to protect the community. If the state cannot prove one of these beyond a reasonable doubt, the defense wins the trial. The conditions are set further down the road.
 - Sonja points out that the court is technically deciding if the conditions are acceptable prior to the conditions being set by the court.
 - Corey also asked if these two things can conflict (can someone be found to be releasable, while the conditions are not adequate)?
 - Sonja explained that technically under the statute this is possible, but there would likely be constitutional issues if this occurred.
- Jennifer Williams asked if someone no longer meets criteria but is still seeking an LRA, if this is only under a stipulation. Sonja said that someone is committed until the point that they are not, and the commitment issues is not addressed during the LRA trial. One can have an evaluation supporting unconditional but prefer to pursue an LRA and not bring up the issue of whether they meet criteria. This is fairly common, and the defense will continue to pursue the LRA.
- Jennifer Ritchie clarified that if the LRA is being recommended by the SCC is an LRA to an SCTF, King County does not have that person reevaluated. As long as the report is adequate and meets the statutory requirements, they skip to the DOC investigation step. This process is different for AG cases.

Leah reminded the group that the sub-committee's purpose was to look at the development of treatment and discharge plans, as well as conditions for release. Leah asked the group to determine specifically at what points in the process these happened. Once this is determined, the group can start working on the areas for improvement within those specific processes.

- Jennifer Williams pointed out that there is not a box for a Transition Team call before the conditions hearings and that these are helpful but not happening in every case.
 - Jennifer Ritchie agreed that these are very helpful. These happen in King County and the Transition Team, Prosecutors and defense go through the proposed LRA order together on a conference call. This allows the group to tell the court that everyone's input is considered. Jennifer said that this has been successful and helpful for them.
 - Leah asked if this was an area for improvement or if it needed to be added to the flow chart. Sonja said that this does not happen in all of the AGO cases and does not happen in the same way. Typically the AGO cases are standard language and is not custom for the client. Jennifer Ritchie pointed out that King County orders are tailored to individual clients. When this happens in King County they are able to tell the Judge that each party's concerns have been heard and addressed.
 - Jennifer Williams pointed out that this happens most times in agreed AGO cases.

The group started discussing the development of the treatment plans.

- Sonja Hardenbrook said that the treatment plan currently begins when the SOTP drafts a treatment plan for when the client releases to the community. Sonja pointed out that what the defense would like to see happen is the treatment plan be planned for by the SCC starting from the date of their admission.
 - The defense gives the treatment provider the documents they need, but it is a lot of pages and too much for them to go through, so they use the most recent Annual Review and additional materials.
 - Jennifer Ritchie pointed out that a treatment plan will be very different at the time of release from when someone came in, and that a SOTP may want to do something different than the SCC.
 - Rachael SeEVERS pointed out that the SCC updates their treatment plans twice a year, so it should be updated throughout the client's stay at the SCC.
 - Michael O'Connell mentioned that there is no condition where the proposed SOTP consults with the SCC clinical team. In the past, Michael did this himself, but he asked how common this was.
 - Corey McNally said when he was at the SCC this was very uncommon. His interpretation of the ethics code is that there should be a treatment handoff, and this is currently not happening.
 - Jennifer Williams asked if all the discovery records are provided to the SOTP to review because in the past some SOTPs have been unaware prior behaviors.
 - Sonja Hardenbrook said this is case-by-case. In some cases there is funding to pay an SOTP early in the process. The number of records the SOTP is able to review is directly related to the amount of money the defense can provide. Typically, the SOTP will review the recent annual reviews and the SCC treatment plan. Overall, the defense will provide as

much information as a SOTP wants, however this is different with each resident.

- Michael O'Connell asked what determines funding. Sonja said this is determined by statute and the courts. The defense has some funding by statute but beyond that they need to get a court order. Michael asked if this is a barrier to a treatment provider getting the information they need. Sonja said yes, including their current schedule and workload (they have other things they are working on).
- Shoshana Kehoe-Ehlers explained that when cases are at this stage and attorneys want to get SOTPs involved earlier, there is minimal funding for this, but in many cases this is preferred.
- Andrew Morrison said that the SOTP treatment plan addresses client-specific dynamic risk factors.
- Leah asked Michael how much information he had received from the SCC in the past, and how much he was able to incorporate into his treatment plan. Michael said he received information he specifically sought out. Michael said he would ask for recent annual reviews, and would weed out the clients he did not think would be good candidates. Additionally, he would seek out information from the SCC and in some cases this made the defense nervous. In some cases, Michael had sessions with treatment providers to get their input and bounce ideas around about how to handle the case, but it seems this is not common.
- Michael also mentioned that some SOTPs felt rushed by the defense to get a “nice tidy package” presented to the court.
- Dan Yanisch agreed that Michael’s approach was not common. Most providers do not have contact with SCC clinical staff prior to client release.
- Dan Yanisch asked the defense if they would be willing to have more contact with the SCC Clinical Team prior to presenting a plan to the court.
 - Sonja Hardenbrook said that the defense has all the records that the SCC does within a few months, and she has never been in a position to keep records from a provider. The defense is in a litigation posture, and they are not going to let the SOTP talk to the other side until they know they are “winning the game” and litigation is resolved. Sonja mentioned that in agreed LRAs, they would love to work together. In the past, when the defense has sent treatment providers to the SCC they tend to disagree and overall, she has not found any communications with the clinical team to be helpful.
 - Michael O'Connell mentioned the effect of the litigation process on the way this unfolds and the effect it has on the treatment and discharge planning. It may deny some people the chance to make certain decisions and may negatively affect a resident later in the process.
 - Andrew Morrison said there is a standing directive that defense contact Dr. Elena Lopez at the SCC.
 - Dan Yanisch said he is not aware of a standing directive.
 - Corey McNally reiterated that the current ethics code states that when transferring from one treatment provider to another, there needs to be a hand off.
 - Sonja Hardenbrook mentioned that her client’s treatment provider changes twice a year and the clinician working with her client barely knows them. This may mean that the SOTP from the community may need to talk to 8 different clinicians over

the course of the LRA process. The defense wants their client to be successful and they have again, not found the communication with the SCC to be helpful.

- Jennifer Williams stated that the current approach affects continuity of care. This frustrates the resident as in many cases, they feel they are starting treatment all over again.
- Michael mentioned that in the past when he has visited the SCC he has had to reiterate that he was not there to do treatment, there was a level of suspiciousness from the SCC.

Leah asked if there were other areas of the treatment planning process that sub-committee members wanted to discuss.

- Corey McNally brought up Richard Packard's letter to Jennifer Ritchie that had been previously sent to the group. Leah asked Michael to talk to the group more about the letter and some of the areas Richard Packard mentioned.
 - Michael said the letter mostly referred to some details of the treatment plan, and it mostly had to do with limitations on what the SOTP was allowed to do and changing the conditions. Richard wrote the letter after having one LRA client and never wanting another because it was such a difficult experience. Michael further explained that the process as is, was very resistant to change and this makes it difficult. Michael also explained that those working with a resident getting together ahead of time can help resolve some of these issues.
 - Leah asked if there were specific requirements on the treatment plans being developed by the SOTPs.
 - Michael said there are a few items in the SCC contract, but for the most part it is the judge that agrees that the presented treatment plan is satisfactory.
 - Andrew Morrison said that SOTPs are supposed to adhere to ATSA standards and the SCC contract, but this can be very inconsistent and responsibility is not given much thought. Andrew also mentioned that it is difficult for the defense to be functioning as quality assurance.
 - Shoshana pointed out that the treatment plan and document disclosure should not be entirely on the defense.
 - Jennifer Ritchie agreed with Andrew and said that they typically look for ATSA standards in treatment planning.
 - Shawn Candella and Dr. Ghazal said the treatment plans are governed by Department of Health and if they are a licensed provider they are held to the same standard as other licensees.
 - Leah said it sounds like there is nothing specific from the SCC indicating specific requirements to be addressed during their treatment, and it sounds like most SOTPs have a lot of discretion.
 - Sonja said that CSOTP is a misnomer because they are not community SOTPs, they are actual SOTPs while those on the island are not.
 - Leah explained that when she used the term "CSOTP" she was referring to Certified Sex Offender Treatment Providers, not community.
 - Corey McNally also pointed out the recent legislation (6641) has allowed for the experience of those on the island to be certified. Legislation has

- been passed and is waiting to take effect. This legislative changes will resolve some of the issues mentioned previously.
- Michael said he added the community piece as a descriptor.
- Leah asked if knowing that the DOH requirements are not very robust, and that there are a lot of inconsistencies, what type of improvements did sub-committee members feel were important.
- Dan Yanisch said that consultation meetings between the CSOTP and those who are providing treatment on the island, if that could be facilitated either prior to accepting the person as a client or prior to developing their plan, this would be ideal. This could also include a consultation with evaluators.
 - Jennifer Williams said DOC/SCC has established collaborative conference calls when individuals are being filed on for Civil Commitment and transferring to the SCC to help with continuity of care. DOC/SCC have been working on a similar process to include collaborative conference calls between SCC staff and DOC once cases are identified by the CEO for potential LRA. Jennifer feels this should include treatment from the SCC as well as the community, in addition to SCC evaluators.
 - Michael O’Connell mentioned that the time he had a King County case that included a conditions meeting, it had quite the impact on the case. It set the stage for a different quality of LRA. Michael feels that this type of collaborative meeting prior to a hearing would be beneficial.
 - Corey McNally agreed.
- Leah clarified and asked if the group was in agreement that one of the areas for improvement is the involvement of the CSOTP prior to a hearing, and that the CSOTP and SCC Clinical Team should have a more collaborative relationship during the development of the treatment plan. However, the current barrier to this is the litigation posture.
- Sonja Hardenbrook said that their professional ethics says they cannot disclose something until it benefits their client.
 - Jennifer Williams asked what the LRA and Discharge Plan process looks like.
 - Jennifer Ritchie said something that has been discussed is where the defense could do LRA planning themselves if the SCC was not recommending the LRA themselves. It is an option and could take away the burden of about half of the LRAs.
 - Rachael SeEVERS said that the proposal allowed the defense to step in and offer assistance if the SCC could not find things.
 - Jennifer Ritchie said that in the cases she receives, there is a lot of agreement from the SCC.
 - Rachael there has been discussion around predisposition discussions, though she is not sure if the SCC has discussed this.
 - Corey McNally pointed out that the ethics surrounding the defense sharing more information may be an ethical conflict with the treatment provider’s responsibility to engage in a treatment handoff.

- Leah circled back and asked the group if she was correctly understanding that having a more collaborative approach prior to trial (in the form of a meeting with those involved in the treatment and release plan) would be beneficial for the client and allow for continuity of care. Unfortunately, there may be some ethical concerns on the defense-side prevent the sharing of certain information.
 - Andrew Morrison said there may be a difference of opinion between attorneys. Andrew said he has never had an ethical challenge having the SOTP engaging with the SCC and this should be happening. This is an issue of siloing and the litigation posture.
 - Sonja said the litigation posture creates the problem of people not wanting the liability concerns and not wanting those attached to their agency.
 - Jennifer Ritchie said she has not encountered this with DOC, SOTPs or the SCC and the difference in the process seems to be the AGO and the defense.
 - Sonja explained that in some cases it is hard to have this collaborative process when in some cases you have deposed people, but then asking them to come to the table and collaborate.
- The group discussed why the defense was tasked with taking on the LRA planning as Washington is the only state that does it this way.
 - Michael O'Connell asked if the group would be receiving additional information on what other states do and how they got there.
 - Leah said it was Devon Gibbs who has that information, and that she would ask Devon to provide an overview of this information to the group at the next meeting.
 - Andrew Morrison mentioned the survey data that Leah had sent out and that this was lengthy but if people had additional questions they may reach out to those other states.
 - Michael said he was still curious about how other states got to where they are.
 - Dan Davis asked if all clients require the same level of treatment.
 - Jennifer Ritchie said no, some who have significant cognitive issues may not have a treatment plan that is as robust. The treatment plan is more tailored towards what they can handle and what will be beneficial for them.
 - Leah asked how often those on an LRA see their treatment provider and for how long.
 - Sonja Hardenbrook said 1-2 times per week for between 1-3 hours a session. Oftentimes people will have a one-on-one and a group session.
 - Jedd Pelander asked if the discharge planning is discussed more after the trial.
 - Sonja Hardenbrook said yes, and at this point the AGO is no longer involved. The defense team's social worker will work with the SCC and DOC to begin the discharge planning. In addition, the defense will continue working with the client after their release.

Leah summarized the issues identified thus far to be:

- The ability of the defense team to share more information with the SOTP that would lead to a more collaborative approach prior to trial; and
- Liability concerns for agencies.

Next Steps

- The group agreed to continue to think of the treatment planning and discharge planning as one process.
 - Jennifer Williams mentioned it would be helpful to create a definition for discharge planning. Leah said she would work on this.
- Next Full Board meeting on June 24, 2020 from 1:00pm-5:00pm.
- Leah will send out Doodle poll to schedule next meeting.
- Leah will work with Sonja to update the LRA Process Map to reflect the necessary changes and feedback from the meeting.
- Leah will work with Devon Gibbs to arrange a brief overview of what other states are doing related to LRAs.

Meeting adjourned at 2:57pm

APPROVED AND ADOPTED BY THE SEX OFFENDER POLICY BOARD

 /s/
 Sub-Committee Chair
 Michael O’Connell

 June 17, 2020
 Date