



Less Restrictive Alternative - LRA

Sex Offender Management Conference – June 1, 2017

Focus of this Training

- **Sexually Violent Predators – RCW 71.09**
- **What is a Less Restrictive Alternative**
- **How an LRA Trial Gets Set**
- **Requirements of LRA Plan**
- **DOC's Role**
- **DSHS/SCC Role**
- **Transition Team**
- **Approved Monitoring Adults**
- **Revocation/Modification**



Sexually Violent Predators

RCW 71.09

SEXUALLY VIOLENT PREDATOR

A person who:

- Has been convicted of or charged with a crime of sexual violence;
- Suffers from a mental abnormality or personality disorder which causes him serious difficulty in controlling his sexually violent behavior; and
- The mental abnormality or personality disorder makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility

RCW 71.09.020(18)

MENTAL ABNORMALITY

- Congenital or acquired condition;
- Affecting the emotional or volitional capacity;
- Which predisposes the person to the commission of criminal sexual acts in a degree constituting such person a menace to the health and safety of others.

RCW 71.09.020(8)

PREDATORY

- Acts directed towards:
 - Strangers;
 - Individuals with whom a relationship has been established or promoted for the primary purpose of victimization; or
 - Persons of casual acquaintance with whom no substantial personal relationship exists.

RCW 71.09.020(10)

**“LIKELY TO ENGAGE IN PREDATORY
ACTS OF SEXUAL VIOLENCE IF NOT
CONFINED IN A SECURE FACILITY”**

- That the person more probably than not will engage in such acts if released unconditionally from detention on the sexually violent predator petition.

RCW 71.09.020(7)

TOTAL CONFINEMENT FACILITY

- A secure facility that provides supervision and sex offender treatment services in a total confinement setting. Total confinement facilities include that special commitment center and any similar facility designated as a total confinement facility by the secretary.

RCW 71.09.020(19)

SECURE FACILITY

- A residential facility for persons civilly confined under the provisions of chapter 71.09.020 that includes security measures sufficient to protect the community. Such facilities include total confinement facilities, secure community transition facilities, and any residence used as a court-ordered placement under RCW 71.09.096

RCW 71.09.020(15)

SECURE COMMUNITY TRANSITION FACILITY

- A residential facility for persons civilly committed and conditionally released to a less restrictive alternative under this chapter. A secure community transition facility has supervision and security, and either provides or ensures the provision of sex offender treatment services. Secure community transition facilities include but are not limited to the facility established pursuant to RCW 71.09.250(1)(a)(i) and any community – based facilities established under this chapter and operated by the secretary or under contract with the secretary

RCW 71.09.020(16)



Three Roads to LRA Trial

RCW 71.09.090(1)

■ **SCC Secretary's Authorization**

- If secretary determines the person's condition has so changed that either:
 - The person no longer meets the definition of a sexually violent predator; **OR**
 - Conditional release to a less restrictive alternative is in the best interest of the person and conditions can be imposed that adequately protect the community
- Secretary shall authorize the person to petition the court
- Petition shall be filed with the court and served on prosecuting agency
- The court, upon receipt shall within 45 days set a trial
- No Show Cause Hearing is necessary

RCW 71.09.090(2)(c)

▪ **Annual Review – State’s Burden**

▪ **Show Cause Hearing Required**

- Prosecuting agency shall present prima facie evidence establishing that the committed person

- Continues to meet the definition of a sexually violent predator;
AND

- That a less restrictive alternative is not in the best interest of the person and conditions cannot be imposed that would adequately protect the community

- **If the court finds the State has failed to present prima facie evidence, then the court shall set a trial**

- Both parties entitled to have current evaluation by expert

- Clinical interview

- Psychological testing

- PPG & Polygraph

RCW 71.09.090(2)(c)

■ **Respondent's Burden**

- “Nothing in this chapter shall prohibit the person from otherwise petitioning the court for conditional release to a less restrictive alternative or unconditional discharge without the secretary’s approval
- Show Cause Hearing required
 - Probable cause exists to believe the person’s condition has “so changed” that:
 - Person no longer meets the definition of SVP
 - OR
 - Release to a proposed less restrictive alternative would be in the best interest of the person and conditions can be imposed that would adequately protect the community
- If the court finds probable cause, then court shall set a trial

“So Changed”

- Probable cause exists to believe that a person’s *condition* has “so changed” ... only when evidence exists ... of a substantial change in the person’s physical or mental *condition* since the person’s last commitment trial proceeding
 - Physiological
 - Permanent paralysis, stroke or dementia that renders the person unable to commit a sexually violent act
 - Mental condition
 - Brought about through positive response to continuing participation in treatment
 - Sex Offender Specific
- Change in a single demographic factor, without more, does not establish probable cause for a new trial. Factors include, but not limited to, change in chronological age, marital status, or gender

One Free Bite – RCW 71.09.0902(d)

- Court has not previously considered issue through either
 - Trial
 - Summary Judgment CR 56
- Consider whether release to LRA
 - In the best interests of respondent and
 - Conditions can be imposed that would adequately protect the community
- Court MAY NOT find probable cause for LRA trial unless
 - Proposed plan meeting requirements of 71.09.092 is filed

Best Interest/Adequate to Protect the Community



- **Not defined terms**

- A trial court commits error if it defines
- Primarily focus on
 - Treatment
 - Employment
 - Safety
 - Likelihood of success
 - Community support

- **Is NOT a comparison of treatment programs**

- Community v. SCC – Focus on Proposed Plan
- Special Needs – Developmental Disability



Focus on the Proposed Plan

RCW 71.09.092

What is “The Plan”

- **Must include RCW 71.09.092**
 - Certified SOTP (or affiliate) who has
 - Agreed to be responsible for the treatment
 - Agreed to report progress to the court
 - Agreed to report violations immediately
 - Developed a specific course of treatment
 - Person agrees to comply with treatment provider and all requirements imposed by the treatment provider and the court
 - Specified Housing
 - Sufficiently secure
 - Person or agency has agreed (in writing) to:
 - Accept the person
 - Provide level of security required by the court
 - Immediately report if the person leaves without authorization
 - Person under supervision of DOC and agrees to comply with DOC supervision requirements



Department of Corrections Role

RCW 71.09.096 and DOC Policy

DOC Supervision

- **DOC will supervise SVPs conditionally released from SCC to LRA**
- **If court grants conditional release to LRA, CCO will provide ongoing supervision per court order until the offender is either:**
 - **Granted an unconditional discharge by the court**

OR

 - **Returned to the SCC and the LRA Order is revoked**

DOC Policy 380.370

Court Ordered LRA Investigation

- **Prior to authorizing release, the court shall order DOC to investigate the LRA and recommend additional conditions**
 - **Conditions shall include, but not limited to:**
 - **Specification of Residence**
 - **No contact with potential or past victims**
 - **No alcohol and other drug use**
 - **Participation in specific course of treatment**
 - **Polygraph & PPG monitoring**
 - **GPS monitoring**
 - **Supervision by DOC CCO**
 - **Restriction to Washington State unless has prior court authorization**
 - **Any other conditions the court determines in best interest of the person or others**

RCW 71.09.096(4)

LRA Conditions

▪ **Standard Conditions**

- Often overlap with supervision conditions required by DOC
- Primary focus on restricting movement, prohibiting contact, limiting places that can be visited, prohibiting substance use and types of materials possessed

▪ **Residential Conditions**

- Cover the person's living situation

▪ **Treatment Conditions**

- Sex offender treatment
- Compliance with verbal and written rules
- Monthly compliance reports from the SOTP

▪ **Special Conditions**



SCC/DSHS Duties

Statutes and WACs

Sexual Predator Program Mandates

- Custody, supervision and evaluation of those detained pending commitment
- Treatment, care, evaluation and control of those found to be SVP
- Evaluations and evaluation procedures established through coordination with DSHS, DOC and ESRC
- Operate secure facilities (SCC and SCTF)
- Provide escorted leave
- Complete Annual Reviews
- Develop individual treatment plan (ITP) for residents
- Maintain records
- Senior clinical team

WAC 388-880

SCTF Requirements

- Direct care staffing levels
- Residents and escorts
 - Wear electronic monitoring devices
 - At least one staff or authorized escort must accompany resident for appointments, employment, treatment or other approved activities
 - Escort shall supervise closely and maintain close proximity
 - Escort shall immediately notify law enforcement of any violation
 - Escort may not be a relative or someone whom resident had a dating relationship
 - Escort shall carry a cell phone at all times

RCW 71.09.110 to end of Chapter

Who Pays For What?

- **DSHS**

- Custody, care, treatment
- Cell phone & minutes
- Installation & maintenance of telephone land line for GPS
- Monthly stipend for living essentials
- ORCA bus pass
- \$15.00/hour plus mileage at federal rate for chaperones

- **Reimbursement from resident depending on resources/ability to pay**

- **The Big Debates**

- First 48 – 72 hours upon release
- Chaperones will not be identified and provided by DSHS
- Private transportation



Transition Team (RCTT)

Historical Collaboration

Members and Responsibilities

- **Comprised of CCO, SOTP and SCC/SCTF Representative**
- **Pre-transition meetings with attorneys**
- **Evaluate treatment performance, behavior, compliance with court ordered conditions and use of relapse prevention skills**
- **Regular meetings to discuss progress, violations, and conditions**
- **Make recommendations**



Approved Monitoring Adults

Chaperones

Requirements, Training, Duties

- Primary goal is to keep the community and resident safe through adequately trained chaperones
- Objective
 - Support resident through the process of transitioning
 - Support resident in an existing community placement
 - Assist resident apply self-regulation and control techniques to experiences in the community on a regular basis
- Formalized Training protocol
 - Chaperone criteria and duties
 - Offender pattern
 - Incident response
 - Communications plan
 - Community outings
 - Violation reporting



Revocation/Modification

RCW 71.09.098

Revocation/Modification Process

- SOTP, CCO, Prosecutor, or Secretary's designee may petition for a hearing on revocation or modification – **NOT RESPONDENT**
 - CCO or secretary's designee restrict movement in the community
 - Before a hearing, both parties have right to request an immediate mental examination
 - Respondent may be taken into custody if:
 - CCO, secretary's designee or law enforcement believe person has violated or is in violation of court's order
 - CCO, secretary's designee reasonably believe person is in need of additional care, monitoring or treatment because person presents danger to himself or others
 - Person taken into custody shall not be released before hearing
 - May be held at county jail, SCTF or total confinement

Revocation/Modification Hearings

- **State's burden to prove by preponderance of the evidence person has violated or is in violation of court order**
 - Hearsay is admissible if the court finds it is otherwise reliable
- **If court finds the State met its burden, the court shall consider:**
 - Nature of condition violated
 - Degree to which violation intentional or grossly negligent
 - Ability of person to strictly comply with court's order
 - Degree of progress made in community-based treatment
 - Risk to the public or particular persons
 - Any factor alone, or in combination sufficient
- **Court may add/modify conditions**
 - Substitute SOTP, require new housing or impose additional supervision conditions
 - Person revoked shall be remanded to total confinement at SCC



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