



STATE OF WASHINGTON
SEX OFFENDER POLICY BOARD

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SEX OFFENDER POLICY BOARD

September 29, 2022 1:00pm-4:00pm

Zoom Meeting

Members Present:

Blanche Barajas
Keith Devos
Jimmy Hung
Brad Meryhew
Christine Minney
Hon. Nelson Lee
Michael O'Connell
Jedd Pelander
Lori Ramsdell-Gilkey
Shawn Sant
Richard Torrance
Jamie Weimer

Members Absent:

Linda Farmer
Terrina Peterson
Mac Pevey

Staff:

Whitney Hunt, OFM

Members Represented by

Proxy:

Donta Harper for Mac Pevey

Guests: Dominic Winter, DOC; Brandon Williams, DOH; Lorraine Lynch, KCSARC; Kathleen Hambrick, CAGE; Joanne Smieja, WA Voices; Bruce Glant, CAGE; Alex Mayo, WA Voices; Lydia Schoen, Community Advocate; Kazuko Fowler, Community Advocate; Kecia Rongen, ISRB; Emily Hancock, SCPDA; Corey McNally, DOC; Sonja Hardenbrook, SCPDA; Priscilla Hannon; Brandon Duncan, DOC; Anna Maria Ferretti, SCC; Megan Allen, KCSARC; Theodore Lewis, DOC; Lateisha De Lay, AL TSA; Elena Lopez, BHA; Jeff Patnode, ISRB

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 the recording is available upon request and there will be an opportunity for public comment at the end of the meeting during the "For the Good of the Order" section.
- **Brad** called the meeting to order and introduced himself and asked that board members introduce themselves.

Sex Offender Policy Board

September 29, 2022 Meeting Minutes

Meeting Objectives

Approval of Minutes

Brad Meryhew asked the Board to approve the meeting minutes from September 15, 2022.

- **Dr. O’Connell** requested to change the sentence of bullet No.2 of page No.4 of the meeting for clarification.
 - **Whitney** made the necessary changes.
 - **Dr. O’Connell** approved the changes.

MOTION # 22-12: MOTION TO AMMEND THE SEPTEMBER 15, 2022, MEETING MINUTES.

- **MOVED: Brad Meryhew**
- **SECONDED: Dr. Michael O’Connell**
- **ABSTAINED: N/A**
- **PASSED: Unanimously**

MOTION # 22-13: MOTION TO APPROVE THE SEPTEMBER 15, 2022, MEETING MINUTES AS AMMENDED.

- **MOVED: Brad Meryhew**
- **SECONDED: Dr. Michael O’Connell**
- **ABSTAINED: N/A**
- **PASSED: Unanimously**

Full Board Discussion: Re: Final Recommendations from Subcommittees on House Public Safety Assignment

- Before the board began discussions about subcommittee updates and recommendations, **Brad** spoke about the history the board, how it started, why it was formed, and how it’s been successful and unsuccessful.
 - It was first formed in 2008 by two Legislatures.
 - It was implemented to help bring consensus in the committee room and keep conflict out.
- **Brad** created and shared a list that narrows down the primary disagreements among the group regarding the recommendations in hopes that it will help keep discussions focused and help the board reach consensus faster.
 - **Jamie** thanked **Brad** for putting this together and stated that it will be helpful for working together on this assignment.

FTR & Washouts Subcommittee

Failure to Register

- **Jamie** stated that the first recommendation presented in Brad's list was put together by KSARC, WASPC, DOC, and WAPA. The alternative to this recommendation is to reduce FTR to a gross misdemeanor by WA Voices, CAGE, and CDLA.
 - **Brad** stated his support for having the recommendation be one year of community custody for the first offense, and two years thereafter.
- **Shawn** stated he wasn't sure if the first option would have broad support but doesn't want to see it as a gross misdemeanor. He would rather see it as an unranked felony.
 - **Rick** stated they're aligned with what **Shawn** said and believes it should remain an unranked felony and not be defined as a sex offense.
- **Dr. O'Connell** asked if there were DOC navigators that currently exist or would we need to create them.
 - **Whitney** shared that there are navigators that exist, but they would need to be expanded to serve individuals with sexual offense histories.
- **Brad** asked if **Jamie** thought we had consensus on FTRs.
 - **Jamie** stated she believes that the group is close to consensus on this matter, but she does have questions about how we would get navigators to assist those that have been convicted of an FTR. If an individual has an unranked felony, doesn't it send them to prison?
 - **Brad** replied that they would still be under supervision and DOC would manage that through their community corrections division.
- **Brad** stated he recommends we drop the alternative to reduce FTR to a gross misdemeanor and supports the first option [unranked felony] with refinements.
- **Jedd** asked how moving to an unranked felony changes from the current law.
 - **Brad** replied that right now it's a ranked offense and an offender with a high enough score could serve 43 to 57 months for an FTR. If this was moved to an unranked felony the sentencing range would change to 0 to 12 months.
- Regarding navigators, **Dr. O'Connell** asked if we make this recommendation are we creating something that DOC would object to? Would this mandate be funded?
 - **Brad** replied that there is potential for it to be unfunded but he's not aware of any pushback from DOC on the expansion of this program.
 - The final report will have to state that it will require funding. The SOPB doesn't do the fiscal note.
- **Shawn** shared a concern that this will shift a lot of burden back on county jails which may cause some resistance from counties.
 - **Brad** agreed that this may happen, and we will include appendices in the report from SGC to support the reasoning for this recommendation.

Washouts

- **Brad** began the discussion surrounding Washouts by giving an overview of the three current recommendation options presented by the subcommittee.
- **Dr. O'Connell** stated that at first glance the third option for making sex offenses wash out on non-violent offenses seems the most palatable.
- **Hon. Nelson Lee** asked if alternatives two and three consider situations where a person charged with a non-sex offense or violent offense because plea negotiations or evidence issues, etc., gets reduced down to a non-violent or non sex offense even if they were originally charged with the former?
 - **Brad** replied he questions the constitutionality of an individual being punished by what they were charged with versus what they were convicted of.
- **Brad** proposed the board hold a vote at the next meeting on which recommendation to move forward with to get an idea of where the group stands with washouts.
- **Shawn** suggested we consider extending the period of time before one would be eligible for a washout. It could garner more support from other groups involved.
 - **Brad** stated that is something we could include in the proposal.

Lifetime Supervision Subcommittee

- **Brad** spoke about the existing proposals from this subcommittee and gave some background to the reasoning behind each of the options.
- **Shawn** stated he has concerns about offering a path off of lifetime supervision for level 3 offenders because that tends to mean there is a resistance to going through treatment or follow-up with DOC programs. Perhaps if the individual was first changed to a level 2 or level 1, first.
 - **Jamie** added that there are ultimately two recommendations from this committee. The first sets a timeframe in which the ISRB can consider an individual is eligible for discharge from lifetime supervision. Just because they're eligible for review does not mean they would be granted discharge. There would be involvement from law enforcement and victims' advocacy groups before a decision is made.
 - **Shawn** stated after hearing this information he's much more comfortable with this recommendation.
 - **Brad** added that the idea is to give these people some hope, motivation, and something to work towards.
- **Brad** stated we still need to determine who would make these determinations. Either the ISRB, or DOC.
- **Lori** stated that the ISRB is well informed on CCB cases throughout the process so they would be well suited to make these recommendations.
- **Corey** clarified that the second proposal suggests that level 1 and level 2 are presumed automatically discharged from supervision unless they have been disqualified for any of the eligibility criteria. There is a safeguard in which the CCO or DOC can request the ISRB review a case.

- **Whitney** shared the following eligibility criteria the subcommittee agreed on:
 - Have not been found guilty of any “high level” and risk-related violation as outlined in “Behavior Accountability Guide” Attachment 1 to DOC Policy 460.1302
 - Have not Been convicted of any new felony offense or any misdemeanor sex offense.
 - Have completed all recommended treatment related to the treatment as required in the Judgement & Sentence and ISRB Conditions.
 - Have not been non-compliant with conditions of supervision on a regular basis as documented by DOC.
 - Have Not been assessed to be at significant risk for sexual recidivism on an empirically validated DOC approved dynamic risk assessment completed within 120 days of eligibility for discharge.
- **Rick** added that not all victim’s advocacy groups would support these decisions.
- **Jamie** acknowledged all of the work the Corey and Sonja have put forward with these proposals.
- **Jamie** asked if CCO’s would flag every level 1 so as to absolve themselves of any perceived acquiescence to a sex offender.
 - **Brad** replied that a way we could work around that is flagging a case by citing objective reasons you think the ISRB should look at it.
 - **Dante** agreed and stated he thinks DOC could set up internal policies and practices based around these concerns to ensure this is being properly implemented and that there is accountability.
- **Jedd** asked if we know the percentages of level 1’s that are on lifetime supervision compared to level 2 and level 3.
 - **Brad** stated 70% for Level 1, 20% for Level II, and 10% for Level III.
 - **Lori** confirmed.
- **Jeff** added that there is a significant continuum among level 3’s. There may be a small number of individuals that the ISRB never want to be off of lifetime supervision. Additionally, if this gets codified, the chances of appeal from these individuals goes up dramatically.
 - **Brad** acknowledged these comments and asked how **Jeff** felt about having level 2’s being held to the same scrutiny as level 3’s.
 - **Jeff** stated it’s not a simple yes or no answer because there’s such a wide range of risk with these individuals that we have to look at each case carefully.
- **Lori** added that there was not a lot of victim input the last time these laws were looked at/changed.
- **Brad** stated that we still need to determine if there’s a consensus surrounding what the time periods should be for eligibility of relief from supervision and asked the board to think about this and the board will discuss further at a future meeting.

BREAK

Full Board Discussion: Re: Final Recommendations from Subcommittees on House Public Safety Assignment – Continued

Lifetime Supervision Subcommittee – Continued

- Regarding recommendation No.5, **Lori** stated that the language regarding pornography is so old and vague that it limits the use of internet as a whole which is incredibly challenging for persons on lifetime supervision since internet use and access is so necessary in today’s world.
- The group agreed to add the following language to the recommendation:
 - “Where they are outdated or not risk-related.”
 - **Brad** added there still needs to include some sort of judicial review.
 - **Dr. O’Connell** suggested we have ISRB make the change but allow the court to overrule it.

5163 Implementation Subcommittee

- **Emily** stated the subcommittee is going to recommend 3 statutory changes to the board.
 1. 500ft. rule in RCW 71.09.096(4)(a) be stricken.
 2. The blanket rule for zoning requirements in RCW 70.09.097(2)(a) be removed.
 3. The definition of secure community transition facility (SCTF) under 71.09.020(16) be clarified to provide a distinction between SCTFs and Community LRA housing.
- **Brad** asked **Emily** to explain the blanket rule for zoning requirements.
- **Devon** shared the following reasoning behind this recommendation:
 - Currently the language states that the considerations for LRA housing service or location “shall include applicable state and local zoning and building codes, general housing requirements, availability of public services, and other considerations identified in accordance with RCW 71.09.315.
The department shall require the housing provider to provide proof that the facility is in compliance with all local zoning and building codes.”
 - There are other statutes that fall into conflict with this general statute.
 - The subcommittee is referencing these statutes in their proposal.
- **Amanda** added that from an SCC perspective, recommendation No.3 would be incredibly helpful to individuals that need to be placed in either SCTF or LRA housing.

SSOSA & Sentencing Alternatives Subcommittee

- **Brad** is recommending after an individual’s period of suspended sentence that we add another hearing for termination of supervision. A judicial officer would still make the determination, and there would still be public and victim input.
- **Jamie** asked if we agree to proposal No.1, how can the court extend that if we amend the maximum.
 - **Brad** stated that:

- For a class B or C, if they run out of their 5 year or 10 year, they couldn't.
 - For a class A, it's up to life. The court can still review them at the appropriate time.
- **Megan** commented that the group did have majority consensus with the general SSOSA proposals.
- **Brad** continued providing a review of the remaining proposals from this subcommittee.
- **Shawn** shared that one issue to consider is equity within these conditions.
- **Jamie** stated that WASPC has not yet reached a consensus regarding sting cases but thanked **Shawn** for his comments as they do help.

Sex Offender Treatment

- **Brad** explained that the recommendation is to expand treatment options to a sliding scale as it is too difficult to get new treatment providers under current law.
- **Dr. O'Connell** shared that the subcommittee did a nice job of addressing this issue and he has begun the process of encouraging WATSA members to speak with their Legislators.

Additional Notes

- **Jamie** commented that there was a request to expand representation on the full SOPB to include representation of individuals that are required to register.
- **Alex** shared that he appreciates the mention of this oversight of representation when the SOPB was created and thanked **Jamie** for bringing it up.
 - **Alex** added that these type of policy boards have started to include representation from group that work directly with individuals that are directly impacted by these policy discussions and recommendations.
- **Megan** shared that KSARC feels it is important to have the voices of individuals that are in the field working directly with victims be heard and represented.
- **Brad** thanked **Jamie**, **Alex**, and **Megan** for their comments.

Next Steps

- Subcommittee meetings have concluded.
- Next SOPB full board meetings:
 - October 13, 2022 – Voting on Recommendations.
 - October 27, 2022 – Review and Discuss Report Draft.
- **Whitney** will be reaching out for writing support for the report(s) as needed.

For the Good of the Order

- **Heidi** asked that we discuss **Dr. O'Connell's** recommendation to address stings at the next meeting.
 - **Brad** confirmed this request.
- **Whitney** shared a comment from the meeting chat from "KT" which stated:

- “The term "palatable," as used for choice 3 of the Wash Outs, is a term based on emotion rather than cognitive thought. "The PASSIONS, therefore, not the REASON, of the public would sit in judgment. But it is the reason, alone, of the public, that ought to control and regulate the government. The passions ought to be controlled and regulated by the government." Federalist Papers, NO 49. Evidence based information such as the Federal washout after 15 years shows it can be done and work when looked at objectively. Please maintain objective thought as most have during this process.”

Meeting Adjourned at 4:02 p.m.

APPROVED AND ADOPTED BY THE SEX OFFENDER POLICY BOARD

_____/s/_____
Chair, Brad Meryhew

____ 10/13/22 ____
Date