

Less Restrictive Alternatives (LRAs)

RCW 71.09

OPD, WDA, WACDL, & DRW

Presenters:

- Devon Gibbs – King County PD-TDA
- Sonja Hardenbrook – SnoCo PDA
- Shoshana Kehoe-Ehlers – OPD
- Rachael Seevers – DRW



Presentation will cover:

- SCC and LRA Population
- What is an LRA?
- Problems with the Current Process
- Proposed Solution: Fair Share



SCC and LRA Population

Who is confined at the SCC?



Who is really at the SCC?

- Aging and “vulnerable adults”
- Chronic medical conditions and mobility limitations
- Serious mental illness, traumatic brain injury, developmental or intellectual disability, or other cognitive condition
- Need specialized services



These are the people being released to LRAs

If not the SCC, where?

Adult Family Homes

- Staff always on site
- Serve “vulnerable adults”
- Nursing and ADL assistance
- Can be specialized to serve only SCC releases

Community Protection Program

- DDA Program
- 24 hour, 1:1 staffing
- Individual or group living
- Targets people with SO hx or risky behaviors

Who is being released to an LRA?

- People who have followed the rules at the SCC
- People who participated in treatment (maybe)
- People experts have deemed ready for unconditional release but who request an LRA
- Some people have no child victims; others were children when they offended
- People in need of extensive supports due to disability

What is an LRA?

Less Restrictive Alternative to SVP Commitment

- Individuals reside in community under Court supervision
- TT governs under Court LRA Order
- DOC supervision “on steroids”
- Treatment with SOTP



How does formal LRA process begin*?

(1) SCC annual review evaluations finds an LRA in best interest and adequate to protect the community

or

(2) Defense petitions with expert opinion establishing that a specific LRA (.092 components) is BI & AP

*King County LRA process often skips petition/show cause by agreement

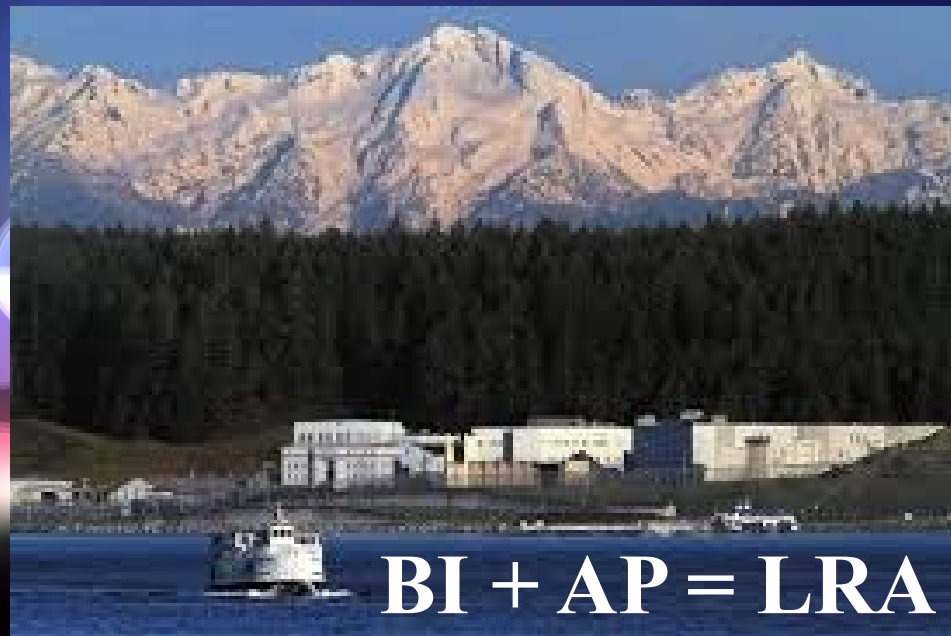
Does resident need to prove change?

- SCC annual review looks at current condition, need not address whether the result of *change*
- Petition (defense expert report) must show *change* unless it is the resident's first petition for LRA



Trial or State Expert Determination:

- (1) Whether LRA is in the best interest (BI) of the person &
- (2) Whether conditions can be imposed to adequately protect (AP) the community.



Who finds the LRA components?

- ~~Special Commitment Center?~~
- ~~Department of Corrections?~~
- Public defenders*



*See In re Det. of Skinner, 122 Wn. App. 620, 632, 94 P.3d 981, 986 (2004)(respondent burden)

How do you build an LRA?



Even super lawyers did not know how!

So what did we do?

Asked DOC for advice? . . .

Asked SCC for advice? . . .

Not many LRAs before to copy




SCTF v. Community Placements

- SCTF **only** by invitation from the SCC
 - Pierce County SCTF (transition and pretransition) on McNeil
 - King County SCTF
- Community Placements



Start in County of Commitment:

- SOTPs?
- Housing?




**Sex Offender
Treatment Provider
Directory**

January 2020

Publication DOH 695-021

11	GERALD ALUMBAUGH Level: Level II	200 BLOCK OF W SPRAGUE AVE	SPOKANE	99201	
12	RICHARD AMDAL Level: Transient Level I	TRANSIENT	SPOKANE		
13	JON ANSON Level: Level II	1100 BLOCK OF S MAPLE	SPOKANE	99204	
14	SHAWN APPELMAN Level: Level III	500 BLOCK OF W SPRAGUE AVE	SPOKANE	99201	
15	DAKOTA ARBUCKLE Level: Transient Level II	TRANSIENT	SPOKANE		
16	JOHN ATKINSON Level: Level II	200 BLOCK OF S WALL ST	SPOKANE	99201	
17	BRYON AU Level: Level III	30 BLOCK OF E MISSION AVE	SPOKANE	99202	
18	ALLEN AUBREY Level: Level III	200 BLOCK OF W SPRAGUE AVE	SPOKANE	99201	
19	FENTON AUTHER Level: Level II	6800 BLOCK OF W BERNHILL RD	SPOKANE	99208	
20	FERNANDO AVILA JR Level: Level III	1200 BLOCK OF N LINCOLN ST	SPOKANE	99201	
21	MIKAEEL AZEEM Level: Level III	1400 BLOCK OF N LINCOLN ST	SPOKANE	99201	
22	JESSE AZURE Level: Level II	2400 BLOCK OF E PROVIDENCE AVE	SPOKANE	99207	
23	SHANE BACKEMEYER Level: Transient Level II	TRANSIENT	SPOKANE		
24	DOUGLAS BADEAUX Level: Level II	4400 BLOCK OF N WHITEHOUSE ST	SPOKANE	99205	
25	DARRELL BAHAM Level: Transient Level I	TRANSIENT	SPOKANE		
26	GEORGE BALCOM Level: Level III	1200 BLOCK OF S Monroe St	Spokane	99204	
27	MICHAEL BARNETT Level: Level II	1500 BLOCK OF W GARLAND AVE	SPOKANE	99205	

Transitional Housing Provider Orientation Packet



Earned Release Date (ERD) Housing Voucher Program

Department of
Corrections
WASHINGTON STATE

400-940217 (toll free, 6/2018)

Explore other counties / resources:

- Contact SOTPs
- Search for Housing



Chaperones

- SCTFs have Escorts (staff)
- In community
 - Recruiting
 - \$15-\$45/hour



posting title: price: \$ (lower haight)

posting description: Externally-hosted images (IMG tag) are no longer allowed in for-sale ads. Please use CL image upload.

reply to:

Your email address use craigslist mail relay (recommended) ^[2]

Type email address again no replies to this email, please



Once we have components?



+



+



The defense can finally get a hearing!

PATHWAY TO AN LRA

Client committed as SVP

Year 1+

Client Ready for LRA

DEFENSE SEARCH FOR COUNTY RESOURCES

County of Commit. Housing & SOTP

DEFENSE SEARCH FOR STATEWIDE RESOURCES

Non County of Commit. Housing & SOTP

DEFENSE OR ANNUAL REVIEWER

An Expert Approves LRA

Defense Petition for LRA / Motion for Show Cause

Year 2+

BEST INTEREST & ADEQUATE TO PROTECT

Court orders DOC to Investigate

Defense wins Trial or State Expert Agrees

DEPOSITIONS & DISCOVERY

State evaluates LRA

Hearing On Petition or Show Cause

DOC investigates

King County Shortcut

Court sets conditions & orders release

DSHS agrees or is ordered to pay for LRA

DSHS community notification

30 days to release

Conditional Release to LRA

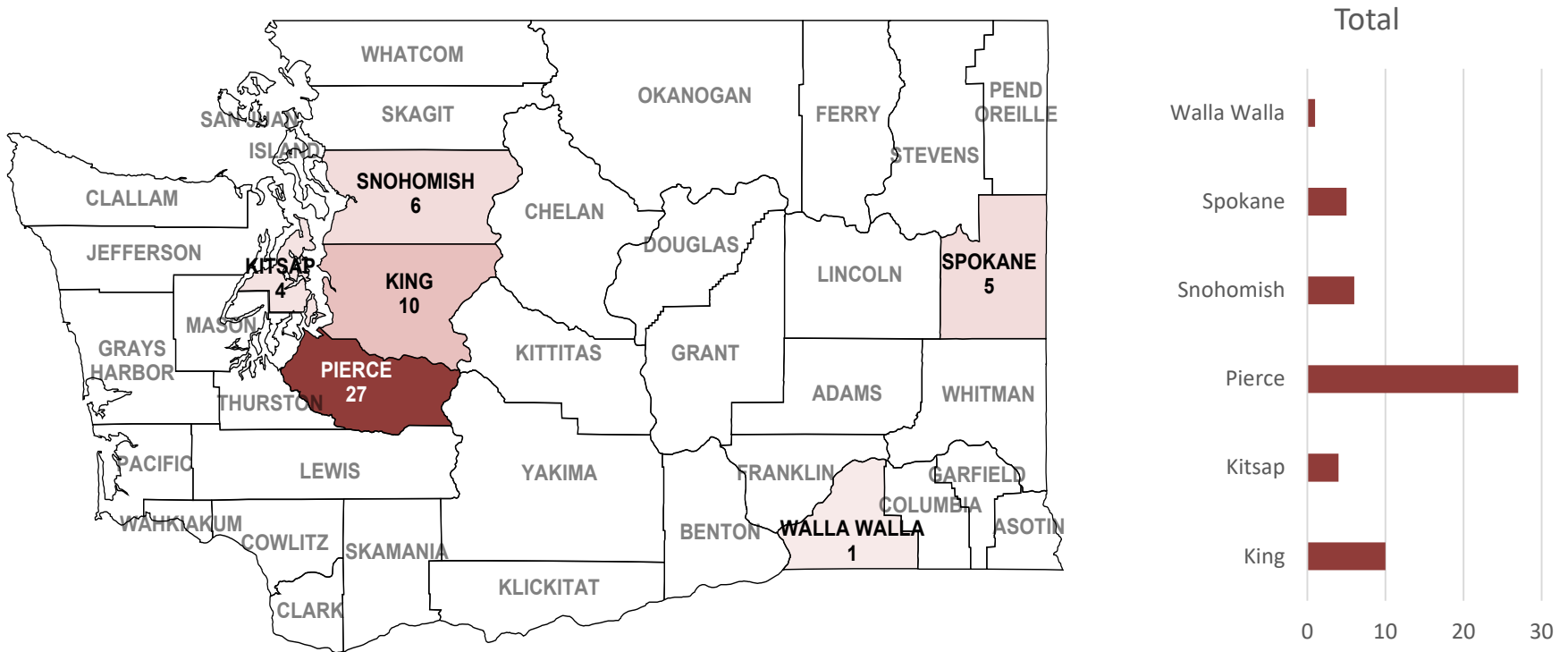
What is the Problem With the Current Process?

Universe of 71.09 Case Per County Total*



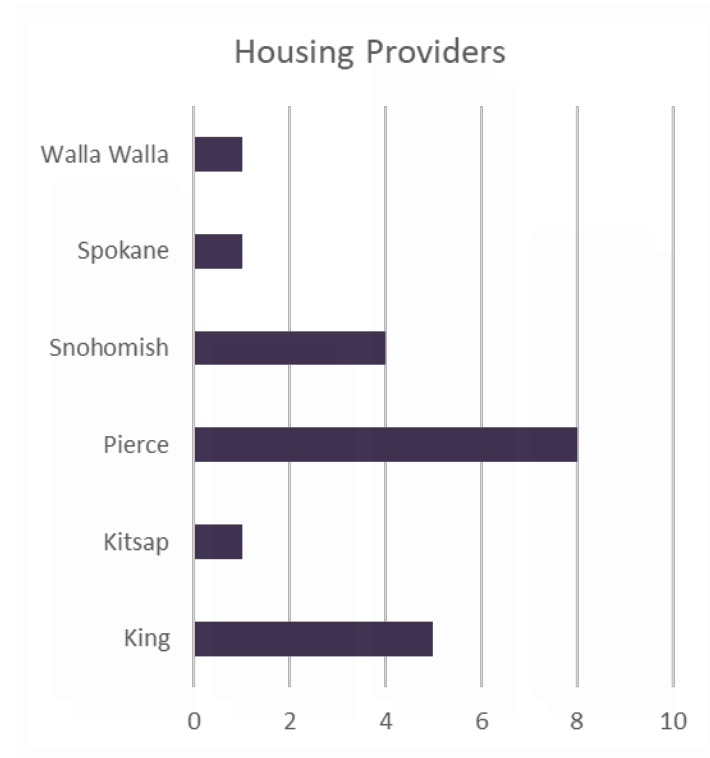
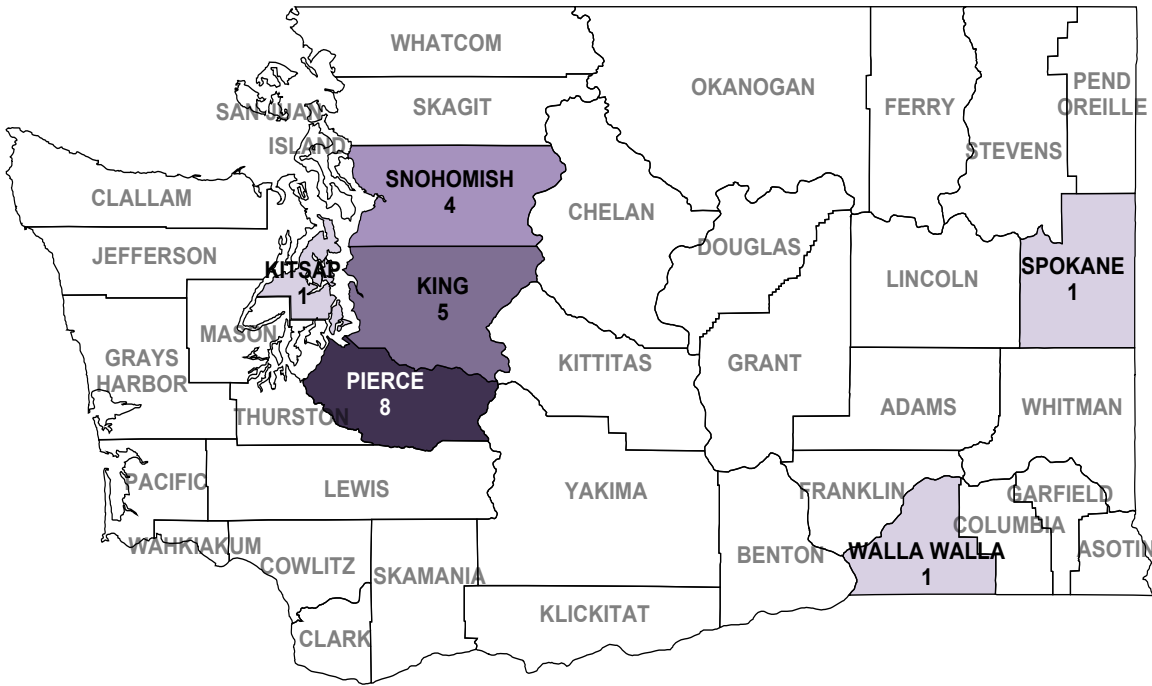
* This represents all individuals currently under Ch.71.09 RCW, at the SCC and on LRA

Total Clients on LRA in Each County

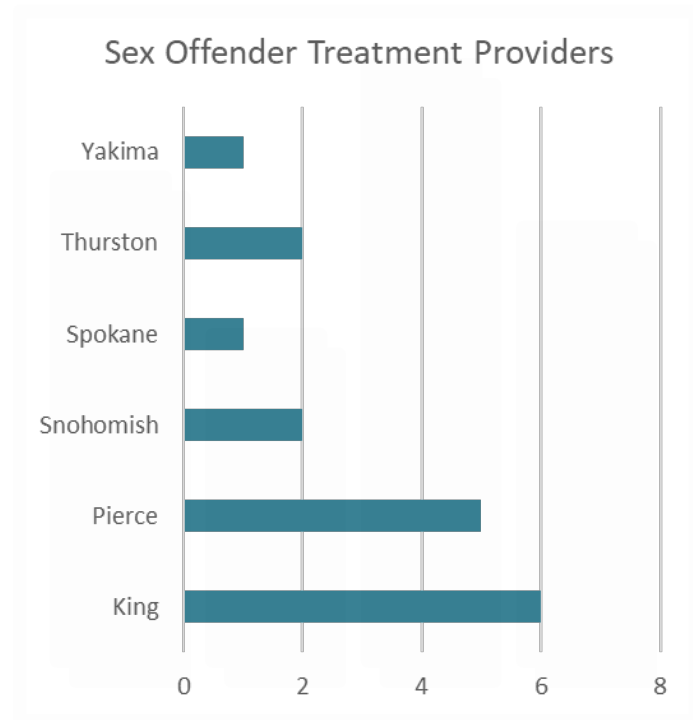
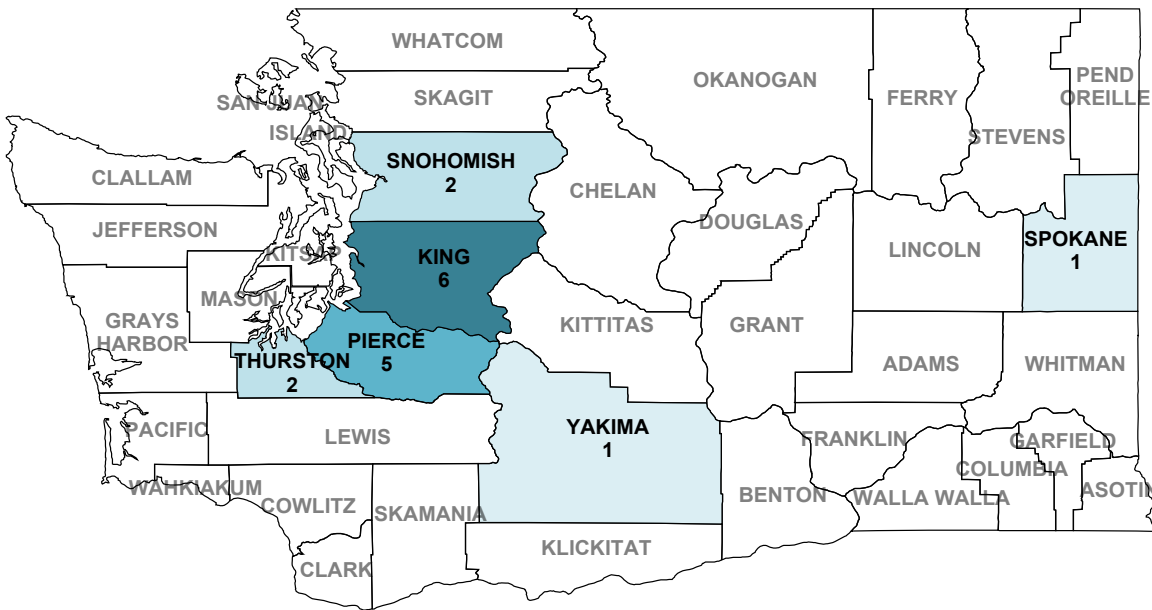


*14 Pierce County and 5 King County LRAs are at SCTFs

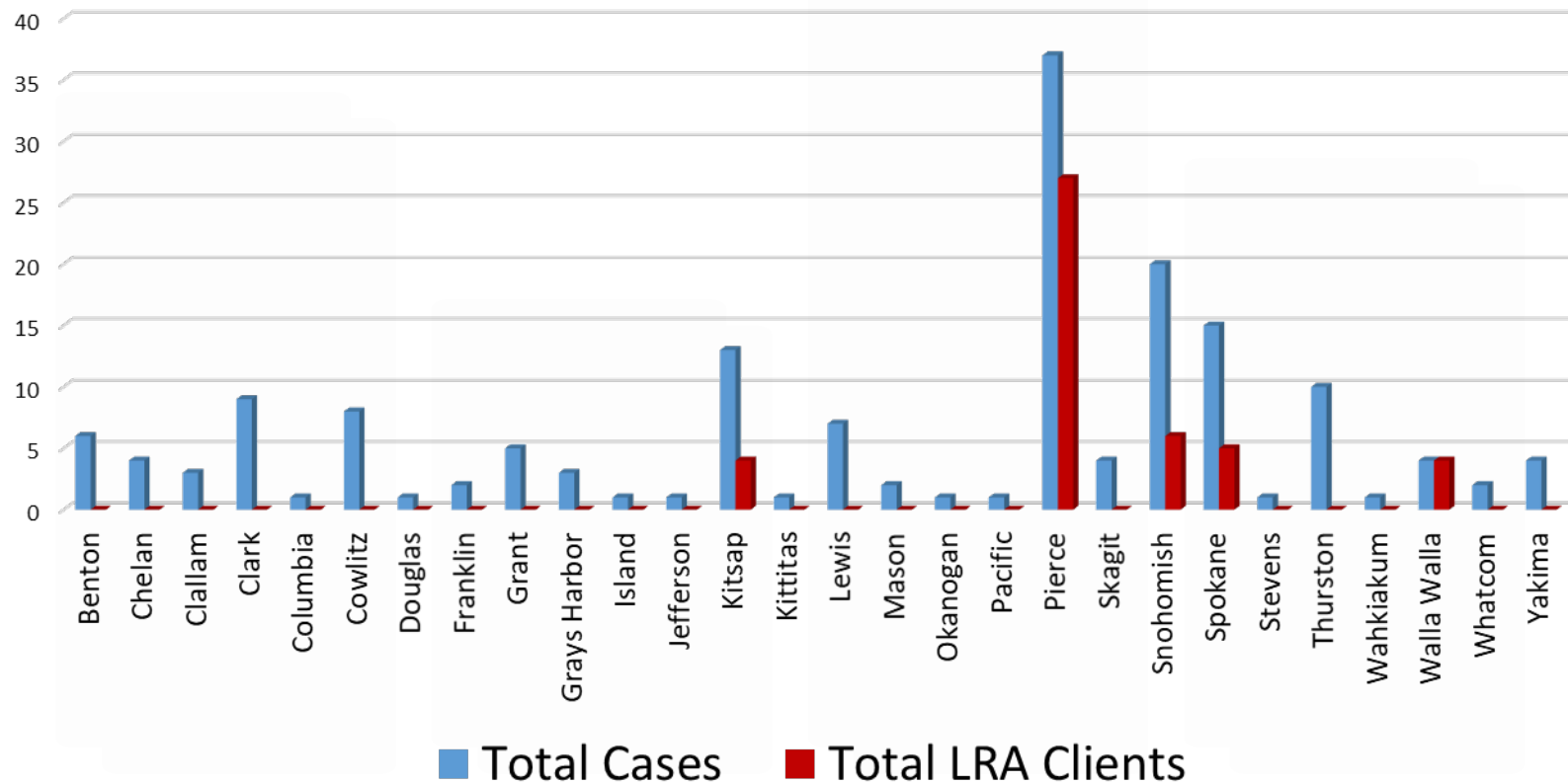
Housing Providers per County



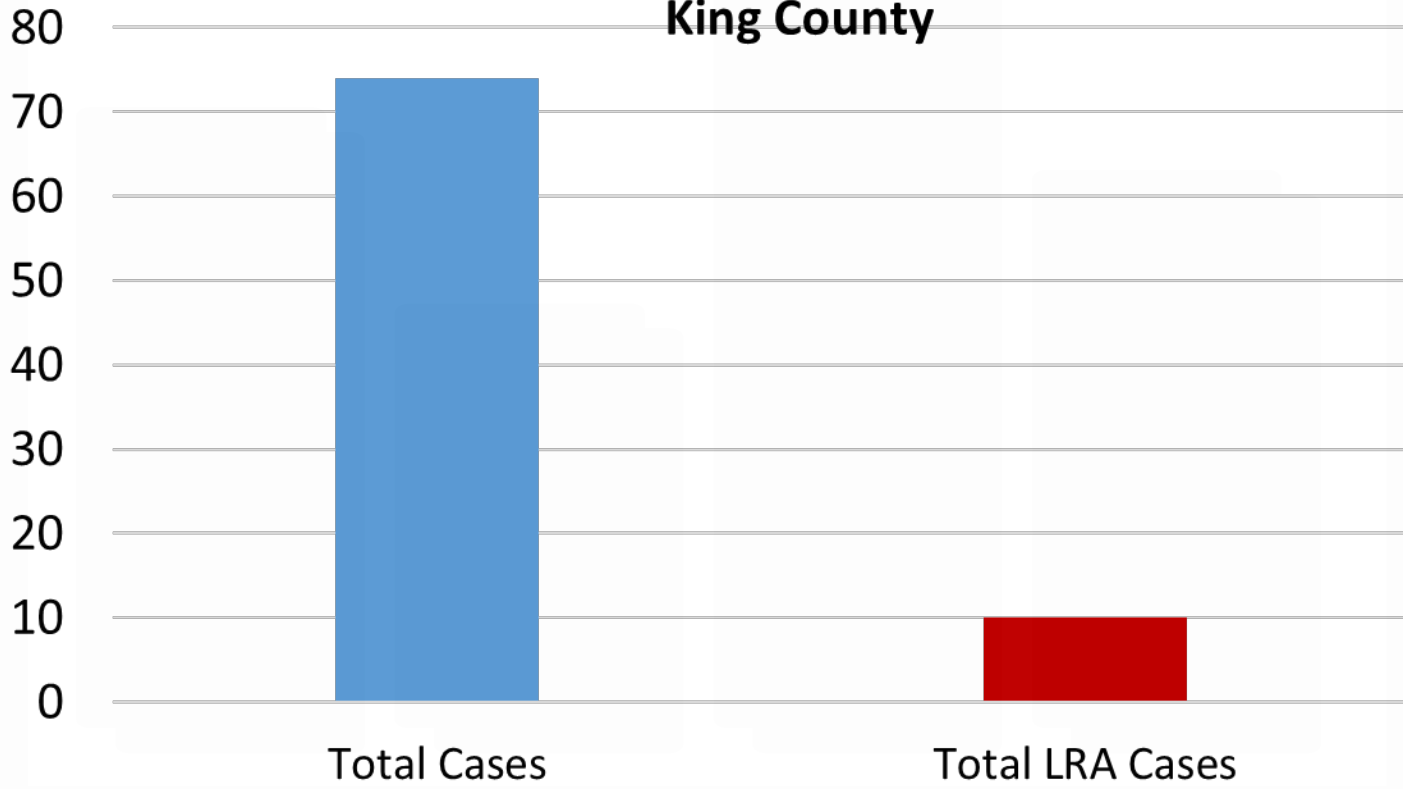
Sex Offender Treatment Providers per County



Total Clients Compared to Clients on LRAs



Total Clients Compared to Clients on LRAs King County





**NO OTHER STATE
DOES THIS!**



Failed Legislative Fix: CoC

RCW 71.09.096(5)(a) Preference for County of Commitment Unless:

- inappropriate considering any court-issued protection orders,
- victim safety concerns,
- the availability of appropriate treatment or facilities that would adequately protect the community.
- negative influences on the person, or
- the location of family or other persons or organizations offering support to the person.



COC doesn't work without infrastructure

Failed Because DSHS Does Not Find Placements*

RCW 71.09.096(5)(a) cont...

“When the department or court assists in developing a placement under this section which is outside of the county of commitment,

-and there are two or more options for placement,

-it shall endeavor to develop the placement in a manner that does not have a disproportionate effect on a single county.”

Only DSHS can assist in preventing a disproportionate effect.

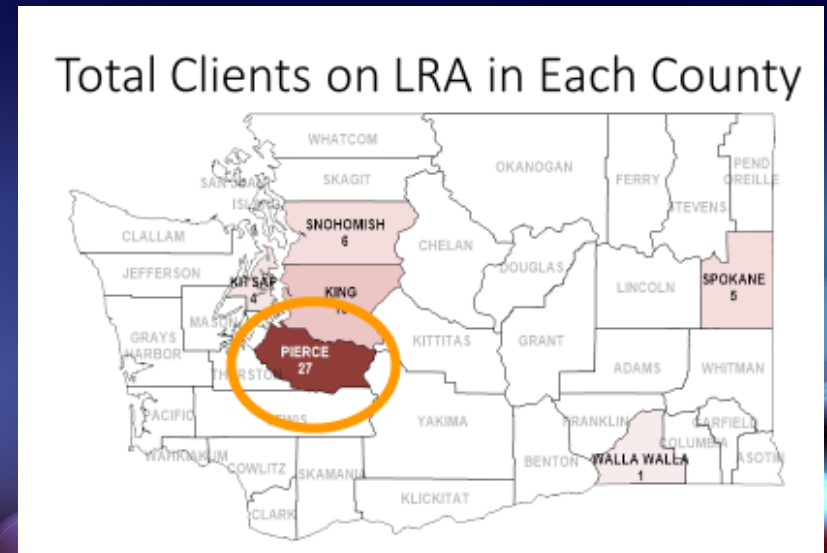


*Ethics requires an attorney to pursue individual client interests

New Housing Results in Public Outcry

Aug 9, 2018: Kiro 7: Local leaders fight plan to put sex offenders in adult family homes

- “DUMPING GROUND”
- LRAs in Pierce from: Mason, Spokane and Thurston.
- Accusation that Pierce chosen by DSHS for convenience & proximity
- Accusation state saving \$ AFH > ESF



They want the sex offenders spread out throughout the state.

New Housing Results in Public Outcry

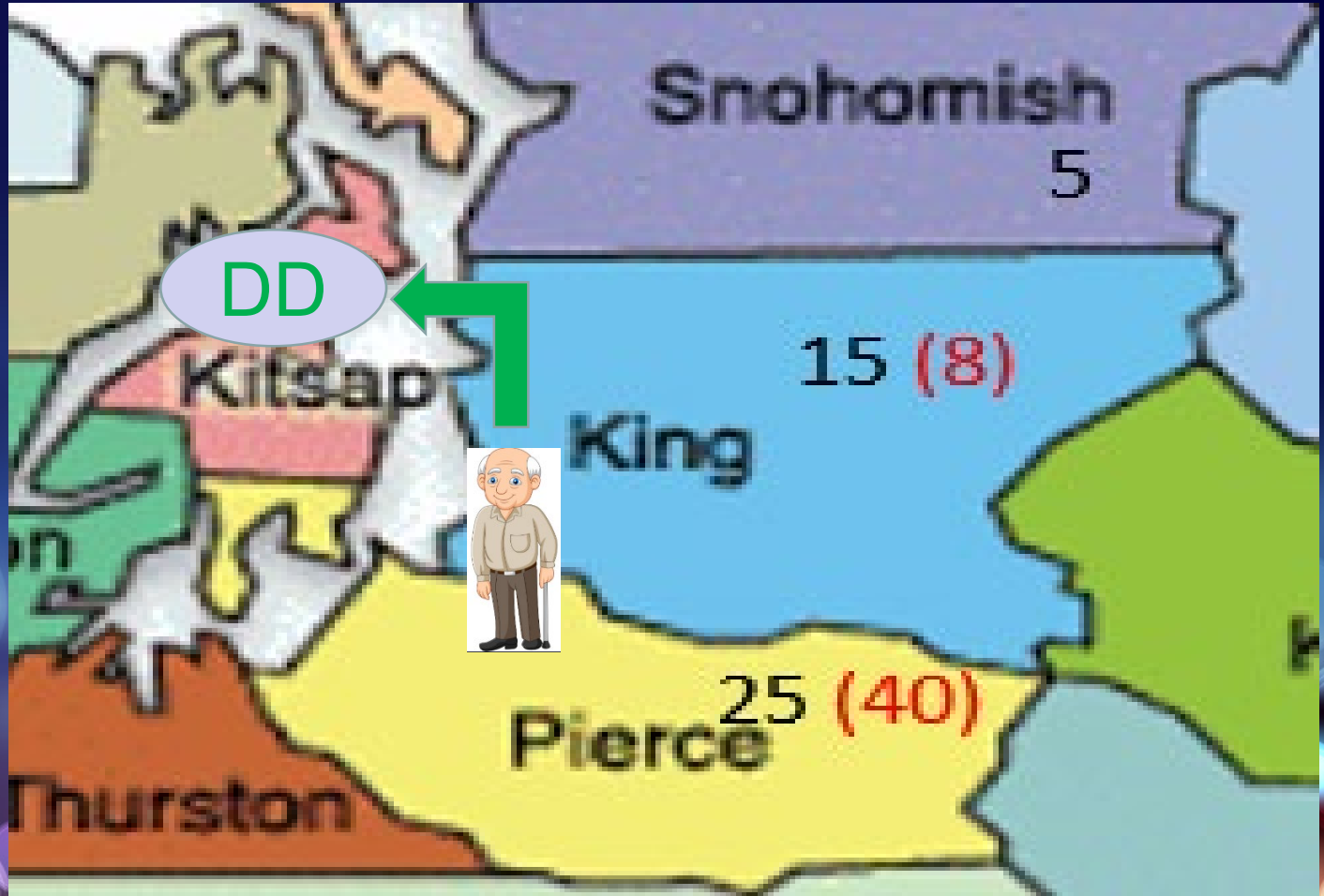
March 5, 2019: Poulsbo neighbors fear for their children after sex offenders move in



Problems with the County of Commitment

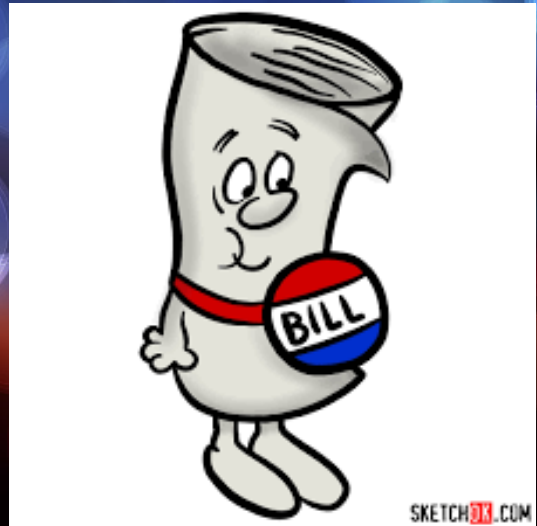


Problems with the County of Commitment



Other suggested bills 2019/2020

- Banned from AFHs – ESFs proposed
- Increased COC/residency restrictions
- Go through SCTFs
- Removing state preemption
- Give communities a chance to object



No LRAs \neq Constitutional

The Minnesota Lesson

The state must also ensure that less restrictive alternatives are available to accommodate individuals found eligible for a reduction in custody.

Those found eligible for discharge must be provided transitional services and discharge planning needed to facilitate the individual's successful transition into the community.

Proposed Solution: DSHS Pursues Fair Share

May 2019

DSHS

DRW

SCC

SOTPs



AGs

KCPAO

OPD

DPD

Fall 2019



Representative
Christine Kilduff



Representative
Mari Leavitt



Senator Steven O'Ban

November 2019

AGs



KCPAO

DRW

OPD

DPD / SnoCo

AREAS of AGREEMENT

- Fair share, not COC
- DSHS involvement in LRA placements
- Discharge planning
- Remove CPP* ban on LRAs
- More hurdles for LRAs are bad



* Other obstacles may remain for CPP, but could be addressed if no longer barred by statute

Why DSHS?

- Statewide network to oversee and license
- Can choose to involve communities early
- Creates contracts and oversight to providers
- Single entity to explain & educate community
- \$ to develop new placements
 - In underserved areas
 - Where infrastructure is needed
- Birds-eye view
 - Efficiency/economies of scale/right “fit”
 - FAIR SHARE



Proposal crosses lines

Prosecutors

Republicans

Senate

House

Democrats

Defenders

H-4122.2 _____
HOUSE BILL 2851

State of Washington 66th Legislature 2020 Regular Session
By Representatives Kilduff and Leavitt
Read first time 01/27/20. Referred to Committee on Public Safety.

1 AN ACT Relating to the placement and treatment of conditionally
2 released sexually violent predators; amending RCW 71.09.080,
3 71.09.090, 71.09.092, 71.09.096, 71.09.130, 71.09.140, and 71.09.250;
4 reenacting and amending RCW 71.09.020; adding a new section to
5 chapter 71.09 RCW; and creating a new section.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 **Sec. 1.** RCW 71.09.020 and 2015 c 278 s 2 are each reenacted and
8 amended to read as follows:
9 Unless the context clearly requires otherwise, the definitions in
10 this section apply throughout this chapter.
11 (1) "Department" means the department of social and health
12 services.
13 (2) "Health care facility" means any hospital, hospice care
14 center, licensed or certified health care facility, health
15 maintenance organization regulated under chapter 48.46 RCW, federally
16 qualified health maintenance organization, federally approved renal
17 dialysis center or facility, or federally approved blood bank.
18 (3) "Health care practitioner" means an individual or firm
19 licensed or certified to engage actively in a regulated health
20 profession.

p. 1 HB 2851

Questions?

Appendix

Once Jury/Judge/Prosecutor Agree to LRA:

- Court must order DOC to investigate
- Court holds RCW 71.09.096 hearing
 - ✓ Sets conditions of release
 - ✓ Sets release date
- Community notification 30 days prior to LRA Release

Statutory LRA conditions

- Specification of residence & monitored by GPS
- Prohibition of contact with potential or past victims;
- Prohibition of alcohol and other drug use;
- Participation in treatment, polygraph, PPG;
- Supervision by a DOC CCO (now CS)
- A requirement that the person remain within the state

Court Ordered LRA conditions

Any other conditions that the court determines are in the best interest of the person or others:

- Chaperones
- House arrest except for preapproved itineraries
- Only preapproved contacts and location(s)
- All locations site surveyed (DOC) approved (TT)
- Transition Team governs – SOTP, DOC, SCC

Day of Release

1. SCC staff attaches GPS on McNeil Island
2. SCC staff takes to register in release city (usually)
3. SCC staff hands over person & GPS to DOC
4. DOC does intake with person
5. Work with social worker to establish benefits

Discretion for violations?

RCW 71.09.325 Serious Violation = return to SCC

- Applies to transition facilities on face BUT used by DOC
- Defines serious violation broadly and not limited to that definition:

... includes but is not limited to the commission of any criminal offense, any unlawful use or possession of alcohol or a controlled substance, or any violation of a court-ordered conditions, which targets the individual's documented pattern of offense that increases the risk to public safety.

There is a concern this implicates liability for DOC / DSHS

What are most common violations?

Usually not willful:

- Failure to make a point-to-point call
- Contact with someone not preapproved
- Viewing media not preapproved
- Deviating from approved itinerary in any way
- Forgetting / not charging GPS/cell phone
- Medication issues
- Loss of Housing / SOTP

General violations 3 x more likely than serious ones