

Chapter II: Lifetime Supervision

Lifetime Supervision

Our response to: “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 general.”

Definition of lifetime supervision v. community custody

Throughout the remainder of this section of the report, we use “supervision” and “community custody” interchangeably. “Community custody” is defined in RCW 9.94A.030(5) as that portion of an offender’s sentence of confinement in lieu of earned release time or imposed as part of a sentence under this chapter and served in the community subject to controls placed on the offender’s movement and activities by the department. We refer to an individual being “discharged” from supervision so as not to confuse the process with relief from registration (which is not discussed in this report).

Research related to supervision

Post-release supervision serves multiple purposes. According to the American Law Institute Sentencing Model Penal Code,⁵⁴ those purposes include promoting the rehabilitation and reintegration of individuals transitioning from prison to the community. This is achieved by setting supervision conditions that reduce the risk of committing a new offense and addressing the individual’s needs for housing, employment, family support, medical care, and mental-health care. The Sentencing Model Penal Code recommends using reliable risk-needs assessment instruments when deciding the length of the supervision term and what conditions of supervision to impose.

In general, individuals released from incarceration are at the highest risk for re-offense immediately after release and individuals convicted of a sex offense follow this same pattern. A substantial body of research exists demonstrating (1) a wide range in risk for recidivism among individuals convicted of a sexual offense; (2) risk for recidivism predictably declines over time and; (3) risk can become so low that it becomes indistinguishable from the risk of someone with a criminal history but no history of sexual offending spontaneously committing a sexual offense.⁵⁵ The policy of supervision of individuals who have been convicted of a sexual offense is to provide oversight and guidance to further mitigate the risk of committing another sexual offense. Policies should in turn change as the risk presented to the community changes.

⁵⁴ American Law Institute. (2022). Model penal code: Sexual assault and related offenses: Tentative draft No. 6: Submitted by the Council to the membership of The American Law Institute for consideration at the 2022 Annual Meeting on May 16–18, 2022. Philadelphia, PA: *The Institute*.

⁵⁵ Hanson, R., Letourneau, E., Harris, A., Helmus, L., & Thornton, D. (2018). Reductions in risk based on time offense-free in the community: Once a sexual offender, not always a sexual offender. *Psychology, Public Policy, and Law*, 24(1): 48-63. doi:10.1037/law0000135

Desistance from crime has no official definition in the literature, however a generally agreed upon definition is someone who has a criminal history's risk to commit a new offense is reduced to become equal to or less than the rate of an individual who has never been arrested spontaneously committing a crime. Hanson and colleagues⁵⁶ propose their rationale and the definition of desistance for individual convicted of a sexual offense as:

“... a plausible threshold for desistance is when their risk of a new offense is no different than the risk of spontaneous sexual offense among individuals who have no prior sexual offense history but who have a history of nonsexual crime. If we are going to manage the risk of an individual with a history of sexual crime differently from an individual with a history of nonsexual crime, then their risk of sexual offending should be perceptibly different. A recent review of 11 studies from diverse jurisdictions (n= 543,024) found a rate of spontaneous sexual offense among nonsexual offenders to be in the 1% to 2% range after 5 years. This is meaningfully lower than the sexual recidivism rate of adults who have already been convicted of a sexual offense. However, it is not zero. A sexual recidivism rate of less than 2% after 5 years is a defensible threshold below which individuals with a history of sexual crime should be released from conditions associated with the sexual offender label.”

The process of desistance is sped up with the presence of factors that lead the individual toward lifestyle stability to include but not limited to, meaningful social connections, housing and employment. While under supervision, the individual is held accountable to build the foundation of a prosocial lifestyle long enough for it to become routine, habitual and reinforcing, furthering the desistance process. Longitudinal studies of risk of recidivism demonstrates a reliable pattern of desistance the longer the individual is offense free in the community. Of a sample of greater than 7,000 individuals convicted of a sexual offense, few individuals presented much risk after 15 years and none after 20 years.⁵⁷

These findings were replicated in a study by the Washington State Statistical Analysis Center in 2020 with a sample of over 7,600 individuals convicted of a sexual offense released in Washington State between 2000 and 2003 and followed their re-arrest data for 15 years.⁵⁸ The report found individuals were at the highest risk in the first 5 years after release and the rate of rearrest tapered as time went on. The report found that less than 25% of the sample were responsible for approximately 80% of the arrests for the entire group, indicating that a small group of higher risk individuals committed the majority of the crimes following the initial release. Finally, findings indicated the relative risk of rearrest for the sample dropped below the public average (2.68%) by the 9th year post release and “...additional risks to public safety appears to vanish around the 10th” (pg. 3).

⁵⁶ Hanson, R., Letourneau, E., Harris, A., Helmus, L., & Thornton, D. (2018). Reductions in risk based on time offense-free in the community: Once a sexual offender, not always a sexual offender. *Psychology, Public Policy, and Law*, 24(1): page 2. doi:10.1037/law0000135

⁵⁷ Hanson, R., Letourneau, E., Harris, A., Helmus, L., & Thornton, D. (2018). Reductions in risk based on time offense-free in the community: Once a sexual offender, not always a sexual offender. *Psychology, Public Policy, and Law*, 24(1): 48-63. doi:10.1037/law0000135

⁵⁸ Washington State Statistical Analysis Center, (2020). Long-term recidivism of Washington sex offenders. https://sac.ofm.wa.gov/sites/default/files/public/pdf/long-term_recidivism_of_washington_sex_offenders.pdf

In an examination of recidivism data of over 7,000 individuals determined that an individual's risk to reoffend is approximately cut in half every 5 years they are sexual offense free in the community regardless of risk level.⁵⁹ Moreover, in a more detailed analysis over 80% of higher risk individuals are never convicted of another sexual offense, supporting the notion that individuals convicted of a sexual offense present a perceptibly low risk for recidivism in general.⁶⁰ In both studies, there was no meaningful rate of recidivism after 15 years offense free in the community even for those assessed as being of higher risk. It was determined that individuals assessed at a higher risk level tended to reoffend quickly upon release and those who did not reoffend had a higher chance of being successful and remaining in the community offense free.

Moreover, the detailed analyses in 2018 by Hanson and colleagues examined non-sexual recidivism and how it impacted the overall risk to reoffend. It was determined non-sexual recidivism did increase the risk of sexual recidivism, however didn't override the effects of time sexual offense free. The research indicates that our current system of lifetime supervision is not necessary for public safety. An expert in the field, R. Karl Hanson, and colleagues recently concluded:

"The vast majority of individuals with a history of sexual crime desist from further sexual crime. Although sexual crime has serious consequences, and invokes considerable public concern, there is no evidence that individuals who have committed such offenses inevitably present a lifelong enduring risk of sexual recidivism. Critics may argue that the near zero recidivism rates observed in the current study should not be trusted because most sexual crimes remain undetected. This type of argument, however, distances policy decisions from evidence. If the goal is increased public protection (not retribution or punishment), then efficient policies would be proportional to the risk presented. Risk in most individuals with a history of sexual crime will eventually decline to levels that are difficult to distinguish from the risk presented by the general population. Instead of depleting resources on such low risk individuals, sexual victimization would be better addressed by increased focus on truly high risk individuals, primary prevention, and victim services."⁶¹

History of Washington community custody laws

In 1981, the legislature passed the Sentencing Reform Act (SRA) which established determinate sentencing for individuals who committed a crime on or after July 1, 1984, including those convicted of sexual offenses. Under determinate sentencing, the court must sentence an individual to a specific number of years with a standard range.⁶² The SRA also authorized SSOSA as an alternative sentence. However, the SRA system was found to be problematic, specifically for sex offense cases, because individuals were automatically released to the community after completion of their sentence and/or after release from relatively short terms of community custody. After a series of high-profile sex

⁵⁹ Hanson, R. K. Harris, A., Helmus, L., & Thornton, (2014). High risk sex offenders may not be high risk forever. *Journal of Interpersonal Violence*, 29, 2792–2813. <http://dx.doi.org/10.1177/0886260514526062>

⁶⁰ Hanson, R., Letourneau, E., Harris, A., Helmus, L. & Thornton, D. (2018). Reductions in risk based on time offense-free in the community: Once a sexual offender, not always a sexual offender. *Psychology, Public Policy, and Law*, 24(1): 48-63. doi:10.1037/law0000135

⁶¹ Hanson, R., Letourneau, E., Harris, A., Helmus, L. M., & Thornton, D. (2018). Reductions in risk based on time offense-free in the community: Once a sexual offender, not always a sexual offender. *Psychology, Public Policy, and Law*, 24(1): pages 59-60. doi:10.1037/law0000135

⁶² The standard range is determined by referencing a sentencing grid using the individual's criminal history score and a rank based on the seriousness level of the crime.

crimes, the Community Protection Act of 1990 was enacted in Washington State. This Act established the civil commitment as a Sexually Violent Predator process, increased statutory maximum prison sentences for sex offenses, increased penalties for crimes committed with sexual motivation, and reduced the amount of early release time that could be earned. In 2001, the Legislature added determinate-plus sentencing for certain sex offenders. Individuals with determinate-plus sentences are sentenced to both a minimum and maximum sentence where the maximum term is the statutory maximum sentence for the crime.⁶³ A determinate-plus offender is subject to the jurisdiction of the Indeterminate Sentence Review Board (ISRB).

The Indeterminate Sentence Review Board (ISRB)

The Indeterminate Sentence Review Board (ISRB) was first established in 1935 as the Board of Prison Terms and Paroles. There are four main functions of the board: 1) To make decisions about whether an individual is appropriate for release from prison for individuals under ISRB jurisdiction, in which the ISRB must follow relevant RCW, WAC, and court decisions in decision making; 2) to approve/deny offender release plans for individuals under ISRB jurisdiction; 3) to impose conditions of parole/community custody for individuals that are appropriate for that individual under ISRB jurisdiction;⁶⁴ and 4) to address violations of parole/community custody that occur in the community for individuals under ISRB jurisdiction. ISRB jurisdiction includes:

- Pre-1984 (PAR) cases⁶⁵: Individuals who committed felony level offenses prior to July 1, 1984, and were sentenced to prison. These individuals serve 3 years of parole supervision upon their release from confinement.
- Community Custody Board (CCB) cases⁶⁶: Individuals who have committed certain sex offenses after September 1, 2001. Nearly all of these cases have lifetime community custody requirements upon their release from confinement.
- Juvenile Board (JUVBRD) cases⁶⁷: Juveniles who have been convicted of Aggravated Murder in the 1st Degree or who have been sentenced to confinement terms of over 20 years. These individuals serve 3 years of community custody upon their release.

⁶³ ESSB 6151 (2001-2002)

⁶⁴ Community custody is the portion of an offender's sentence spent in the community under the supervision of the Department of Corrections. DOC is required to supervise offenders on community custody

⁶⁵ RCW 9.95.100

⁶⁶ RCW 9.94A.507

⁶⁷ RCW 10.95.030 and RCW 9.94A.730

CCB cases make up the largest percentage of cases, by far, under ISRB jurisdiction. The following offenses in Table 1 are CCB qualifying offenses:

Table 1: Offenses that make up CCB cases

<p>Pursuant to RCW 9.94A.507</p>	<ul style="list-style-type: none"> • Rape in the First Degree • Rape in the Second Degree • Rape of a Child in the First Degree • Rape of a Child in the Second Degree. • Child Molestation in the First Degree • Indecent Liberties with Forcible Compulsion Sexually Violent Predator Escape
<p>Or any of the following offenses with a finding of sexual motivation</p>	<ul style="list-style-type: none"> • Murder in the First Degree • Murder in the Second Degree • Homicide by Abuse • Kidnapping in the First Degree • Kidnapping in the Second Degree • Assault in the First Degree • Assault in the Second Degree • Assault of a Child in the First Degree • Burglary in the First Degree

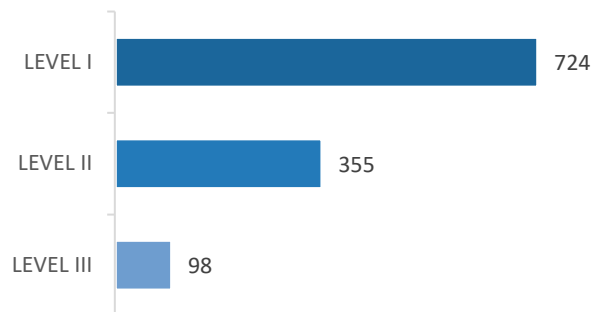
Individuals who have committed these offenses are under the jurisdiction of the ISRB until the expiration of their maximum term. All the offenses referenced above are Class A offenses, which, under current law, requires lifetime supervision. There is currently not a pathway for an individual who is sentenced to lifetime community custody to be reviewed for a potential discharge from supervision. Table 2 details the number of individuals who are incarcerated or under community custody jurisdiction per year. The number of CCB cases continues to grow, and, without the creation of a pathway off of lifetime supervision, will only continue to grow.

Table 2: Total ISRB Population by Year

	2014	2015	2016	2017	2018	2019	2020	2021
# of individuals in Prison	2108	2115	2175	2273	2376	2429	2415	2349
# of individuals on community custody	644	717	842	942	1066	1130	1307	1457

Figure 3 shows the breakdown of CCBs on community custody by ESRC-recommended risk level: Anecdotally, sexual recidivism for individuals released under ISRB jurisdiction is low.⁶⁸ Most frequently, when an individual is revoked from community custody, it is related to: 1) drug or alcohol use and/or other substance related violations; 2) unapproved dating/sexual relationships – especially with people that have care or custody of minors, and 3) sexually explicit material.

Figure 3: Registration Level Breakdown



What other states do

We reached out to numerous states to understand their processes and procedures related to lifetime supervision. We were able to gather some data on 22 states, though gathering and confirming this information was challenging due to the lack of information publicly available and the significant variances in systems. (Please see Appendix H for further detail). Practices for discharge from lifetime supervision vary greatly amongst the states: For example, Arizona, California, and Hawaii, have processes where an individual can petition for discharge from supervision. Colorado’s process only allows for a step-down to a lower level of supervision, but not discharge from supervision altogether. Connecticut allows discharge if an individual receives an absolute pardon and Rhode Island has a process for a conditional release. Indiana and Michigan do not have a process in place for an individual to be discharged from lifetime supervision.

Monetary costs of lifetime supervision

According to data from DOC at the time of the writing of this report, there are currently 1,866 individuals under lifetime community custody in Washington. The average length of time an individual convicted of a sexual offense spends under lifetime community custody is 27.9 years.⁶⁹ The average cost for supervision of a low-risk individual is \$2,436 per year and the average estimated costs of lifetime supervision is \$67,934 per individual.⁷⁰

⁶⁸ Recidivism refers to a person's relapse into criminal behavior. It is measured by criminal acts that result in a return to a Department prison facility with or without a new sentence during a three-year period (36 months) after being released from prison (NIJ). The legislative intent is that the system should positively impact inmates by stressing personal responsibility and accountability and by discouraging recidivism (RCW 72.09.010). [https://www.doc.wa.gov/information/definitions.htm#:~:text=Recidivism%20refers%20to%20a%20person%27s,released%20from%20prison%20\(NIJ%20\)](https://www.doc.wa.gov/information/definitions.htm#:~:text=Recidivism%20refers%20to%20a%20person%27s,released%20from%20prison%20(NIJ%20)).

⁶⁹ This number was informed by the average number male life expectancy of 78.69 years and female life expectancy of 82.56 years.

⁷⁰ These numbers are estimates based off of the cost of supervision of a low-risk individual and are subject to change. As risk is based on individual factors, there are outliers that carry a higher classification and increased costs. Additionally, the numbers utilized are based on DOC’s workload study (2004) which has not yet been completed. Given the initial results of the study, it is suspected that the costs represented here may be lower than the current actual costs. DOC is currently conducting a more current workload study that is anticipated to be published around the beginning of 2023.

Collateral costs of lifetime supervision

There are costs associated with lifetime supervision in addition to the financial costs born by the state. These include, but are not limited to, impacts to employment, mental health, and family systems. Lifetime supervision can limit an individual's job prospects as some employers won't hire an individual who is under supervision. This is compounded if the individual is under supervision for the entirety of their life. Supervision generally requires regular contact with a community corrections officer (CCO) which can be challenging to balance if the individual is able to secure employment. Without a pathway off of lifetime supervision, mental impacts, such as lack of hope and ongoing stress and anxiety, may be experienced. We heard from individuals with lived experience that one of their greatest challenges under lifetime supervision is having hope since there isn't currently a pathway off supervision. They reported feeling like there isn't "a light at the end of the tunnel", even if they successfully complete treatment, are deemed low-risk, and are compliant. They further reported increases in stress and anxiety due to the changing of CCOs and the fear that the CCO has the power to immediately disrupt their lives and their families' lives with little to no available recourse to them. Lifetime supervision requirements can also impact the individuals' families and loved ones by conditions that may limit the individual's ability to maintain and sustain pro-social family relationships.

Challenges with Washington's current lifetime supervision system

There are several challenges with lifetime supervision:

1. **First, there is currently no formal step-down process from lifetime supervision.** This means that when an individual is sentenced to lifetime supervision, currently, they will remain under ISRB jurisdiction for the remainder of their life. The number of people on community custody under the ISRB has continued to grow because of the lifetime supervision requirement; the population under supervision has dramatically increased through the years. Essentially the only relief from supervision is through death. This has led the number of people under the ISRB's jurisdiction to balloon requiring more and more resources. As shown in Figure 3, approximately 2/3rds of individuals currently under the ISRB jurisdiction are considered to be in the lowest risk category and they are taking up a large portion of the ISRB and DOC resources to supervise and manage. This is not an efficient use of resources.
2. **Second, the individual on supervision has to abide by both the conditions set in their Judgement & Sentence and those imposed by the ISRB.** The ISRB cannot modify conditions set in the Judgement & Sentence.⁷¹ Between the two bodies setting conditions, this leads to a large number of conditions the individual must abide by and the CCO to monitor. Additionally, the conditions set in the Judgement and Sentence are unable to be modified without substantial effort to reflect changes in risk by the individual and can be a relic that is no longer applicable to manage current risk presented to the community.

⁷¹ We recommend that this process be changed to allow the ISRB to send a letter to the Court for consideration of amended conditions. Please see Recommendation #25 of this report for the full recommendation and supporting reasoning.

3. **Third, although Washington uses a risk-based tiering system, currently, the conditions and level of supervision all look the same regardless of the risk level of the individual.** Currently, the ISRB does not have the resources to go back and amend conditions it has imposed with all individuals under their jurisdiction. The ISRB is only able to review conditions on a case-by-case basis, as requested by the individual on supervision (this is typically a written request). Though the ISRB would like to be able to review the conditions for everyone under their jurisdiction, they just aren't able to at this time due to limited resources taken by the ballooning number of people under their jurisdiction.
4. **Fourth, individuals on supervision will likely experience changes in their community corrections officers (CCOs).** Supervision in many counties is assigned by where an individual lives. If the individual moves, even if it's a nearby move, there may be a change in the CCO. Additionally, some offices require individuals to report to different locations. These changes often result in the CCO needing to "learn" the individual under community custody, which has been known to have a significant impact on the individual being supervised (ex: changes in expectations, earned privileges, check-ins, etc.). If a CCO wants to change an individual's level of supervision, the ISRB does not have a say in that. CCOs are required to monitor the conditions that the board and the court have imposed and make sure the individual is following the conditions. A working relationship between the individual and CCO is critical for the success and stability of the individual under supervision. Frequent changes in CCOs and the large number of conditions individuals under supervision are required to abide by leads to CCO's not developing working relationships with the individual, thus making it harder for the individual to be successful while on supervision for life.

Recommendations – Lifetime Supervision

No. 11 (Voting results – Yes: 8, No: 2, Abstain: 2)

Recommendation

The SOPB recommends that a pathway off of lifetime supervision should be created for individuals who have committed sexual offenses and meet eligibility criteria, including all of those currently subject to lifetime community custody. Specifically, the SOPB recommends the following time frames and criteria for eligibility for discharge from lifetime community custody:

Level I. Individuals who are recommended as a Level 1 upon their release from prison by the End of Sentence Review Committee shall be discharged from community custody five (5) years after their return to the community so long as they meet the eligibility requirements of not committing a "disqualifying event." The Department of Corrections shall review the relevant records to determine if the individual meets the eligibility criteria and process them off of community custody if they meet that criterion.

If the Department determines that a Level I individual does not meet the criteria for relief from lifetime community custody, or can identify a specific safety concern, then that case file shall be sent by DOC to the ISRB for review. DOC may make a referral to the ISRB for review of a Level 1 at least 90 days prior to discharge from community custody if DOC has reasonable grounds to believe the person poses a significant risk of sexual recidivism.

Level II. Individuals who are recommended as a Level II by the End of Sentence Review Committee upon their release from prison should be eligible for discharge from supervision ten (10) years after their return to the community so long as they meet the eligibility requirements of not committing a “disqualifying event.” For Level II offenders the ISRB shall review their file, submitted by DOC to the ISRB, to determine if the individual qualifies for relief from community custody and may extend the period of supervision for good cause shown. A review hearing shall be held at least 120 days before the end of the supervision period.

If a disqualifying event occurs within the first 10 years from release for a Level II individual, the individual will not be eligible for discharge from supervision for at least 5 years from the disqualifying event date. A review hearing by the ISRB should be held at least 120-days prior to the discharge from supervision date.

Level III. Individuals who are recommended as a Level III by the End of Sentence Review Committee upon their release from prison should be eligible for discharge from supervision fifteen (15) years after their return to the community so long as they meet the eligibility requirements of not committing a “disqualifying event.” For Level III offenders the ISRB shall review their file, submitted by DOC to the ISRB, to determine if they qualify for relief from community custody and may extend the period of supervision for good cause shown. A review hearing shall be held at least 120 days before the end of the supervision period.

If a disqualifying event occurs within the first 10 years from release for a Level III individual, the individual will not be eligible for discharge from supervision for at least 5 years from the disqualifying event date. If a disqualifying event occurs within the last 5 years of supervision for a Level III, then the individual would not be eligible for discharge from supervision for at least 3 years from the disqualifying event date. A review hearing by the ISRB should be held at least 120-days prior to the discharge from supervision date.

We recommend the following as “Disqualifying Events” for discharge from Lifetime Community Custody:

An individual would not be eligible for discharge from community custody if they have had disqualifying events. A disqualifying event is defined as:

- The individual has been found guilty of any serious and risk-relevant violation of the conditions of community custody, as determined by the ISRB at an on-site hearing. “Serious violation” is to be further defined in a future WAC, to include violations such as contact or attempted contact with prohibited person(s) or classes of individuals; use of prohibited drugs/alcohol if these substances were involved in the individual's offense; willful failure to complete required treatment; absconding from supervision, and other violations deemed high-risk by the WAC.
- The individual has been convicted of any new felony offense or any misdemeanor sex offense as defined in RCW 9A.44.128 or 9.94A.030;

- The individual has not completed all recommended treatment as required in the Judgement & Sentence and ISRB Conditions; The SOPB recommends that the ISRB be able to waive this condition if there is a finding that this resulted from the individual's indigence.
- The individual has been found to be non-compliant with conditions of supervision on a repeated basis as documented by DOC and referred to the ISRB. These violations would be addressed on a formal basis by the ISRB prior to release from community custody; and
- The individual has 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.

Background

For individuals who are considered a Level I, an assumption of eligibility and/or discharge from supervision will be an efficient process for lower-risk, cooperative individuals to be relieved of supervision and will reduce liability concerns for those involved. It will focus resources on those who pose an increased risk (Level II and Level III) and utilize resources more efficiently. Time-free offense research indicates the risk for recidivism cuts in half every 5 years. This was why the 5-year length of time is recommended because cutting risk in half over 5 years would provide a reasonable safeguard against future re-offense. If the disqualifying event occurs reasonably close to a new offense (sexual or non-sexual), the time free calculator suggests that it sets an individual's risk level back at least 3+yrs, so 5 years was chosen as a safeguard. DOC is able to request an ISRB review as a mechanism for the individuals involved in the case to voice concerns to the ISRB in rare cases where risk level does not accurately capture risk.

For individuals who are considered a Level II or Level III, we recommend a thorough review process to determine if the individual should be discharged from supervision. Leaving this decision up to the ISRB, who takes in consideration the information from DOC, is important because: 1) the ISRB already follows a similar process with the Pre-1984 cases, and 2) the ISRB has been overseeing these individuals throughout their supervision. For these reasons we recommend the ISRB have the jurisdiction to discharge the individual from lifetime supervision and not the court.⁷²

The proposal of providing a path off lifetime supervision is based on the significant body of research supporting the longer an individual is in the community offense-free the risk for re-offense predictably declines. The above cited studies in the research section of this report are specific to individuals convicted of a sexual offense, when the larger body research applies to individuals convicted of non-sexual offense indicating the same desistance pattern exists between both populations. The terms of 5, 10 and 15 years offense-free are used to determine when an individual may become eligible to be removed from lifetime supervision based in initial assessed risk level. Lower risk individuals who are already close to the desistance level of risk upon release will cross this threshold within 5 years. While moderate and the majority of high-risk individuals will cross this threshold in 10 and 15 years respectively as risk cuts in roughly half every 5 years. As an

⁷² There are also challenges with current tort law for social services agencies in Washington. Please see our 2022 report entitled *Updates Regarding Implementation of Chapter 236, Laws of 2021, January – June 2022* for more information about these challenges.

approximate heuristic, at 10 years, the individual will present as 1/4th the risk they did at release, while at 15 years the individual will present as 1/8th the risk they did upon release.

The proposal incorporates the findings of non-sexual offending increases risk to commit a new sexual offense. It does this by adding time if an individual commits a serious violation or new non-sexual offense. Finally, for outlier cases the ability to have the ISRB review any case is available. In conclusion, supervision resources should be focused on those individuals who have recently returned to the community and who present the greatest risk of recidivism.⁷³ Requiring individuals to remain under supervision after they have reached desistance level results in unnecessary monetary and collateral costs and is not the best use of limited resources.⁷⁴ Additionally, allowing the ISRB to work with the sentencing court to modify conditions to reflect the risk the individual presents in the present will provide a flexible up to date supervision strategy for higher risk individuals.

No.12 (Unanimous)

Recommendation

The SOPB recommends that individuals who are granted a SSOSA sentence should be supervised by the Department of Corrections for the length of their suspended sentence or 36 months, whichever is longer.

Background

This is a repeat recommendation based on the SOPB's review of SSOSA and corresponding report from 2013.⁷⁵ As noted in *Chapter 1: Treatment Alternatives* of this report, some individuals choose to take a plea for a lesser charge (a Class B or Class C offense) with a prison term rather than pursue a SSOSA if it would result in a Class A conviction due to the current lifetime supervision requirement. Individuals on SSOSA are not under the jurisdiction of the ISRB, they are purely under the supervision of DOC and the sentencing court. Prior to the enactment of the Determinate-Plus (indeterminate) sentencing for Class A sex offense on September 1, 2001, SSOSA cases were supervised for the period of the suspended sentence or 36 months, whichever was longer. Class A offenses often have a suspended sentence of up to 131 months. That was the term of community custody for these defendants before Determinate-Plus. Specifically, the newly adopted statute said:

RCW 9.94A.670, as amended in 2001 added Determinate Plus sentences.

(a) The court shall place the offender on community custody for the length of the suspended sentence, ***the length of the maximum term imposed pursuant to section***

⁷³ Rhine, E., Petersilia, J., & Reitz, K., (2015). Improving parole release in America. *Federal Sentencing Reporter*, Vol. 28 (2): 96–104. doi: 10.1525/fsr.2015.28.2.96

⁷⁴ We recognize that, should a pathway be created for an individual to be discharged from lifetime supervision, the result would be a significant change to Washington's current system. During this process, we heard from the victims' advocates who expressed concerns that there will be an impact on the victims' community as a result of this change: the truth in sentencing may be impacted since victims were told during the legal process that the individual who caused them harm would have lifetime supervision, which will likely result in victims having to further manage their expectations, and may contribute to a further lack of trust in the legal system.

⁷⁵ https://sgc.wa.gov/sites/default/files/public/sopb/documents/SSOSA_review_201401.pdf

303 of this act (Determinate-Plus), or three years, whichever is greater, and require the offender to comply with any conditions imposed by the department under RCW 9.94A.720.

Our recommendation is to simply return to the prior terms of community custody. A person who is granted a SSOSA is on community custody for the length of the suspended sentence or 36 months, whichever is longer. The current SSOSA statute would be amended to say:

(b) A term of community custody equal to the length of the suspended sentence, ~~the length of the maximum term imposed pursuant to RCW 9.94A.507~~, or three years, whichever is greater, and require the offender to comply with any conditions imposed by the department under RCW 9.94A.703. A supervision termination hearing shall be scheduled with the sentencing court within the last 60 days of the expiration of community custody.

No. 13 (Unanimous)

Recommendation

The SOPB recommends for SSOSA cases that the sentencing Judge in the Superior Court hold a supervision termination hearing at the end of the presumed community custody period to determine if the person should be released from community custody.

Background

The Court determines whether a SSOSA is granted. If a pathway off of lifetime supervision is created, we recommend that a safety valve of requiring a termination hearing at the end of the presumed community custody period be required for individuals on SSOSA prior to being relieved of supervision. The Court would maintain authority in determining whether the individual is ready to be released from community custody.

No. 14 (Unanimous)

Recommendation

The SOPB recommends that the DOC and ISRB submit an annual report to the governor and appropriate committees of the legislature detailing the number of individuals eligible for discharge from lifetime supervision; the number of individuals granted discharge from lifetime supervision; and the number of individuals who, subsequent to discharge from lifetime supervision, are investigated for a recent overt act as defined by RCW 71.09.020 or new sex offense as defined by RCW 9A.44.128 or 9.94A.030.

Background

Should the Legislature decide to move forward with creating a pathway off lifetime supervision, we recommend that monitoring be put in place. Having DOC and the ISRB submit annual reports on these topics will help ensure transparency, monitoring and accountability, and create and provide access to reliable data to help inform future decisions.

Appendix B

Voting Results by Stakeholder

SOPB Voting Results by Member Affiliation

The SOPB includes members who represent the following twelve organizations:

- 1) Washington State Department of Children, Youth & Families, Juvenile Rehabilitation (DCYF)
- 2) Washington Association of Sheriffs and Police Chiefs (WASPC)
- 3) Washington Association of Prosecuting Attorneys (WAPA)
- 4) Washington Association of Criminal Defense Lawyers (WACDL)
- 5) Indeterminate Sentencing Review Board (ISRB)
- 6) Washington State Superior Court Judges Association (WASCJA)
- 7) Office of Crime Victims Advocacy (OCVA)
- 8) Association of Washington Cities (AWC)
- 9) Department of Corrections (DOC)
- 10) Washington State Association of Counties (WSAC)
- 11) Washington State Department of Social and Health Services, Special Commitment Center (SCC)
- 12) Washington Association for the Treatment of Sexual Abusers (WATSA)
- 13) Washington Coalition of Sexual Assault Programs (WCSAP)

The table below outlines the voting results for the juvenile sex offense treatment recommendations from the SOPB by members' affiliate organization. 12 votes in favor is a unanimous vote.¹

Recommendation	Results	
<p>No. 1</p> <p>The SOPB recommends that the SSOSA statute be protected and preserved. We believe the evidence is strong that this sentencing alternative is an effective tool to resolve many cases and has proven itself over the decades.</p>	Yes: 12	No: 0
	Unanimous support	
<p>No. 2</p> <p>The SOPB recommends that cost barriers to SSOSA be reduced by the implementation of sliding scale fee schedules for evaluations and treatment and the creation of low-cost treatment options.</p>	Yes: 12	No: 0
	Unanimous support	
<p>No. 3</p> <p>The SOPB recommends that, where possible, work release programs be established and expanded to allow those who otherwise lack the resources to take advantage of SSOSA and other treatment alternatives.</p>	Yes: 12	No: 0
	Unanimous support	
<p>No. 4</p> <p>The SOPB recommends that RCW 9.94A.670 be clarified to include language that requires an individual to enter a plea of</p>	Yes: 12	No: 0
	Unanimous support	

¹¹⁹ Statement by SCJA regarding votes: "The SCJA does not take a formal position at this time until such time as the Legislature drafts a bill. The SCJA does appreciate the increased judicial oversight and discretion being considered in these recommendations." As SCJA is not formally weighing in on the recommendations with a vote, 12 votes in favor is a unanimous vote.

<p>guilty prior to trial in order to be eligible for this sentencing alternative.</p>			
<p>No. 5 The SOPB recommends that a sentencing alternative similar to SSOSA be enacted for those convicted of violations of RCW 9.68A. related to Depictions of Minors Engaged in Sexually Explicit Conduct so long as the person did not create the images in question.</p>	<p>Yes: 12 Unanimous support</p>		<p>No: 0</p>
<p>No. 6 The SOPB recommends that a sentencing alternative similar to SSOSA be enacted for those convicted of an internet sting or other sex offense not involving an identifiable victim.</p>	<p>Yes: 8 DCYF WAPA WACDL ISRB AWC WSAC WATSA WCSAP</p>	<p>No: 2 WASPC OCVA</p>	<p>Abstain: 2 SCC DOC</p>
<p>No. 7 The SOPB recommends that this treatment alternative only be available to those who are willing to take responsibility for some sexual misbehavior/a strong willingness to address behaviors that led them to their offense.</p>	<p>Yes: 12 Unanimous support</p>		<p>No: 0</p>
<p>No. 8 The SOPB recommends the following criteria for this treatment alternative, similar to the current criteria for SSOSA eligibility, which we endorse:</p> <ul style="list-style-type: none"> - No prior sex offense convictions or adjudications, and no adult convictions for a violent offense committed within five years of the instant offense; and - A standard sentencing range includes a sentence of eleven years or less. 	<p>Yes: 12 Unanimous support</p>		<p>No: 0</p>
<p>No. 9 The SOPB recommends that the Court impose standard conditions similar to SSOSA:</p> <ul style="list-style-type: none"> - Annual review hearings, including treatment termination hearings; and - Up to five years of community-based SOTP treatment. 	<p>Yes: 12 Unanimous support</p>		<p>No: 0</p>
<p>No. 10 The SOPB recommends that the Court hold a supervision termination hearing at the end of the suspended sentence for the Court to agree with the termination of community custody.</p>	<p>Yes: 12 Unanimous support</p>		<p>No: 0</p>

No. 11	Yes: 8	No: 2	Abstain: 2
<p>The SOPB recommends that a pathway off of lifetime supervision should be created for individuals who have committed sexual offenses and meet eligibility criteria, including all of those currently subject to lifetime community custody. Specifically, the SOPB recommends the following time frames and criteria for eligibility for discharge from lifetime community custody:</p> <p>Level I. Individuals who are assessed as a Level 1 upon their release from prison by the End of Sentence Review Committee shall be discharged from community custody five (5) years after their return to the community so long as they meet the eligibility requirements of not committing a “disqualifying event.” The Department of Corrections shall review the relevant records to determine if the individual meets the eligibility criteria and process them off of community custody if they meet that criterion.</p> <p>If the Department determines that a Level I individual does not meet the criteria for discharge from lifetime community custody, or can identify a specific safety concern, then that case file shall be sent by DOC to the ISRB for review. DOC may make a referral to the ISRB for review of a Level 1 at least 90 days prior to discharge from community custody if DOC has reasonable grounds to believe the person poses a significant risk of sexual recidivism.</p> <p>Level II. Individuals who are assessed as a Level II by the End of Sentence Review Committee upon their release from prison should be eligible for discharge from supervision ten (10) years after their return to the community so long as they meet the eligibility requirements of not committing a “disqualifying event.” For Level II offenders the ISRB shall review their file, submitted by DOC to the ISRB, to determine if the individual qualifies for discharge from community custody and may extend the period of supervision for good cause shown. A review hearing shall be held at least 120 days before the end of the supervision period.</p> <p>If a disqualifying event occurs within the first 10 years from release for a Level II individual, the individual will not be eligible for discharge from supervision for at least 5 years from the disqualifying event date. A review hearing by the ISRB should be held at least 120-days prior to the discharge from supervision date.</p> <p>Level III. Individuals who are assessed as a Level III by the</p>	DCYF WASPC WACDL AWC DOC WSAC WATSA ISRB	OCVA WCSAP	SCC WAPA

End of Sentence Review Committee upon their release from prison should be eligible for discharge from supervision fifteen (15) years after their return to the community so long as they meet the eligibility requirements of not committing a “disqualifying event.” For Level III offenders the ISRB shall review their file, submitted by DOC to the ISRB, to determine if they qualify for discharge from community custody and may extend the period of supervision for good cause shown. A review hearing shall be held at least 120 days before the end of the supervision period.

If a disqualifying event occurs within the first 10 years from release for a Level III individual, the individual will not be eligible for discharge from supervision for at least 5 years from the disqualifying event date. If a disqualifying event occurs within the last 5 years of supervision for a Level III, then the individual would not be eligible for discharge from supervision for at least 3 years from the disqualifying event date. A review hearing by the ISRB should be held at least 120-days prior to the discharge from supervision date.

We recommend the following as “Disqualifying Events” for discharge from Lifetime Community Custody:

An individual would not be eligible for release from community custody if they have had disqualifying events. A disqualifying event is defined as:

- The individual has been found guilty of any serious and risk-relevant violation of the conditions of community custody, as determined by the ISRB at an on-site hearing. “Serious violation” is to be further defined in a future WAC, to include violations such as contact or attempted contact with prohibited person(s) or classes of individuals; use of prohibited drugs/alcohol if these substances were involved in the individual's offense; willful failure to complete required treatment; absconding from supervision, and other violations deemed high-risk by the WAC.
- The individual has been convicted of any new felony offense or any misdemeanor sex offense as defined in RCW 9A.44.128 or 9.94A.030;
- The individual has not completed all recommended treatment as required in the Judgement & Sentence and ISRB Conditions; The SOPB recommends that the ISRB be able to

<p>waive this condition if there is a finding that this resulted from the individual's indigence.</p> <ul style="list-style-type: none"> • The individual has been found to be non-compliant with conditions of supervision on a repeated basis as documented by DOC and referred to the ISRB. These violations would be addressed on a formal basis by the ISRB prior to release from community custody; and • The individual has 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. 			
<p>No. 12 The SOPB recommends that individuals who are granted a SSOSA sentence should be supervised by the Department of Corrections for the length of their suspended sentence or 36 months, whichever is longer.</p>	<p>Yes: 12 Unanimous support</p>		<p>No: 0</p>
<p>No. 13 The SOPB recommends for SSOSA cases that the sentencing Judge in the Superior Court hold a supervision termination hearing at the end of the presumed community custody period to determine if the person should be released from community custody.</p>	<p>Yes: 12 Unanimous support</p>		<p>No: 0</p>
<p>No. 14 The SOPB recommends that the DOC and ISRB submit an annual report to the governor and appropriate committees of the legislature detailing the number of individuals eligible for discharge from lifetime supervision; the number of individuals granted discharge from lifetime supervision; and the number of individuals who, subsequent to discharge from lifetime supervision, are investigated for a recent overt act as defined by RCW 71.09.020 or new sex offense as defined by RCW 9A.44.128 or 9.94A.030.</p>	<p>Yes: 12 Unanimous support</p>		<p>No: 0</p>
<p>No. 15 The SOPB recommends that the offense of Failure to Register, pursuant to RCW 9A.44.132, be reduced from a Seriousness Level II offense to an Unranked Felony for the purposes of sentencing. This would result in a presumed sentencing range of 0 – 12 months.</p>	<p>Yes: 12 Unanimous support</p>		<p>No: 0</p>
<p>No. 16 The SOPB recommends that for the crime of Failure to</p>	<p>Yes: 12 Unanimous</p>		<p>No: 0</p>

<p>Register, defendants shall be given one year of community custody regardless of risk for a first offense and two years of community custody for subsequent offenses.</p>	<p>support</p>	
<p>No. 17 The SOPB recommends that Failure to Register offenses should not be defined as a “sex offense” under RCW 9A.44.128 of 9.94A.030. Under current law the second offense of Failure to Register and thereafter are defined as “sex offenses.”</p>	<p>Yes: 12 Unanimous support</p>	<p>No: 0</p>
<p>No. 18 The SOPB recommends that Failure to Register should be classified as a “disqualifying offense” as defined in RCW 9A.44.128, which would restart the waiting periods for relief from registration for a conviction.</p>	<p>Yes: 12 Unanimous support</p>	<p>No: 0</p>
<p>No. 19 The SOPB recommends that individuals under the jurisdiction of the Department of Corrections for a Failure to Register offense, whether they are in the community or still in prison, be assessed to identify the individual’s barrier(s) to registration compliance and provided with resources and tools to support compliance and improve functioning in the community, including housing, vocational rehabilitation, treatment as necessary, and community supports. The SOPB specifically endorses the use of navigators or other specialized corrections approaches in meeting the needs of this population.</p>	<p>Yes: 12 Unanimous support</p>	<p>No: 0</p>
<p>No. 20 The SOPB recommends that the Washington Association of Sheriffs and Police Chiefs (WASPC) review the Model Policy for Washington Law Enforcement regarding Adult and Juvenile Sex Offender Registration and Community Notification (4.24.5501) to identify opportunities to utilize technology to streamline initial and ongoing registration processes.</p>	<p>Yes: 12 Unanimous support</p>	<p>No: 0</p>

No. 21

The SOPB has been unable to achieve any consensus on this difficult issue. We offer three possible solutions and the vote of our Board for those positions.

- **Option 1:** The SOPB recommends no washouts for subsequent offenses. The current state of the law.

Voting results

Yes: 2 votes — WAPA, WASPC

No: 9 votes — DCYF, WACDL, WCSAP, WSAC, WATSA, DOC, ISRB, OCVA, AWC

Abstain: 1 vote — SCC

- **Option 2:** The SOPB recommends the law allow washouts for subsequent offense only if those are non-violent offenses that are not sex offenses as defined in RCW 9.94A.030.

Voting results

Yes: 4 votes — WADCL, DCYF, AWC, WSAC

No: 7 votes — WCSAP, WATSA, WASPC, DOC, ISRB, OCVA, WAPA

Abstain: 1 vote — SCC

- **Option 3:** The SOPB recommends that the portion of this assignment related to washouts be completed after the Criminal Sentencing Task Force has completed their work on this subject.

Voting results

Yes: 10 votes — WADCL, ISRB, OCVA, AWC, DOC, SCC, WATSA, WCSAP, WAPA, WSAC

No: 1 vote — DCYF

Abstain: 1 vote — SCC

No. 22

The SOPB recommends that person-first language be incorporated into newly written statutes and in every-day written and verbal communications in regard to minors who have committed sexual offenses.

Yes: 12
Unanimous
support

No: 0

No. 23

The SOPB recommends that the Department of Health Sex Offense Treatment provider requirement in RCW 18.155.020 be modified to allow SOTPs to supervise up to 4 Affiliates, regardless of full-time or part-time status.

Yes: 12
Unanimous
support

No: 0

No. 24

The SOPB recommends that an agency be directed to administer a funding program to assist in reducing the costs associated with the licensure for Sex Offender Treatment

Yes: 12
Unanimous
support

No: 0

Providers (SOTPs).		
<p>No. 25</p> <p>The SOPB recommends that, subject to judicial approval by the sentencing court, the ISRB may recommend, via letter to the sentencing court, modification to conditions of supervision imposed by the court under ISRB jurisdiction. The ISRB may not address restitution or other legal financial obligations and the sentencing court retains the authority to delete or modify conditions.</p>	<p>Yes: 12</p> <p>Unanimous support</p>	<p>No: 0</p>
<p>No. 26</p> <p>The SOPB recommends the following in order to correct the current contrast between RCW 4.24.550 and Washington’s Public Records Act:</p> <ul style="list-style-type: none"> - The SOPB recommends that RCW 4.24.550 be amended to add a new section: (12) Sex offender and kidnapping offender registration information is exempt from public disclosure under chapter 42.56 RCW, except as otherwise provided in 4.24.550. - The SOPB recommends that RCW 42.56.240 be amended 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. 	<p>Yes: 12</p> <p>Unanimous support</p>	<p>No: 0</p>

Appendix D

Data on SSOSA Cases by Year

Number of SSOSA Cases Granted Per Year by Offense Conviction

Offense	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	Total
Assault 3						2	1	1		2	6
Assault of a child 2	1			1							2
Burglary		1									1
Child molest 1*	24	23	32	30	23	21	32	16	16	15	232
Child molest 2	11	5	5	7	12	8	13	9	8	13	91
Child molest 3	4	5	1	1	2	2	2	1	3	2	23
Commer sex abuse						1					1
Communication with minor	1				1			1			3
Dealing depictions 1	1								2		3
Extortion 2						1					1
Incest 1	3		3	4	2	2	2	4	1		21
Incest 2		1	1						1		3
Indecent exp		1									1
Indecent Lib - DD victim	3	6	2	2	1		5	4		1	24
Indecent lib with force*	2		1			2		1		3	9
M/D/P W/I Marij 1st offense	1										1
Poss of depictions 1	2	1				3			2		8
Poss of depictions 2	1		1			1	1	1	1	1	7
Rape 2 (attempt)*			1				1				2
Rape 3				2		1		2			5
Rape of a child 1*	18	15	22	22	13	14	12	12	10	8	146
Rape of a child 2*	11	5	13	3	6	5	3	7	4	7	64
Rape of a child 3	10	11	13	6	11	10	5	7	8	9	90
Residential burglary							1				1
Sexual exploitation		1	2		2	3	1	1	2	3	15

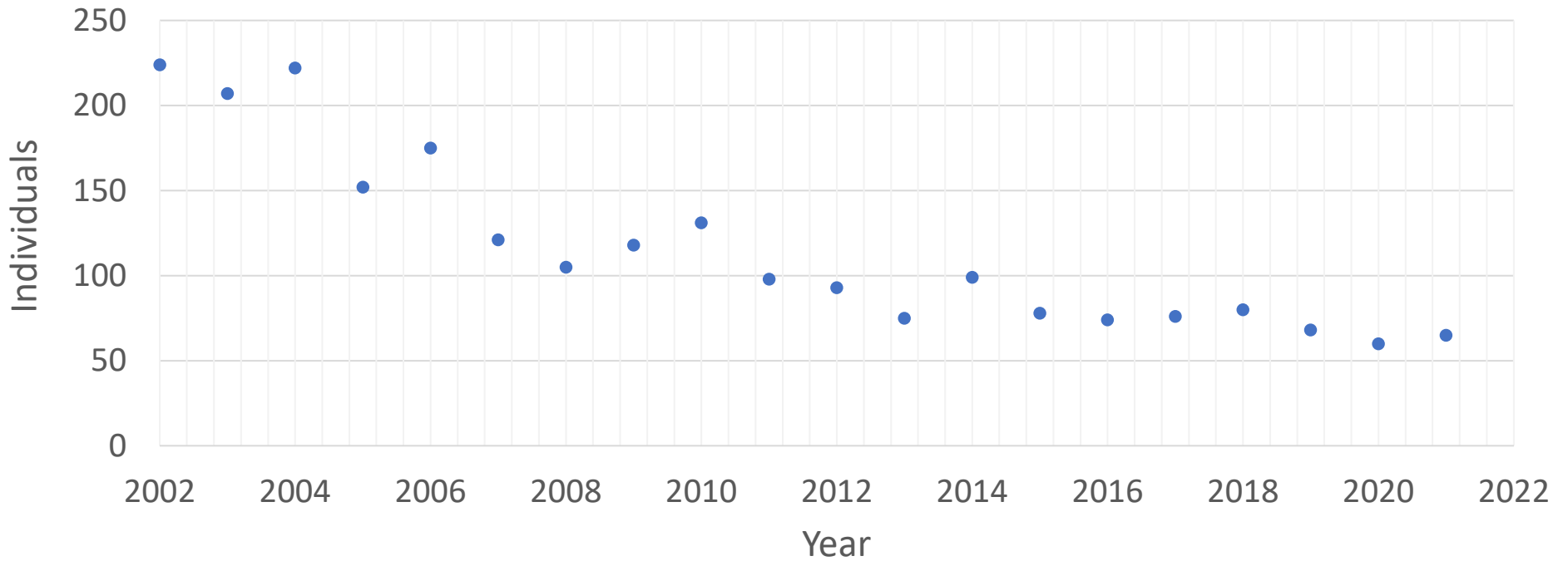
Sexual misconduct			1		1				1		3
Tampering with a witness									1		1
Unlawful imprisonment			1								1
Viewing depictions 2								1			1
Voyeurism							1			1	2
Total SSOSA granted per year:	93	75	99	78	74	76	80	68	60	65	768

* = Denotes Class A offenses Requiring Lifetime Supervision

SSOSA Cases Per Year

Year	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
# of Cases Eligible for SSOSA	822	857	861	769	773	702	632	682	622	587	606	547	579	584	522	553	570	635	547
# of Cases Granted SSOSA	224	207	222	152	175	121	105	118	131	98	93	75	99	78	74	76	80	68	60
% of Individuals Granted SSOSA	27%	24%	26%	20%	23%	17%	17%	17%	21%	17%	15%	14%	17%	13%	14%	14%	14%	11%	11%

Number of Individuals Granted a SOSSA by Year



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