



STATE OF WASHINGTON
SEX OFFENDER POLICY BOARD

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SEX OFFENDER POLICY BOARD

March 31, 2022 1:00pm-3:00pm

Zoom Meeting

Members Present

Keith Devos
Linda Farmer
Patricia Flores
Jimmy Hung
Brad Meryhew
Michael O'Connell
Jedd Pelander
Terrina Peterson
Lori Ramsdell-Gilkey
Shawn Sant
Jamie Weimer

Members Absent:

Maryann Moreno

Members Represented by Proxy:

Donta Harper for Mac Pevey
Trisha Smith for Richard Torrance

Staff:

Whitney Hunt

Guests: Josh Choate, ATG; Brandon Williams, DOH; Alex Mayo, WA Voices; Jennifer Williams, DOC; Shoshana Kehoe-Ehlers, OPD; Rachael Seevers, DRW, Sonja Hardenbrook, SnoCo PDA; Keri-Anne Jetzer, OFM; Andrew Morrison, OPD; Emily Hancock, SnoCo PDA; Brandon Duncan, DOC; Joanne Smieja, WA Voices; Candice Yi, SCC; Dominic Winter, BHA/SCC; Heidi Brodt, CAGE; Elena Lopez, BHA; Bruce Glant

IMPORTANT NOTE: The recording for this meeting is available upon request.

Meeting Notes

Welcome & Call to Order

- **Whitney** reminded meeting participants to mute their microphones when not speaking and asked them to use the chat function through Zoom whenever they would like. **Whitney** also reminded everyone that the meeting is being recorded and that recording is available upon request.
- **Brad** called the meeting to order, began introductions, and welcomed new board members.
- **Whitney** encouraged all attendees to introduce themselves in the Zoom chat.

Meeting Objectives

SB 5163 Discussion

1. Sections 14 and 15 of Chapter 236, Laws of 2021 assigns work for the SOPB:
 - “Sec. 14. A new section is added to chapter 71.09 RCW to read as follows: (1) 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 23 71A.12.230. The board shall provide semiannual updates to the appropriate committees of the legislature during the 2021-2023 biennium. (2) This section expires June 30, 2023.”
 - “Sec. 15. A new section is added to chapter 9.94A RCW to read as follows: (1) 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. (2) This section expires June 30, 2023.”
 - Includes requirement for quarterly meetings and semiannual updates.
2. **Brad** emphasized that this assignment asks for examining specific issues of placement in the community protection program which will likely require legal research and assistance from lawyers and making contact with federal and state authorities. He encouraged anyone interested, and/or previously involved, in this work to volunteer to help as the reports are coming due and this isn’t a small project.

Quarterly Review Presentations: Stakeholders involved in, or directed by, the 5163 legislation were asked to share and present their perspectives to the full board:

- **DOC** – by Dr. Donta Harper
 - Two significant related items that DOC has implemented:
 1. Allowance of issuing secretary’s warrants on individuals under conditional release.
 - Bill allows for warrant up to 96 hours (approx.4 days) pending the entry of a bench warrant. The Department has since implemented this legislation within its policies and protocols. Implementation is going well, but at the time of this update, it appears that this new process has not yet had to be initiated. This legislative change was initiated by the Department by implementing into internal policies and protocols for recovering an individual who goes on escape or disappearing status; however, this process has not yet had to be initiated.
 2. 60-day timelines from request of an investigation

- Requirement of 60-day turnaround has been implemented into internal policies and processes. There are currently challenges with implementing in the 60-day timeframe: Investigations by specialists are extensive and require a lot of work and specialists are working hard to complete the investigations within the timeframe.

Questions

Brad asked when you say that you haven't had to use the warrant procedures, is that because there hasn't been a lot of violations for this populations?

Donta yes. We have not had to use the procedures where we've had someone go on a disappearing or escape status that required a warrant so quickly that wasn't able to be signed off by the judge. The way the bill is set up and DOC interprets the bill, this was put in as a "stopgap" but the Department hasn't had to initiate it in that way.

Brad With the 60-day turnaround, I'm hearing you say that it's been challenging, but that specialists have risen to the challenge so far?

Donta The specialists have risen to the occasion but it has been pretty challenging. As you know, with any new processes, there is a need for adapting. The 60-day timeline runs fast and doesn't take into account the current workload that a specialist already has. Example: A specialist might already have 1 or 2 investigations on their caseload, but then a third investigation comes which doesn't account for the previous two investigations that were already in progress. Specialists are finding this timeframe challenging. The Department understands the requirement and is working to make sure it is accomplished. There may need to be some further discussion to improve this so that the Department can produce the best plan possible for the individual.

Michael asked what change was made? Did it use to be a 30-day period and now it's a 60-day period?

Donta added that the change that was made put language in the bill, which DOC was advocating for something to be added. There was nothing prior that had language that said when an investigation had to be due. What specialists were experiencing before this language was judges arbitrarily saying they need an investigation and time periods were set by the judges with lots of variation. The Department asked for a 90-day window but 60-days was what was decided.

Jennifer clarified in the chat that there wasn't a period specified in statute prior to this legislation.

Sonja noted in the chat that prior to 5163, the Court could order less than 60 days previously, when situations warrant. For example, when it's a transition facility owned and operated by DSHS that has 30+ investigations.

Donta confirmed that timelines in the past were arbitrary at times and there wasn't a specified period of time in legislation previously.

- **OPD** – by Shoshana Kehoe-Elhers
 - OPD and SCC upper management recently met to discuss this implementation and the progress that's already been made. She recognized the efforts that the SCC and CEO have been making and the large undertaking that this project is.

- Defense would like to find a way to share lessons learned and help troubleshoot problems that arise because of the history and role the defense community has played in building the system over the last 10 years.
 - Recognizes that there are many factors that come into play in creating these plans. Increased communication between the SCC, defense counsel and treatment providers is necessary as there have been some issues that have come up.
 - Proposal to create a select group between OPD, DRW, SCC, and another defense contractor to begin to meet regularly to troubleshoot and talk openly.
- **ATG** – by Joshua Choate
- History: The provision of 71.09.090 that requires when the state show cause an annual reviewing hearing does not have evidence that the person should not be in an LRA (ie: the evidence is that an LRA is appropriate). This change required that the SCC get involved and submit a plan within 90-days to the court; if unable to do so, they need to tell the court they can't and why they can't complete this. Then the Respondent has an opportunity to propose their own. This is the main component that caused practices and procedures to change at ATG office.
 - ATG office has changed their standard order to add an additional paragraph at the end that states: “DSHS shall identify an LRA that satisfies RCW 71.09.092(1) through (4). If DSHS cannot identify a placement within 90 days, DSHS shall provide written certification to the court and other listed parties detailing their efforts.”
 - A copy of this order is then provided to the SCC to start the process.
 - As of the time of this presentation, the SCC hasn't come back with a “can't identify placement” result. We have seen plans come in that have all been to SCTF so far but ATG and OPD have been made aware of some community placements that may be coming.
 - Caveats: King County numbers are not included in the numbers thus far and may not be a complete count:
 - o 23 show cause hearings since July 2021
 - 14 no change in status
 - 3 individuals on show cause hearings that are already on an LRA, or SCC annual review recommended or concluded than LRA was not in the best interest yet but individual proposed a plan anyway
 - 2 unconditional release trials ordered
 - 4 SCC plans ordered (but this number may be low and a few more plans may have been agreed to)

Questions

Brad as I understand it, the last clause added in the order is like a backstop in case DOC wasn't able to meet the 60-day turnaround on their investigation - there's lead for them to give the court good cause for that, and so the whole court process builds in a little flexibility in extraordinary circumstances, is that fair to say?

Josh Yes, this is a different provision and different order. The process now is that the order is entered at the show cause hearing. When the LRA plan is ultimately submitted by DSHS within the 90 days, there is typically a need to return to court for an order to be entered for DOC to

investigate the placement still entered. That's where you see the 60-day deadline. It's always been our practice to have some leeway language as the end of it, which didn't change. It now just says if there's an issue with the deadline, DOC may want to come back to court on that. As part of this, people should keep in mind that this all can take 30 or 60 days to get a court hearing, then there's 90 days to get a plan together, then 60 days for DOC, and then 30 days for community notification. And these are the deadlines if everything goes perfect. For a person who may go on an LRA, it's typically at least 6 months of time go by before that's accomplished.

- **WATSA** – by Dr. Michael O'Connell

- WATSA reached out to its members and some of their clients. A few responses were received and distributed to the board via email. The responses received primarily centered around changes to the process of moving from social workers and defense counsel to SCC social workers. Most of the feedback was that the SCC social workers are new and well-meaning but are still learning and there are items that are "falling through the cracks". One treatment provider confirmed that they have four LRA clients and haven't seen anything different (but this could be due to circumstances). There are a few LRA clients who notified some issues with items falling through the cracks (primarily regarding medical care and reimbursement for medical expenses).

Questions

Brad one of the issues we have been looking at is the shortage of treatment providers and what to do about it – did those treatment providers who responded identify any barriers for them in taking more cases?

Michael what I had been hearing from a number of treatment providers is an issue that was included in both reports last year: the way that the DOH has interpreted a change from legislation previously that changed the underlying credential required from any healthcare license to several specific licenses that were mentioned. The professions were mentioned (ex: licensed mental health counselor, psychologist, etc.) but there was no provision for someone who was an associate. This means that the treatment provider had to be fully licensed before they could even become an affiliate SOTP under supervision by a fully certified SOTP. Many treatment providers have been talking about how that is a barrier. The Legislature hasn't done anything on that front yet with those recommendations. I have also heard about the re-constituted advisory board. It seems that DOH may be willing to make recommendations to the legislature.

Brandon W added that he is not sure where that information came from - we have not discussed making department suggested legislation, at our last meetings we have referenced that this was a recommendation being made to the legislature by the report. As an FYI, I will bring this up to the Director of Health professions, if I receive new information regarding this stance I will relay this at our next meeting.

Michael noted that if the DOH was willing to make suggested legislation it would be really helpful because this change is needed.

- **SCC** – by Keith Devos and Candice Yi

- New Chief of Transitions – Candice Yi

- Hiring: Made lots of progress in hiring and currently have only three vacancies. The team is made up of experienced social workers and we are building the process from the beginning and re-assessing regularly.
 - This work has been “projectized”: we have a new project manager who is helping build the processes and project that needs to go into 5163 implementation.
 - Hired 2 of 4 community nurses
 - Addressed the siting manager requirement and Dominic Winter is now in this role
 - Requirement: feasibility study on LRA housing. We are close to the end of contracting for this study and hope to have the study completed before the next legislative session.
 - Receiving significant support from Secretary and Headquarters
 - Hired new Chief of Clinical Services, Dr. Megan Reese, who begins in April
 - Working on continuity of care and continuing support as the individual transitions to the community. Staffing has been reorganized in the SCC and changes have been made to support continuity of care.

Updates from Candice:

- SCC recognizes the need for ongoing process-improvement efforts. It feels a bit like a plane is being built while flying but we are excited and willing to do the work. There are lots of internal processes and procedures that are changing and some challenges have been presented.
- We have made strides in staffing but we still aren't fully staff. We have hired an additional two community-based social workers that are onboarding in April.
- Trying to streamline processes on Medicaid/Medicare/Provider One. Obtaining training from HCA to assist in this process and discussing/developing partnerships.
- Expanding community resources in terms of LRA and SOTP contracts for individual needs
- Developed contract model: heart of it is in-home staffing model that affords provider to bill for staffing and services that wasn't adhered to in prior contracts. A team is looking at rates of payment for SOTPs to increase incentives.

Questions

Brad asks do you have any familiarity with how the community protection program might be a potential resource for LRA placement for those individuals that qualify? Is that something you could help us look at?

Candice we are interested in all of the resources so yes we will be looking at that.

Brad recommends that we get volunteers for a meeting to put together a report on the implementation.

Whitney asked for individuals to put in the chat if they are interested in that process to begin next steps.

MOTION #22-1: Motion to create a subcommittee to prepare reports on the 5163 legislative assignments.

MOVED: Brad Meryhew

SECONDED: Michael O'Connell

ABSTAINED: None
PASSED: Unanimous

Chair and Vice Chair Nominations and Voting for 2022-2024

- Brad Meryhew was nominated for Chair by Linda Farmer
- Jedd Pelander was nominated as Vice-Chair by Linda Farmer
- **Voting Results:**
 - 13/13 members voted for Brad Meryhew as Chair
 - 13/13 members voted for Jedd Pelander as Vice-Chair

Sentencing Guidelines Commission (SGC) and Criminal Sentencing Alternatives Task Force Updates

- New assignment from Chair of House Public Safety Committee with 6 components:
 1. “Conduct a current review of the Special Sex Offender Sentencing Alternative (SSOSA) and make recommendations for improvements to the SSOSA process, including the current eligibility criteria, judicial discretion and barriers to accessibility. These recommendations should address any shortages in sex offender treatment or other services employed by this alternative sentence.
 2. Review research and make recommendations regarding best practices related to sentencing alternatives for individuals with sexual offenses, including “non-contact” sex offenses.
 3. Review research and make recommendations regarding best practices and procedures related to lifetime supervision of adults convicted of sexual offenses to include: the monetary and collateral costs of lifetime supervision; the impact on community safety of lifetime supervision; and any recommendations regarding procedures to end lifetime supervision in individual cases or in its entirety.
 4. Review research and current practices and procedures for Failure to Register (FTR) cases and make recommendations regarding how to ensure community safety most effectively while wisely using scarce public resources.
 5. Review research and make recommendations regarding best practices for felony “washout” periods for sex offenses, as provided in RCW 9.94A.525(2).
 6. Make recommendations regarding sex offender policies and practices related to the above referenced policies, and make recommendations as appropriate regarding improvements to treatment, housing, community re-entry and other relevant policies.”

Brad emphasized that the history of SSOSA and development has had extensive involvement and support from the victims’ community. Their voices and perspectives should be included as these discussions begin.

Michael noted that general feedback from WATSA members after learning of the the project is one of excitement with many providers interested in getting involved. He agreed that victim advocates will be essential to this process.

Brad emphasized that much of this project has a research component and research is going to be essential to reviewing, incorporating and informing the recommendations.

Jedd asked if juveniles can be included in this report, primarily with regards to FTRs, particularly because last year's reports included a recommendation around FTR cases.

Brad agreed and stated that the FTR juvenile recommendation at the minimum should be reiterated and, because the project doesn't specifically say adults or juveniles, and to the extent that we find research as it pertains to juveniles and that it's relevant, we should include it.

Brad provided context to "washouts". "Washouts" is related to sentencing and the question is whether or not sex offenses should "washout" under the law. This means that a criminal conviction in Washington can be scored/used against you if you're convicted of another crime in determining your offender score. Your determinate sentence range is determined by a chart where one axis is the seriousness of the crime you've been convicted of and the other axis is your offender score. Many felonies washout and sex offenses are an exception.

MOTION #22-2: Motion to create a SSOSA & Sentencing Alternatives Subcommittee (items 1&2), Lifetime Supervision Subcommittee (item 3), and FTR & Washouts Subcommittee (items 4 and 5) to begin working on the House Public Safety Committee project.

MOVED: Brad Meryhew
SECONDED: Michael O'Connell
ABSTAINED: None
PASSED: Unanimous

Anyone interested in joining these subcommittees should reach out to **Whitney**.

MOTION #22-3: Motion to adopt the full board meeting minutes from November 29 and 30, of 2021.

MOVED: Brad Meryhew
SECONDED: Linda Farmer
ABSTAINED: None
PASSED: Unanimous

Next Steps

For the Good of the Order

Meeting Adjourned at 3:08 p.m.

APPROVED AND ADOPTED BY THE SEX OFFENDER POLICY BOARD

_____/s/_____
Chair Brad Meryhew

_____/4/28/22_____
Date