



STATE OF WASHINGTON

SEX OFFENDER POLICY BOARD

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SEX OFFENDER POLICY BOARD

Legal and Legislative Best Practices Subcommittee

September 15, 2021, 1:30 pm - 3:00 pm

Zoom Meeting

Attendees: Terrina Peterson, WASPC; Shawn Sant, WAPA; Jamie Weimer, WASPC; Jeff Patnode, ISRB; Joanne Smieja, WA Voices; Katie Hurley, King County Public Defense; Megan Allen, KCSARC; Michael O'Connell, WATSA; Paula Reed, CAC of WA; Sonja Hardenbrook, Snohomish County Public Defender's Association; Mary Laskowski, Children's Justice Center of King County; Emily Hiskes, Snohomish County PDA; Jennifer Williams, DOC; Kerry McCarthy; Brad Meryhew; George Yeannakis, OPD; Joanne Glant; Linda Farmer, AWC; Megan Schoor, OFM; Whitney Hunt, OFM

Meeting Notes

Welcome & Call to Order

- **Megan S.** welcomed everyone to the meeting. Meeting participants were asked to mute their microphones when not speaking and asked to use the chat function and "Raise your hand" function through Zoom whenever they would like.
- **Megan S.** reminded people that the meeting was being recorded and the recording is available upon request.
- **Megan S.** invited people to introduce themselves in the Zoom chat.

MOTION #21-1-6: MOTION TO APPROVE THE September 1, 2021 MEETING MINUTES

- **MOVED: Jennifer Williams**
- **SECONDED: Shawn Sant**
- **ABSTAINED: N/A**
- **PASSED: Unanimously**

Objective 1 – Small Group Report-out on Item 2c (RCW 13.40.300)

- **Terrina** invited **Katie**, **Shawn**, and **George** to report-out on their small group findings.
 - **Shawn** stated they still have some details to work out regarding concise language in the proposal. Should be able to finish within a week or so.
 - **Terrina** reminded **Shawn** that next week’s meeting is the last for this sub-committee. Question: Is there anything ready that can be shown to the group now for discussion?
 - **Shawn** stated he thought the principal problem is trying to clarify what the three of them were talking about: the decline and the range of putting a juvenile between 21 to 25. As a prosecutor, **Shawn** was in favor of 16-to-17-year old’s committing rape 1 or rape 2 would be looking at the 21-to-25-year threshold. The question **Katie** raised is, how do we go from a 15-year-old who's looking at a 2-year range and then suddenly, they turn 16 and they’re looking at a three-year jump. They’re trying to consider and talk about fairness within these age groups.
 - **Katie** agreed that they’re not yet near agreement and added that there is a lot of complexity with these issues. **Katie** and **Shawn** will commit to talking again this week about some of the moving parts.
- **Michael** asked if the impasse right now is that the 16-to-17-year old’s, rather than being auto decline, would automatically have jurisdiction extended to 25.
 - **Katie** responded saying they would move it from an auto to a discretionary decline. The main impasse that **Shawn** and she have is what the standard range for those young people would be.
- **Brad** stated that he’s not sure we will necessarily resolve this with only **Shawn** and **Katie** negotiating at this late a date and asked that they each make a written proposal which lays out the rationale and facts for the whole group to discuss and decide on.
 - **Shawn** wasn’t sure how close he and **Katie** could get to a consensus on this matter but agreed with **Brad’s** idea.
 - **Brad** clarified he’s asking that they try and find a rhetorical agreement around the rationale for the needed changes even if we can't agree at this point in the process on the fine details.
- **Terrina** confirmed that **Shawn** and **Katie** are committing to write up proposals and asked when that can be done prior to next week’s final meeting.
 - **Katie** responded saying she will try to write it up tonight or tomorrow night.
 - **Terrina** scheduled the deadline for Monday, September 20, 2021.
- **Jennifer** stated that Item #2 of the subcommittee’s recommendation seemed wordy where it spoke about the age at the time of the alleged crime and charge. She recommended changing it to “date of offense”.
- **Shawn** stated he thought that something that could cause further complication could be if the offense was committed by a 16 or 17-year-old but not discovered or investigated until they turned 18+, which creates a whole different set of unique problems.

- **Shawn** asked **Terrina** to clarify that he and **Katie** weren't addressing that issue but are focusing on working out the 16-to-17-year-old auto decline issue. Specifically, regarding if we are going to eliminate auto decline on sex offenses and the rape 1 and rape 2 by 16-to-17-year-old's and how to create a matrix or something that makes sense where we have some agreement of what kind of ranges they are looking at. **Shawn** wants to make sure he was capturing the narrow scope of that instruction.
- **Terrina** confirmed, yes and thinks that the group has already reached a consensus that our recommendations would be to remove those sex offenses from auto decline and put them in with the discretionary and then add or make changes to 13.40.300 so that there was a potential to sentence them up to 25.
- **Brad** asked if we had an answer to the main question that Item 2c is asking.
 - **Shawn** stated he wasn't looking at that but he and **Katie** have had that discussion and he's shared some very personal experiences where he thinks there is a significant impact where a person would have been given opportunities as a juvenile; so long as the offense or the offender did not cause a delay in the discovery or prosecution of that case it seems like there should be some benefit of treating that offense differently than a person that committed a sex crime at age 30 upon a 13-year-old versus if the offender was only 16 at the time of offense with the 13-year-old victim. That's much different than a 30-year-old with a 13-year-old victim but if they don't get discovered until the age of 30 that seems like a very disparate treatment.
 - **Brad** would consider this issue of those kids that he's been trying to help in SOPB board meeting since 2008 a very serious one. They've enacted significant reforms to address them like allowing them to use the juvenile statute for relief from registration so that they have the shorter time periods and the lower burden of proof. The fact is they still got a conviction in adult court and the legislative change that he's always wanted to see for this population is the ability to go back and seal that conviction because that's what they lose from a juvenile court perspective the ability to seal the conviction that they would have had in juvenile court.
 - **Shawn** agreed and added it would be just as easy as adopting something that suggests that an offense committed while a juvenile is entitled to the same benefits of a juvenile offender sentenced in the juvenile court. In other words, specifically granting them the same ceiling opportunities to the later adult offender. He added that, for a person getting found or located, through no fault of their own, interfering with the process if they are now prosecuted at age 28 or 30. He doesn't see a just reason why they should not be afforded the same opportunities that would have been affordable to them as a juvenile had the matter been disclosed or discovered in a timely manner.

- **Megan S.** stated that there appears to be a consensus of a potential recommendation around granting juveniles the option to seal their records. She and **Whitney** will review the meeting recording and make this recommendation language more articulate and make sure to capture **Shawn's** insight into the report itself.
 - **Brad** agreed and recommended using similar language as is found in statute 9A.44.143 or adding to it.
 - **Katie** proposed in the Zoom chat adding something like this in 13.50.260 which is the ceiling statute.
- **Shawn** stated that he recognizes this looks at things from the standpoint of a first offender and we must evaluate what we do. For instance, when a person is 30 but maybe there was another intervening offense or something in between there, what kind of offenses would qualify perhaps as to registration if there was another adult committed sex offense and then the juvenile offense was discovered after that? That would be a very different scenario.
- **Michael** asked **Brad** to clarify if we're suggesting that adults convicted of sex offenses committed when they were juveniles have the same rights to relief from registration as if they were juveniles.
 - **Brad** responded yes, that's the current law under 9A.44.143 (8).
 - **Michael** stated that does not need to be changed or tweaked.
 - **Brad** responded no, but it doesn't allow them to seal the record of conviction allowing them to get off registration any faster and it doesn't specify time periods. It just says they can use the juvenile statute.
 - **Michael** thought this was not widely known or understood among those registered.
 - **Terrina** and **Brad** responded saying that they are sent this information every July by the State Patrol but the information is very dense and pages long.
- **Megan S.** clarified that there seems to be a consensus of building a recommendation around the option to seal records and asked who can help draft this recommendation.
 - **Katie** volunteered to write up the draft and will send it to **Brad** and **Shawn** to look it over.
 - **Megan** asked if the draft can be submitted by COB Monday, September 20.
 - **Katie** responded yes.
- **Megan S.** looked over the other recommendations that relate to item 2C, namely, item #5 and item #6, and asked the group if they would like to have discussions about these two items.
- **Megan Allen** stated we just add in more detail around if they're going to do a review of the declines that they explore race and ethnicity for all juveniles involved, including the victims as well as the nature of the offense.
 - **Terrina** added that was also to focus on what elements or considerations the court needs to consider, and it should be in another document that the group made.
- **Michael** stated it wasn't clear if this study should be about the current situation or after changes get made.

- **Brad** stated that all the Registration Subcommittee is asking WSIPP to do is to come in and look at the whole registration issue by tracking whatever kids are still on registration for five years and then creating a report and getting back to us. The same idea that we have here of this feedback. There may be a way to include in recommendations from both subcommittees regarding ethnicity, disproportionality and race and drill it down into one recommendation for study topics for WSIPP. This being one of them and then registration being the other, tracking those people who are on registration for some period of time.
- **Michael** clarified that this is our current situation and then at some point in the future it would be both?
- **Brad** responded saying to get valid data it has to be. It's not a quick turnaround where we're asking them to give us that data because they first have to look at what happens in operation.
- **Michael** stated he is just suggesting we be clear what we're asking them to do and what period of time we're asking them to examine.
- **Brad** replied, referring to the language in item #5, he's not sure what's meant by "a review or study of statutory considerations for hearings under 13.40.110".
- **Terrina** stated she's trying to find an old document she remembered somebody had written out that contained discussions about what considerations we make changes to.
 - **Katie** replied stating she's asked before for us to have a different standard for decline rather than the Kent factors which she thinks is really outdated but doesn't remember if that was linked to this conversation.
 - **Terrina** recalled that when they originally had this discussion **Katie** had talked about the Kent factors and then remembers putting in a comment on one of the documents about things she thought we should consider.
 - **Katie** responded saying she remembers having the conversation but is unsure if it could look like some kind of task force, etc., but she doesn't have a clear recommendation to propose.
 - **Brad** added that maybe this wasn't intended for WSIPP but maybe it was just a recommendation that there be some sort of group to have a look at those considerations and that we were not going to be doing that because the issue of WSIPP looking at the decline considerations and the factors is beyond the scope of what we can do. There is a potential for what we're doing here with the decline to have a disproportionate impact particularly if you increase discretion given to courts and you have regional disparities, etc., so, saying that this needs to be tracked and we need to look at the actual impact is an important thing to acknowledge.
 - **Megan S.** stated it seems there's more to this conversation and recommended she and **Whitney** search the SharePoint site to find any additional details that exist around this recommendation and share those findings.
 - **Terrina** agreed.

- **Terrina** suggested this part of the recommendation, as **Brad** said, should just be a recommendation in the report that states that we think all the different topics we think WSIPP could do studies on and then, if we want, recommend that a group of sorts have a look at their considerations.
- **Megan S.** asked if we should table item #6 or would folks like to consider moving recommendation #6 forward.
 - **Michael** thinks somebody ought to review the WSIPP results and stated we're in as good of position as any to do it.
- **Megan S.** asked if there was any further discussion needed or if the group still supports the SOPB reviewing declines once WSIPP completes their study.
 - **Terrina** added that if we do like a larger WSIPP recommendation we could just include something that says the SOPB would review any of the WSIPP studies that are completed on these topics.
 - **Brad** stated that if we are going to say something like that he would rather we just add a sentence at the end of the preceding recommendation and then the SOPB would be available to review those studies and further advise the legislature.

BREAK

Objective 2 – Small Group Report-out on Person-first language / Item 2b

- **Megan S.** welcomed the group back after the break and began discussing recommendation item 2B which is the idea of creating new section wording that clarifies that the crime was committed as a juvenile. There are RCW's that that are listed and linked that will ultimately need this new section wording if the subcommittee wants to move forward with this recommendation. **Megan S.** also pointed out the recommendation about utilizing person-first language at the bottom of the table if page #3 of the SharePoint document. This idea was submitted by **Paula Reed** and there's also questions from **Jennifer** and **Magen Allen**. **Megan S.** mentioned that there was a person-first language webinar that happened September 8th last week that **Paula** invited everyone to. Folks should have received the handout of those slides and a link to the meeting recording to access.
- **Megan S.** asked **Terrina** what recommendation she would like to talk about first or if they should first discuss the webinar that took place on September 8 and what it means for these recommendations.
 - **Terrina** replied and stated the group should first discuss item #1 of 2B that states “creating new section wording that clarifies that the crime was committed as a juvenile”. She suggested that it might be easier to just add a new RCW that just defines crime committed by a juvenile that could just be added so it would be similar to a sexual motivation designation, etc.
 - **Emily Hiskes, Michael O’Connell, and Paula Reed** stated their agreement in the Zoom meeting chat.

- **Katie** suggested that the language be changed to “committed as a youth” because, the word juvenile has a very specific definition under some RCWs to refer to youth who are prosecuted in juvenile court versus adult court. Whereas, this naming convention is more tied to the age we could define youth as a person who is under the age of 18.
 - **Paula** agreed that there are certain connotations that come to mind with the word juvenile, and it does not reflect the developmental differences that we're trying to recognize. We have had these conversations and wondered if that would be something we could consider, particularly if we're going to add something that says “committed as a juvenile” or “committed as a youth”. She is surprised that everything is just lumped into one.
- **Michael** stated this being related to juvenile court is something he had never considered before so that's a real problem we should wrestle with. **Michael** also asked **Paula** to restate her thought because he didn't quite understand the underlying point.
 - **Paula** stated that her main point is about how definitions matter and wondered if there was room to move away from putting everything under the same umbrella. Alternatively, she would support what **Katie** proposed - juvenile may not be the best word.
- **Whitney** mentioned in the chat that there's another subcommittee that's discussing wording such as “committed by a minor” or “committed as a minor”.
 - **Michael** stated that Christopher from WA Voices was talking about how minor could include a 19 or 20-year-old trying to buy cigarettes. That's why we shifted it to the word “juvenile” since that tends to mean somebody under the age of 18, which seemed to resonate with others.
 - **Paula** stated that is probably not in line with what we're seeing across the country when it comes to talking about juvenile sex offenders. “Juvenile” just doesn't reflect some of the different ages and developmental progression of the different groups and may have a negative connotation for some.
- **Megan S.** shared a comment that **Jennifer** asked in the chat: “Would your recommendation be to remove the word juvenile from the entire RCW?”
- **Sonja** also asked in the chat: “If our criminal sexual statutes use ‘child’ for rape of minors, perhaps we use ‘child’ for all respondents under 18.”
 - **Paula** responded saying what she most commonly sees in other statutes or state statutes is a “child” is typically a person under 12, so classifying a 13 or 14-year-old as a child might still be confusing.
 - **Megan S.** asked **Sonja** to clarify a statement she made in the chat which said: “Except that we do that on ROC for victims up to 16.”
 - **Sonja** replied saying we use the term “child” as that's where ROC comes from, that's rape of child, and it includes all the way up to children that are 16 in WA. She doesn't necessarily like that and tends to agree with **Paula** that it may need to be a different level; but, we use them synonymously in Washington and if we're going to use it in the offense we might as well use it referring to a person that offended as well.

- **Megan S.** shared a chat message from **Shawn** in which he spoke about modifying RCW 13.40.20 in the definition section by adding a definition of “youthful offender” as “a crime committed by a person who was under the age of 18 at the time of offense”.
 - **Katie** stated that using the term “offender” could bring up some negative connotations that we're trying to avoid and as we try to think about language, it could be better to use the term “child”. She also added that “youthful offender” might confuse people, or, make it confusing if a young person were to move to a different state.
 - **Brad** agreed with **Katie** and added that the word “offender” is about identity and one of the biggest impacts of this whole system on kids is the impact it has on their identity and that's what we want to avoid.
- **Brad** stated that he doesn't agree that because cigarettes are illegal up to 21 that that changes the definition of “minor”. In Washington it is and has always meant a person under the age of 18, that's what the court has jurisdiction over, people under the age of 18. **Brad** thinks that if we just added to every statute the ability to add the tag “committed by a minor”, just like we add domestic violence or anything else to an offense, that seems to be the most elegant solution
- **Megan S.** put forward a question that **Jamie** posted in the chat: “**Brad**, do you have an example of a statute that adds to finding language? I'm having trouble finding an example.”
- Also, in the chat, **Paula** agrees that “minor” is clearer than “juvenile”, **Michael** is happy with either term and **Mary** agrees with the term “minor”.
 - **Brad** stated that he looked for a definition of minor in RCW 26.28.010 which sets the age of majority. What they're talking about there is the ability to engage in contracts which is defined in 015. Examples mentioned in the RCW include entering a marriage, buying property, voting, etc., which are standard legal contracts to make decisions regarding their own body and the body of their lawful issue order. So that that's what it means to be an adult, which is to be over 18 or the age of majority.
- **Jamie** asked if we use language that is different than juvenile, how confusing will that be with the remainder of the statutes under 9A.44 referencing juveniles.
 - **Katie** replied stating we already have an example of this from a couple of years ago with the depicting of sexually explicit images crimes by a minor in 9.68A. So this has already been done for a similar class of offenses. She added that there's a clear precedent for adding this and thinks that we should go beyond this and examine the names for rape of a child and child molestation.
- **Terrina** proposed that at next meeting we have a Zoom poll to decide what term we use out of the choices, “child”, “juvenile”, “minor”, etc.
 - A majority of persons in the chat favored “minor”.

Information / Resource Needs?

Next Steps

- **Shawn** and **Katie** will have language recommendations for Item 2C by Monday, September 20.
- Entire group needs to look over the use of person-first language.

For the Good of the Order

- Nothing to add.

Meeting Adjourned

APPROVED AND ADOPTED BY THE LEGAL AND LEGISLATIVE BEST PRACTICES
SUBCOMMITTEE

_____/s/_____
Chair, Terrina Peterson

____2/25/22_____
Date