



STATE OF WASHINGTON  
SEX OFFENDER POLICY BOARD

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**SEX OFFENDER POLICY BOARD**

October 14, 2021 1:00pm-4:00pm  
Zoom Meeting

Members Present

Linda Farmer  
Jimmy Hung  
Susan Marks  
Brad Meryhew  
Michael O'Connell  
Jeff Patnode  
Jedd Pelander  
Terrina Peterson  
Hon. Shawn Sant  
Richard Torrance  
Jamie Weimer

Members Absent:

Hon. Maryann Moreno

Members Represented by Proxy:

David Flynn (Dr. Zainab Ghazal)  
Mac Pevey (Brandon Duncan  
with votes to be cast by Donta  
Harper)

Staff:

Whitney Hunt

Guests: Katie Hurley, King County Department of Public Defense; Joanne Smieja, WA Voices; Dr. Elena Lopez, DSHS BHA; Alex Mayo, WA Voices; Laura Martin, Snohomish County PDA; Brandon Williams, WA DOH; Gina Romero, Airway Heights Corrections Center; Jennifer Williams, Department of Corrections; Theodore Lewis, Department of Corrections; Corey McNally, Department of Corrections; Gina Romero, Department of Corrections; Dr. Holly Coryell, Special Commitment Center; Josh Choate, AGO 71.09 Prosecution Unit; Shoshana Kehoe-Ehlers, Office of Public Defense; Rachael Severs, Disability Rights Washington; Devon Gibbs, King County Department of Public Defense; Sonja Hardenbrook, Snohomish County Public Defender Association

**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 Meryhew and Whitney** invited board members and guests to introduce themselves in the Zoom chat.

### **SB 5163 Workgroup Proposed Recommendations and Discussion**

- **Brad** introduced the topic and requests and begins at the feedback section and provides context to the board about its inclusion.
  - **Brad** identifies that the feedback corresponding with the recommendation around contract requirements is included in the report because this recommendation may not reach consensus with the Board and this allows for laying out findings of fact and sharing of stakeholders' perspectives regarding this issue.
  - **Brad** identified that some of the perspectives shared are shorter in length, particularly those of the SCC and DOC, and encourages any expansion desired by those stakeholders.
- **Josh** presented the recommendations from the SB5163 Workgroup and emphasizes that rationale has been added to each recommendation. **Shoshana** deferred to **Josh** to outline the recommendations to the board.
  - **Josh** agreed with **Brad's** recommendation of encouraging stakeholders to share their perspectives and cite their concerns in the beginning of the document.
  - **Whitney** reviewed and explained the timelines of the report related to these recommendations.
    - The first draft of the report is due to the board on 10/25/21 by COB
    - **Whitney** informed the board and attendees that she and Megan may reach out to individual workgroup members for assistance in report writing on particular sections if needed.

Recommendation #1: 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.

- This recommendation received unanimous support from the Workgroup members.
- **Josh** provided background about the recommendation noting that SB 5163 only recently took effect. He noted the Workgroup did not have a lot of information regarding other states' practices at the beginning of the assignment which made it difficult to determine if Washington is comparable. **Josh** reported that the

Workgroup reached out to several states to gather information and there are not very many states nationwide that have similar programs.

- **Brad** asked for clarification. Is there consensus that we [WA] need to pay [treatment providers] more but we aren't ready to say how much?
  - **Josh** agreed that there is an overall consensus from the Workgroup that pay increases should likely be made, but it is unclear the amount without gathering more information first. He noted that there was little data he could find available from ATSA or WATSA to inform this decision.
  - **Brad** asks if there is any dissent on the recommendation.
  - **Josh** reports that there was not any dissent on the recommendation. He stated that defense counsel believe that pay rates are far too low and that they should be substantially increased to include incentives. He informed the board that there is a shortage of providers in the state and noted that the Workgroup discussed that pay increases may be needed as an incentive due to the shortage.
  - **Brad** asked for clarification from Dr. Ghazal. Dr. Ghazal, this is ordering you to do so something you [SCC] have already started right?
  - **Dr. Ghazal** stated correct.
  - **Brad** asked for clarification from Dr. Ghazal. Dr. Ghazal, so this is fine to do to gather the data you want before you feel comfortable making any recommendations?
  - **Dr. Ghazal** stated yes.

**MOTION #21-32 MOTION TO ADOPT SB5163 Workgroup's Recommendation Number 1.**

- **MOVED:** Brad Meryhew
- **SECONDED:** Dr. Michael O'Connell
- **ABSTAINED:** None
- **PASSED:** Unanimously

Recommendation #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).

- This recommendation received unanimous support from the Workgroup members.
- **Josh** provided background and noted that the timing of the project stunted the Workgroup's ability to answer some of the questions that were presented. He further noted that SB 5163 just went into effect in July 2021 and the SCC hasn't had a change too fully implement. He reported that the Workgroup felt that it will take two years to see the LRAs be put into place and the kinks worked out before further recommendations can be made.

- **Brad** reported that the board typically tries not to make recommendations that are set out like the recommendation proposed but he feels it is impossible to know what will happen with the implementation of SB 5163.
- **Brad** asked if there was any dissent on the recommendation.
- **Josh reported that there was not any dissent on the recommendation.**
- **Brad asked for clarification. Dr. Ghazal**, this is the sort of thing that you guys [SCC] are going to do internally anyways, right?
- **Dr. Ghazal** replied correct. Dr. Ghazal added that two years should give adequate time for the SCC to establish discharge plans, to see how the residents' fair at the end of the process, and to be able to gauge the success of the plans overall which would provide informative feedback.
- **Terrina** asked for clarification. Wasn't the SOPB assigned and funded to look at this and meet quarterly with biannual reports until 2023?
- **Brad** replied yes. He stated that this may be a little redundant with the assignment but stated that he believes what is being recommended is a need for a two-year frame for assessment. He further stated that he does not think that the previous assignment of quarterly meetings of the SOPB accomplishes what is being recommended by the board.
  - i. **Whitney** reviewed the legislative assignment to provide context and noted that the recommendation is made to directly answer the Legislature's assignment around contract requirements.
  - ii. **Josh and Shoshana** agreed that the recommendation is based on the specific assignment about contract requirements and more information is needed.
  - iii. **Rachel** noted that Workgroup's assignment specifically includes other stakeholders and not just the SOPB.

**MOTION #21-33 MOTION TO ADOPT SB5163 Workgroup's Recommendation Number 2.**

- **MOVED:** Brad Meryhew
- **SECONDED:** Richard Torrance
- **ABSTAINED:** None
- **PASSED:** Unanimously

Recommendation #3: There are two options for Recommendation #3

- **Option A:** For defense-proposed LRAs Sex Offender Treatment Providers 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. This recommendation was supported by eight of nine voting subcommittee members.

- **Option B:** Sex offender treatment providers (SOTPs) for defense-proposed LRAs 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.
  - **Josh** gave the background on the recommendation and noted that the Workgroup struggled to reach agreement so two options have been proposed for the board to consider. The board and workgroup are asked in the assignment to make a recommendation about whether there should be a contact requirement.
    - **Josh** notes that the SCC and DOC prefer a contract: SCC because they are concerned about cost control and continuity of costs among the various treatment providers across their continuum in different departments; DOC because they are concerned about treatment continuity and wanting treatment to remain as consistent as possible for the benefit of the LRA client.
    - **Shoshana** notes that SOTPs reported to the Workgroup that payment rates and contracts were barriers for treatment providers to want to work with the 70.09 population. Defense supports not having a contract because defense counsel was previously responsible for putting together the LRA and this was also their previous experiences. Additionally, the actual agreements specified in the contract have also been identified as barriers. She notes that WDA, state OPD and DRW also have concerns because of the historical nature of housing contracts.
    - **Brad** clarifies for the board that in the past the LRA tended to come from the defense and the defense had to go and find a treatment provider and there were challenges with that and that's the experiences that inform the defense's perspective. SB 5163 created a new system where the SCC is now responsible for the LRA process. The SCC has issued an RFP process for treatment providers to provide services pursuant to that contract and the SCC will have a contract with treatment providers who they contract with in the LRA process. The RFP is out there right now and we will see how that process works and whether the SCC is able to attract the talent they are looking for. There is still a defense "track" for the defense to propose an LRA. Brad says that we aren't talking about telling the SCC that they can't contract with their RFP treatment providers, it's that if there's a defense-proposed LRA and the defense is trying to find a treatment provider, the perceived barrier of a contract is impacting providers we need.
      - i. **Shoshana** agrees that's Brad's clarification is accurate.
      - ii. **Brad** further states, in sum, there's two "tracks" here and what no one knows, yet, is how the RFP process will play out.
      - iii. **Brad** says that the real question then to answer is if a contract should be required for treatment providers with the SCC on defense-proposed LRAs. There is no formal requirement right now.

- **Dr. Ghazal** adds that, if we were to not require contracts for defense-proposed LRAs, it creates a conflict. Because of the statewide shortage of SOTPs, there will not be an incentive to contract with the SCC. Which will mean that if the SCC is asked to develop a discharge plan for a resident and the SCC approaches a treatment provider to ask them to contract with them, the provider will say no. This will potentially lead the SCC to the 90-day deadline without the SCC having a treatment provider identified; therefore, the defense will now have to create the discharge plan. She believes this will essentially undermine the intention of SB 5163.
- **Terrina** asks “so would it not be equitable to the SOTPs? They would all then prefer to go to the defense?”
  - i. **Brad** replies “Well, that’s what we don’t know. And what will change is that Dr. Ghazal is actively looking at the [SCC] contract and sought feedback from various people on what the objectional provisions are. And maybe we will see a contract that is less objectionable and maybe we will see a fee increase.” The point is there are some moving dynamics here that we don’t know how that’s going to play out.
- **Brad** asks “Dr. Ghazal, does that change things any? What you’re talking about is a situation that the SCC simply can’t find providers but do you see that, maybe with those other incentives, we could?”
  - i. **Dr. Ghazal** says “I see the incentives.” However, once a contract is signed, there could potentially be a situation where a court-appointed SOTP provided by the defense dictates a rate that may be different than a contracted rate that’s already in place. The SCC would then be forced to be changing the contracts every so often because the cost would be driven by the non-contracted SOTPs.
- **Sonja** says that the problem Dr. Ghazal is anticipating could only be a problem if the SCC contract remains an obstacle. If the optimistic hopes work out and the contract is no longer objectionable, then Sonja doesn’t see a reason why SOTPs wouldn’t want to sign it, especially if it’s an adequate rate of pay. It’s not a simple process to get a court to order an hourly rate for an SOTP. A judge has to be convinced that it’s an appropriate rate, so Sonja doesn’t anticipate that there’s going to be exorbitant or outrageous rates. Providers don’t do the work for the pay. The providers that were heard from by the Workgroup were honest, hardworking folks that wanted to keep the community safer and we owe them respect and trust. Sonja doesn’t believe that the providers or the defense will try to “gauge” the state. Defense wants the same things the SCC wants – all of the LRA clients in the community with great providers. Sonja believes the provider shortage could get a lot worse if we lose the opportunity to recruit those providers without an onerous contracting process.
- **Brad** notes that this is not going to be resolved by the board today.

- **Linda** states that perhaps some of the contracting process can be lessened. Governments tend to create a lot of red tape and some of it can be avoided with enough internal pushback and creativeness.
- **Rachael** says that's why there has to be incentives and the contract has to be attractive enough for providers to want to contract. **Rachael** says that related to what Dr. Ghazal mentioned, Rachael thought providers gave valuable feedback, when asked by the Workgroup, as to why they don't contract and what their concerns are. Rachael wonders if their feedback can be added into the report into the "findings of fact" section.
  - i. **Shoshana** notes that the Workgroup had listening sessions with SOTPs that provided the feedback Rachael is recommending be included in the report. She agrees with Rachael that it should be included.
  - ii. **Brad** believes that the feedback should be included in the treatment providers' perspective section.
  - iii. **Whitney** informed the board that a handout containing this information is in progress and will be included in the report.
- **Dr. O'Connell** says that he has a lot of intense personal experience in this area, with his first LRA client in 1996 and his last client closing in 2019. He feels like he was driven out of the business by the process. The fee schedule was part of it, but not the only part, and notes he is not alone in his experiences. SOTPs do not feel respected and feel that the SCC is looking for a way to "bring them down a notch", but notes this is not every time and not on every case. He feels there is an undercurrent of community SOTPs not being trusted by the SCC. He feels they are regarded as "making money hand over fist". And agrees that when compared to state salaries it looks significant, but it covers a lot of stuff employees don't have to cover. He notes that in addition to himself, there are 2 other world-renown SOTPs who will no longer engage in 71.09 work. And the fact that the SCC is having a hard time finding SOTPs is because there are reasons for this. He agrees that the listening session information should be included.
- **Brad** asks the board to vote on which option they support.
- **Rick** notes that, based on what he heard from both sides, more information may come. Given that, Rick asks to abstain from voting because he doesn't feel like he can make a solid fact-based decision.
- **Jeff** notes he feels the same way and will abstain.

Recommendation #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. The workgroup proposes the following types of opportunities:

- a. **SCC Orientation/Workshop.** The SCC should develop a formal orientation and onboarding workshop for new SOTPs who contract with them. This should be compensated.
- b. **Sex Offense Management Conference.** Sex Offense Management Conference should be re-instated as it was held in the past. This will need to be funded from the Legislature.
- c. **Optional BHA-sponsored Trainings.** Expand funding to DSHS' Behavioral Health Administration's (BHA) Agency Learning and Development Council (ALDC) to explore and encourage the possibility of providing new and/or offering existing applicable trainings on a variety of mental health and sexual offense issues to contracted SOTPs who work with LRA clients.
- **Josh** gave the background on the recommendation and noted this is a response to the direct request from the Legislature about whether trainings should be mandatory. The Workgroup recommends that it should not be mandatory and provides some recommendations around training options.
  - **Brad and Dr. O'Connell** agreed that the sex offense management conference was a wonderful experience in the past and noting a need for funding by the Legislature should be included in the report.
  - **Dr. O'Connell** agrees that the training should not be mandatory.
  - **Shawn** agrees that training should be compensated and that training for providers is important.
  - **Brandon W.** clarified the current continuing education requirements for SOTPs per the RCWs for the board. There are significant requirements for providers to keep their main mental health license active along with additional requirements for their SOTP license.

**MOTION #21-34 MOTION TO ADOPT SB5163 Workgroup's Recommendation Number 4.**

- **MOVED:** Brad Meryhew
- **SECONDED:** Dr. Michael O'Connell
- **ABSTAINED:** None
- **PASSED:** Unanimously

Recommendation #5: The SOPB recommends that a cost-of-living pay increase be considered as an incentive for providers who work with LRA clients.

- **Josh** gave the background on the recommendation and stated that it relates to the Legislature's request about incentives for providers. The remaining recommendations are also around incentives.



**MOTION #21-35 MOTION TO ADOPT SB5163 Workgroup’s Recommendation Number 5.**

- **MOVED:** Brad Meryhew
- **SECONDED:** Jedd Pelander
- **ABSTAINED:** None
- **PASSED:** Unanimously

Recommendation #6: The SCC should incentivize providers who contract with them, by paying for a portion of continuing education units specific to their SOTP credential and/or trainings that may be necessary for treatment of LRA clients or the specialized population.

- **Josh** gave the background on the recommendation and stated that it relates to the Legislature’s request about incentives for providers.
  - **Dr. Ghazal** agrees that the coverage for continuing education units should be for providers who contract with the SCC.
  - **Josh** notes there are very few, if any, providers who work with LRA clients who do not contract with the SCC so he is hopeful this will have a positive impact.

**MOTION #21-36 MOTION TO ADOPT SB5163 Workgroup’s Recommendation Number 6.**

- **MOVED:** Brad Meryhew
- **SECONDED:** Jedd Pelander
- **ABSTAINED:** None
- **PASSED:** Unanimously

Recommendation #7: Cover costs associated with traveling to McNeil Island while carrying out LRA treatment.

- **Josh** gave the background on the recommendation and stated that it relates to the Legislature’s request about incentives for providers.

**MOTION #21-37 MOTION TO ADOPT SB5163 Workgroup’s Recommendation Number 7.**

- **MOVED:** Brad Meryhew
- **SECONDED:** Dr. Michael O’Connell
- **ABSTAINED:** None
- **PASSED:** Unanimously

Recommendation #8: 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.

- **Josh** gave the background on the recommendation and stated that it relates to the Legislature's request about incentives for providers.
  - **Brandon W.** clarifies that the fee structure for the SOTP license is in place because of the general costs of maintaining the profession. He notes that this cost is reviewed annually by the DOH.

**MOTION #21-38 MOTION TO ADOPT SB5163 Workgroup's Recommendation Number 8.**

- **MOVED:** Brad Meryhew
- **SECONDED:** Richard Torrance
- **ABSTAINED:** None
- **PASSED:** Unanimously

**Juvenile Proposed Recommendations**

*Recommendation Wording as voted on by SOPB on 10/4/21:*

***Increase Rape First Degree to A++ Disposition Category.*** We recommend that there be an increase in the juvenile disposition category for Rape First Degree from A to A++ if the respondent was sixteen or seventeen years of age at the time of the alleged crime. This would increase the Court's jurisdiction up to the youth's twenty-fifth birthday. Respondents under 16 when the offense was committed would continue to have the juvenile disposition category of A for Rape First Degree.

Amended Proposed Recommendation #4 for 10/14/21 discussion and re-vote: We recommend that there be an increase in the juvenile disposition category for Rape of a Child First Degree from B+ to A + in the respondent was sixteen or seventeen years of age at the time of the alleged crime. This would increase the Court's jurisdiction up to the youth's twenty-first birthday. Respondent was under 16 when the offense was committed would have a juvenile disposition category of B+.

- **Brad** gave the background on the recommendation and explained the differences between the previous wording and the new wording. He noted that the Rape of a Child offense did not get a status change previously. The proposal is to move the offense from an A- to an A+ which would increase the consequences. However, with the changes that were already approved and adopted on this recommendation previously, the minor will already have been moved from adult court to juvenile court.
  - **Jamie** notes there was not a juvenile disposition category previously because minors were previously auto-declined into adult court. The proposed change is essentially a correction to make sure the board doesn't miss the need to

recommend a new category to be created since the board already agreed to remove auto-decline.

- **Katie** clarifies that this was something that was discussed between her and Shawn previously, however, it was an area that agreement couldn't be reached.
- **Shawn** adds that this doesn't necessarily have universal WAPA support but the discussions he has had personally led Shawn to be able to support this. He feels this makes a lot of sense to add clarification. Discretionary decline is still in place if needed.

**MOTION #21-39 MOTION TO ADOPT the juvenile Amended Recommendation Number 4.**

- **MOVED:** Brad Meryhew
- **SECONDED:** Jamie Weimer
- **ABSTAINED:** None
- **PASSED:** Unanimously
- **WASPC** also notes: With the addition of juvenile disposition category for 16 and 17 year old for rape of child, WASCP votes yes to legal and leg recs 2, 3 and 4.

**Proposed New Recommendation by WASPC Regarding Registration:**

WASPC adamantly believes that addressing public disclosure will have significant positive impacts as it relates to keeping information on compliant level I offenders, of which most juveniles are leveled, restricted as outlined in RCW 4.24.550. WASPC's recommendation regarding public disclosure is a repeat recommendation from the Sex Offender Policy Board, originally made to the Legislature in 2015.

- Amend RCW 4.24.550 to add a new section: (12) Sex offender and kidnapping offender registration information is exempt from public disclosure under chapter 42.56 RCW.
- Amend RCW 42.56.240 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.
- **Brad** gave the background on the recommendation and explained that this was proposed by WASPC and discussed in the Registration Subcommittee but was accidentally left out of the recommendations that were presented to the board.
  - **Brad** provided information about the *Donna Zink* legal cases regarding public records. These cases went up to the Supreme Court. The results of the

lawsuits mean that people can request information about Level I offenders and were very high profile cases. The SOPB looked at the issue in 2015 and the board made the recommendations that are essentially here now. Brad notes that if these recommendations are made, they are likely to be a “lightening rod” for certain organizations and may become high-profile again.

- **Jamie** agrees with the background information Brad provided. WASPC does believe that there have been cases that individuals, for nefarious purposes, have done requests on the entire registry. This recommendation would help protect that information.

**MOTION #21-40 MOTION TO ADOPT new juvenile recommendation addressing public disclosure.**

- **MOVED:** Brad Meryhew
- **SECONDED:** Jamie Weimer
- **ABSTAINED:** None
- **PASSED:** Unanimously

**Next Steps**

- Final SOPB Meetings for 2021 (1 pm – 4 pm)
  - October 28
  - November 18 (to finalize both reports and approve meeting minutes)
- Deadlines:
  - Report Draft #1 (Juvenile) to board by COB 10/18/21
  - Report #2 (SB 5163) to board by COB 10/25/21

**For the Good of the Order**

- Nothing to add

**Meeting Adjourned at 3:32 pm**

**APPROVED AND ADOPTED BY THE SEX OFFENDER POLICY BOARD**

\_\_\_\_\_/s/\_\_\_\_\_  
Chair Brad Meryhew

\_\_11/29/21\_\_  
Date