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Sex Offender Policy Board

General Recommendations for Sex Offender Management

October 2016

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Executive Summary

The Washington State Sex Offender Policy Board (SOPB) was created to advise the Governor and the Legislature as necessary on issues relating to sex offender management. RCW 9.94A.8673 authorizes the Governor or a legislative committee of jurisdiction to request the SOPB be convened to "undertake projects to assist policymakers in making informed judgments about issues relating to sex offender policy".

In October 2015, Governor Jay Inslee submitted a request to the Board that contained several areas for Board consideration. This report will address the last two items from the Governor's letter; "Offer recommendations as to other changes in sex offender registration and notification statutes that further advance the safety of the public; and offer recommendations as to other issues related to sexual offending that the SOPB determines could advance the safety of the public through further study". The SOPB considered various recommendations before unanimously deciding on those presented in this report. Each of the recommendations provided have been selected based on support from empirical evidence, and the recommendation's ability to enhance the safety of the public while allowing convicted sex offenders to successfully reintegrate within their communities.

Recommendations for Sex Offender Management in Washington State

The SOPB recommends consideration of the following topics in the coming year.

Research and Consider SORNA's Requirements for Juvenile Registration

- Research has continued to show a need to treat juveniles differently than their adult counterparts due to their ongoing brain and neurological development. Not only are juvenile sex offenders unique in their ability to be rehabilitated, they also are more vulnerable to collateral consequences associated with sex offender policies.
- The majority of states already treat juveniles differently with regards to sex offender registration and community notification. Currently Washington treats juveniles and adults the same.
- **RECOMMENDATION:**
 - The SOPB recommends that the state research, review, and consider SORNA's registration requirements for juvenile offenders.

Exemption of Sex Offender Information from Public Disclosure

- In December 2015 the SOPB issued a unanimous recommendation that sex offender registration information should be exempt from public disclosure under Chapter 42.56 RCW. This was supported by the Board, as exemption of this information has been held from public disclosure for years and has proven to be in the best interest of the community, and offenders.
- The SOPB adopted findings that this information has been held from public disclosure for decades, and has proven to be in the best interests of the public, of victims of sexual assault,

of community safety, and of registered sex offenders – both in terms of facilitating their successful reintegration into the community and in terms of their physical safety.

- **RECOMMENDATION:**
 - The SOPB strongly advises that the public disclosure of sex offender registration information be reconsidered during the 2017 legislative session.

Review and Update RCW 71.09 – Sexually Violent Predators

- The Community Protection Act that allowed for the civil commitment of individuals deemed to be “sexually violent predators” was initially implemented in 1990. Since then, the system charged with managing these individuals has grown considerably. Various lawsuits and legislative changes have led to RCW 71.09 lacking a coherent center. Additionally, the Secure Community Transition Facilities (SCTFs) have now been active for more than a decade and are suffering from growing pains and understaffing.
- Since the implementation of the Community Protection Act, we have learned more about the individuals we are treating in the SCC, including their risk for recidivism and amenability to treatment. At a cost well over \$150,000 per inpatient resident per year, RCW 71.09 is very costly and cumbersome to maintain.
- **RECOMMENDATION:**
 - The SOPB recommends that an independent body comprised of subject matter experts be tasked with reviewing RCW 71.09 in its entirety. The Board believes that a thoughtful and careful review of the statute would result in positive suggestions to revise the system while appropriately maintaining community safety.

Research and Consider Implementing the Risk-Need-Responsivity (R-N-R) Model within the Department of Corrections

- Washington allocates a significant amount of resources to the treatment and management of lower risk sexual offenders. Often times, this takes resources away from those offenders who need it the most, and exposes those who are lower risk to additional criminal behavior. Several studies have shown that this can *increase* recidivism for those who are lower risk. Additionally, various studies have proven that we can maximize cost-benefit to the tax payers by focusing our resources on those who are higher risk.
- The R-N-R Model aims to improve treatment and further reduce recidivism by assessing an offender’s criminogenic needs (factors that are strongly correlated with recidivism), risk (this determines which offenders need more treatment than others), and responsivity (aids in determining the most effective way to administer treatment).
- **RECOMMENDATION:**
 - The Board recommends a comprehensive review of the Department of Corrections’ Sex Offender Treatment Programs to consider areas in which resources are allocated in a way which may be inconsistent with an R-N-R approach. The areas include but are not limited to, RCWs, state criminal justice and mental health agencies’ policies and procedures, and funding mechanisms related to the treatment of the sex offender population.

Examine Liability Concerns and Effective Case Management

- Members of the Sex Offender Policy Board have heard several instances of agencies avoiding making decisions or offering opinions regarding changes in conditions of supervision, especially for registered sex offenders. It seems that this is, in part, due to the Washington State Legislature waiving the doctrine of sovereign immunity by statute.
- ***RECOMMENDATION:***
 - The Sex Offender Policy Board recommends an examination of how liability concerns have interfered with state agencies employing effective case management and stewardship of state resources. A review of this issue should include an examination of how Washington compares to other states in this regard.

Introduction

Washington has led the nation in sex offender management for several years by maintaining an open mind and revisiting policies, allowing them to evolve along with new developments in the field. The Washington State Sex Offender Policy Board (SOPB) was created to advise the Governor and the Legislature as necessary on issues relating to sex offender management. RCW 9.94A.8673 authorizes the Governor or a legislative committee of jurisdiction to request the SOPB be convened to "undertake projects to assist policymakers in making informed judgments about issues relating to sex offender policy".

Comprised of 13 voting members, the Board is made up of subject matter experts who remain up to date on the latest research in the field, and represent all areas of the sex offender management system. In 2011, budget cuts eliminated funding for the SOPB and presently, members serve on a voluntary basis.

In October 2015, Governor Jay Inslee submitted a request to the Board that contained several areas for Board consideration. This report will address the last two items from the Governor's letter; *"Offer recommendations as to other changes in sex offender registration and notification statutes that further advance the safety of the public; and offer recommendations as to other issues related to sexual offending that the SOPB determines could advance the safety of the public through further study"*. The SOPB considered various recommendations before unanimously deciding on those presented in this report. Each recommendation was selected based on support from empirical evidence, and the recommendation's ability to enhance the safety of the public while allowing convicted sex offenders to successfully reintegrate within their communities.

General Recommendations

Recommendation: Research and Consider SORNA's Requirements for Juvenile Registration

In 2009 the SOPB made several recommendations related to sex offender registration and community notification for juvenile sex offenders based on a review of the relevant social science research at that time. Some of those recommendations were enacted into law and several were not. The SOPB continues to identify research that suggests a need for juvenile sex offenders to be treated differently than their adult counterparts. The SOPB's review of other states' practices and policies regarding registration and community notification found that most states treat juveniles differently. Currently, Washington does not separate the two populations for registration and community notification purposes, though the state does allow for certain juvenile offenders to petition for the relief of the duty to register contingent on several criteria.

As outlined in the Sex Offender Policy Board's 2009 report, the key finding regarding juveniles states, *"Youth who have sexually offended are different from adults who commit sex offenses in part, because of ongoing brain and neurological development. Therefore, sex and kidnapping offender laws regarding juveniles and public policy should reflect their unique amenability to treatment and vulnerability to collateral consequences due to their ongoing development."* Based on this finding by the SOPB, and the continued discovery of research in support of treating juveniles differently; the SOPB recommends that Washington delve further into this area of study and consider best practices for providing treatment, assessing risk, and ensuring community safety for juveniles who commit sexual offenses.

Additionally, new SORNA regulations regarding the registration of juveniles persuaded the Board to make the recommendation for further SORNA compliance by researching and considering SORNA's requirements for juvenile registration. As of now, SORNA requires that all juveniles over the age of 14 register, those under 14 are only required to register in limited circumstances. This is in line with current research mentioned above, regarding the ability to rehabilitate juvenile offenders. The recommendation to further review juvenile registration in Washington was formally made to the Governor's Policy Office on July 25, 2016.

Recommendation: Exemption of Sex Offender Information from Public Disclosure

In December 2015, the SOPB issued a unanimous recommendation that sex offender registration information should be exempt from public disclosure (that RCW 4.24.550 is/should be an "other statute" under RCW 42.56). The SOPB adopted findings that this information has been held from public disclosure for decades, and this has proven to be in the best interests of the public, especially those who are victims of sexual assault. In addition, this information may enhance the safety of the community, and that of registered sex offenders – both in terms of facilitating offenders' successful reintegration into the community and in terms of their physical safety.

However, the Washington State Supreme Court held in *Doe. v. Washington State Patrol* that RCW 4.24.550 does not serve as an "other statute" under RCW 42.56, and sex offender registration information is not exempt from public disclosure. In its ruling, the Court specifically noted the following:

"In the 2015 regular session, the legislature rejected an amendment that would have deleted subsection (9) in its entirety and replaced it with "[s]ex offender ... registration information is exempt from public disclosure under chapter 42.56 RCW." Compare S.B. 5154, 64th Leg., Reg. Sess., at 5 (Wash. 2015), with Substitute S.B. 5154, 64th Leg., Reg. Sess., at 6 (Wash. 2015) (Laws of 2015, ch. 261, § 1). Although a failed amendment means little, it does show that the legislature knows how to exempt sex offender records under the "other statute" provision of RCW 42.56.070(1) if it wishes to do so. If there were any doubt as to whether or not RCW 4.24.550(3)(a) exempts sex offender registration records from PRA requests, subsection (9) resolves it. If not dispositive of this case on its own, subsection (9) at the very least confirms our conclusion that RCW 4.24.550(3)(a) is not an "other statute" exempting sex offender records."

Following this decision, real consequences have come to light. The SOPB has heard from numerous Level 1 sex offenders, who have expressed concern over their employment, housing, and social relationships. Moreover, this information is now being published on various websites, potentially interfering with the successful reintegration of Level 1 offenders across the state. If their victims are family members (as is often the case with Level 1 offenders), this has the potential to reveal victims' confidential information and negatively impact the victims' lives. The SOPB strongly advises that this be reconsidered in the 2017 session, and that legislation be enacted to exempt sex offender registration information from public disclosure. Specifically, the SOPB recommends that:

- A. RCW 4.24.550 be amended to include the following sentence: Sex offender and kidnapping offender registration information is exempt from public disclosure under chapter 42.56 RCW.
- B. RCW 42.56.240 be amended to include the following sentence: The following investigative, law enforcement, and crime victim information is exempt from public inspection and copying under this chapter: 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.

Recommendation: Review and Update RCW 71.09 – Sexually Violent Predators

The Community Protection Act that provided for the civil commitment of individuals deemed “sexually violent predators” was initially implemented in 1990. In the 26 years since then, the system designed to identify, contain, and treat these individuals has grown considerably. The professional literature has burgeoned, and so have the complications and fears related to assisting a person viewed as sexually dangerous back into the community. Legislation and lawsuits have regularly revisited RCW 71.09, making it a hodge-podge of statutory requirements without a coherent center. Public opinion and political will have impinged on making any significant changes to this law, other than to make it more stringent and restrictive.

In order to maintain the constitutionality of the law and the Special Commitment Center (SCC) program, a Federal injunction was implemented in 1994 and finally lifted in 2007. A primary component of lifting that injunction was the creation of a viable means for residents to transition back into the community. The court found that such a program, involving indefinite commitment of residents, must provide appropriate structure and an exit plan for individuals participating in treatment. Two Secure Community Transition Facilities (SCTFs--located in Pierce and King Counties) have now been active for more than a decade. These facilities are now experiencing growing pains, and significant staffing restrictions. We now know much more about the type of individual that is being treated and transitioned. Information about recidivism risk has grown considerably, and the processes to keep someone detained under this law have grown unwieldy and sometimes counterproductive. More residents have been participating in treatment, thereby lowering their level of risk, and making them eligible for a less restrictive alternative (LRA) placement. Furthermore, the number of such cases that the Department of Corrections (DOC) must investigate and supervise is steadily increasing. For example, in 2002 there were nine (9) active LRA cases in the community, while currently there are 49 active cases, and at least a dozen more under consideration.

With these issues in mind, it is our recommendation that an independent body comprised of individuals with specific knowledge in the SVP arena (judges, prosecutors, defense attorneys, treatment providers, Community Corrections Officers, SCC staffers, DOC and DSHS administrators) be asked to review RCW 71.09 in its entirety. It is believed that a thoughtful and

Careful review of the statute would result in positive suggestions to revise the entire system without impacting community safety.

Areas to look at would include:

- Location of the Total Confinement Facility and Secure Community Transition Facilities.
- Legal procedures and expenses including the possibility of creating an Administrative Law panel of judges.
- Specialty areas for adolescents, females, the elderly, and the mentally ill / intellectually disabled. Can ways be developed to adequately treat and transition these individuals elsewhere?
- Transition needs, including stepdown LRA options.
- Tolling of supervision once a person is placed in the community, as opposed to one of the SCTF's.
- Investigation of proposed addresses, including creation in statute of a sound process and structure specific to the investigations, supervision, and arrest authority of DOC, liability increases for the State substantially.

Now that we have a quarter century of experience dealing with this statute, we know that these and other areas within RCW 71.09 may benefit from closer scrutiny and revision. We recommend that a specialty panel be created to specifically review and identify areas for improvement, with a focus on maintaining public safety while also controlling costs.

Recommendation: Research and Consider Implementing the Risk-Need-Responsivity (R-N-R) Model within the Department of Corrections

In Washington state, significant resources are allocated to treat and manage lower risk sexual offenders. Often, this means allocation of treatment resources and supervision funding. This is not sound fiscal practice, as research shows the highest risk offenders should receive the most intensive supervision and highest level of treatment in order to maximize the cost-benefit to taxpayers, and more effectively use a very limited resource (Andrews, Bonta, & Hoge, 1990; Bonta & Andrews, 2007; Hanson, Bourgon, Helmus, & Hodgson, 2009).

One important example is lifetime supervision, which is not based on risk to sexually reoffend. Just as Washington state has made a conscientious decision to not be in compliance with tier-based leveling as required under SORNA, continuing to provide programming, treatment and supervision based on static offense is contraindicated by empirical research. Research has consistently shown that providing correctional and law enforcement resources based on static offense provides a false sense of public safety as this is a poor predictor of future sexual and general recidivism (Letourneau, Levenson, Bandyopadhyay, Sinha, & Armstrong, 2010; Freeman & Sandler, 2010). The SOPB recommends changes in policy to reflect and consistently apply R-N-R principles across the criminal justice continuum, particularly as it applies to sexual offenders.

More than a decade's worth of research and practice has consistently demonstrated the efficacy and best practice of applying the risk-needs- responsivity (R-N-R) model to prioritize correctional resources. The Principles of Effective Intervention prescribe that directing resources towards higher risk offenders produces the greatest impact to reduce recidivism (WSIPP, 2006). Some studies

suggest the placement of lower risk offenders in high intensity treatment may actually *increase* their risk to re-offend by removing offenders from protective factors (family, employment, prosocial peers) and placing them with more criminogenic offenders. This has been shown to be true for sex offenders as well (Lovins, Lowenkamp, & Latessa, 2009). The Washington State Department of Corrections has utilized an R-N-R system for assigning programming and community supervision for several years; however, the R-N-R model has not been systematically applied to our state's sex offender management system. Contrary to popular belief, there is consensus in the field of sex offender research and management that sexual offenders actually present a low risk to recidivate, even more so to recidivate sexually (Duwe, Donnay, & Tewksbury, 2008; Freeman N. J., 2012; Freeman & Sandler, 2010; Hanson & Bussiere, 1998; Sandler, Freeman, & Socia, 2008).

In addition to risk, the R-N-R model aims to improve treatment and further reduce recidivism by assessing an offender's criminogenic needs; those factors which are strongly correlated with an offender's risk. Various studies show that programs targeting at least four to six criminogenic needs can reduce recidivism by approximately 30% (Andrews, et al., 1990). Criminogenic needs are generally focused around "The Central Eight". The first four are often referred to as "The Big Four" as they are associated with the largest decline in recidivism: History of Antisocial Behavior, Antisocial Personality, Antisocial Cognition, and Antisocial Peers. The remaining four include family/marital life, school/work, leisure and recreation, as well as substance abuse (Andrews, Bonta, & Wormith, 2006). In short, the R-N-R model assesses risk to determine who needs treatment, evaluates their criminogenic needs to determine what to treat, and also evaluates responsivity to determine how to most effectively administer treatment to the offender.

The Board recommends a comprehensive review of the Department of Corrections' Sex Offender Treatment Programs to consider areas in which resources are allocated in a way that may be inconsistent with an R-N-R approach. These components include, but are not limited to, RCWs, state criminal justice and mental health agencies policies and procedures, and funding mechanisms related to the treatment of the sex offender population.

Recommendation: Examine Liability Concerns and Effective Case Management

In recent years, the Sex Offender Policy Board has heard of more and more cases where state agencies avoid making decisions or offering opinions to change conditions of supervision, especially for registered sex offenders in community placement.

While the official policy of the agency may be otherwise, the implicit practice seems to be to never implement or recommend less restrictive conditions, regardless of how well the individual may be currently performing and despite evidence the changes are likely to advance treatment goals and community reintegration and thus improve community safety.

Sometimes case management issues can be resolved by having the matter brought to a court, which then issues an order for supervision and management revisions. This approach requires the court to interpret whether the agency's stated objections to changes in conditions are objectively offered.

It has become apparent this problem is more than typical bureaucratic inertia or occasional risk-aversion by certain individuals. This pattern seems to be, at least in part, the result of the Washington State Legislature having waived the doctrine of sovereign immunity by statute. This and subsequent changes were described in a 2005 law review article (Michael Tardif & Rob

McKenna, 2005. *Washington State's 45-Year Experiment in Government Liability*, 29 Seattle University Law Review. 1, 50-52.)

The Sex Offender Policy Board recommends an examination of how liability concerns have interfered with state agencies employing effective case management and stewardship of state resources. A review of this issue should include an examination of how Washington compares to other states in this regard.

Conclusion

The Sex Offender Policy Board serves to advise the Governor and Legislature on an ‘as needed’ basis. In October 2015, Governor Inslee submitted a request to the Board asking that they convene and undertake several projects. This report comes as a response to the last two items of the request, and provides recommendations as to what Washington can do to further enhance the effectiveness of sex offender policies, and protect public safety.

Washington continues to lead the nation in sex offender management, and does so by staying apprised of the most relevant and updated research and modifying policies as necessary. With a goal of reducing the recidivism rates of convicted sex offenders, and continuing to put public safety first, the Board formally recommends that the following items be researched and considered further.

- Research and Consider SORNA’s Requirements for Juvenile Registration
- Consider the Exemption of Sex Offender Information From Public Disclosure
- Review and Update RCW 71.09 – Sexually Violent Predators
- Research and Consider Implementing the R-N-R Model Within the Department of Corrections
- Examine Liability Concerns and Effective Case Management

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Appendices

SOPB 2009 Full Report to the Legislature

SOPB 2015 Report to the Legislature (Public Disclosure Recommendation)

SORNA's Juvenile Registration Guidelines

Governor's Request (letter)

Washington State

Sex Offender Policy Board



Annual Report to the Legislature
2009

Washington State Sex Offender Policy Board

**Annual Report to the Legislature
2009**

Authored by
Shoshana Kehoe-Ehlers and
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On behalf of the Sex Offender Policy Board

PREFACE

In 2008, the legislature passed SSB 6596 to create the Sex Offender Policy Board (SOPB), and assigned administrative responsibility for it to the Sentencing Guidelines Commission (SGC). RCW 9.94A.8671 states the Legislature's intent is to promote a coordinated and integrated response to sex offender management and create an entity to respond to issues that arise, such as integrating federal and state laws, in a way that enhances the state's interest in protecting the community with an emphasis on public safety.

The Board has been assigned a wide variety of duties that range from examining individuals cases to setting performance measures for the entire system statewide. In addition, the Board will continue to be a repository for research on best practices in sex offender management, response systems, and prevention.

This year the Board fulfilled the task of reviewing the state's adult and youths who sexually offend registration and notification system assigned by the 2008 legislature in 2SHB 2714, including responding to ESHB 2035 enacted by the 2009 legislature. ESHB 2035 directed the board to review whether registered sex and kidnapping offenders should be required to submit information regarding any e-mail addresses and any web sites they create or operate. This report is intended to provide an account of these activities as well as comply with the annual report responsibility as directed in RCW 9.94A.8676.

The Board also served as an advisory resource for the Legislature and Governor's office during and after the 2009 legislative session.

The following report opens with an executive summary, detailing what the Board learned from their overall research and discussions about the complexities of the sex offender management system and prevention. It then lists and details the key findings that the Board reached from its research. These key findings provide the framework and the basis for the proposals reached by the Board. The report then moves into areas of change the Legislature may want to consider. These areas are divided into first, Juveniles Who Commit Sex Offenses area of law; second, the Adult Sex Offense area; third General System areas, and then finally, the Community Notification and Education section.

The report then summarizes the work and progress completed in the areas of: sex offenders in the community, including housing options for sex offenders, developing benchmarks for Washington State's sex offender management and response system.

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ACKNOWLEDGEMENTS

The work of the Washington State Sex Offender Policy Board would not have been possible without the resources and support of the following:

- Dr. Russell Lidman, Director of the Seattle University College of Arts & Sciences – Institute of Public Service for advising the Board on approaching evidence based practice research.
- The Sentencing Guidelines Commission for guidance and support for the Board.
- All of the state departments, prosecutor agencies, and non-profit organizations who lent the time and talent of their staff to this project.
- All of the state departments, agencies and organizations who donated conference room space for the numerous meetings held by the Board, the Committees, and Workgroups.
- The many hours of work provided by experts around the state.
- All of the agencies and individuals who participated in interviews, literature reviews and surveys conducted during the Benchmarks and Sex Offender in the Community phases of the project.
- All of the state sex offender management or sex offender policy boards across the nation who provided very helpful information about how other states approach the sex offender management system.
- The legislative staff members who attended the many meetings providing helpful insight and advice.
- Each member of the Board and Committees who followed through on the commitment to participate in a long-term, multi-disciplinary, collaborative process to critically assess and make proposals to improve the management of adult sex offenders and youths who sexually offend, specifically the registration and notification component of the system.
- We would like to acknowledge the extra time and effort of our committee chair persons. Without their leadership and dedication, this would not have been possible. Kecia Rongen (Registration and Notification Committee and Juvenile Workgroup); Mary Ellen Stone (Sex Offender in the Community Chair); Bev Emery and Russell Hauge (Benchmarks Committee); Lindsay Palmer (Community Notification Workgroup), and Brad Meryhew (Failure to Register/Registration/Risk Assessment Workgroup).

SEX OFFENDER POLICY BOARD MEMBERS' BIOGRAPHIES

Russell Hauge – Washington State Association of Prosecuting Attorneys. Mr. Hauge was elected Kitsap County Prosecuting Attorney in 1994 and re-elected in 1998, 2002, and 2006. He served as chairman of the Governor's Sex Offender Task Force in 2007 and currently serves as the Chair of the Sex Offender Policy Board.

Andrea Piper - Washington Coalition of Sexual Assault Programs.

Andrea Piper is the Executive Director of the Washington Coalition of Sexual Assault Programs (WCSAP) and Vice-Chair of the Washington State Sex Offender Policy Board. Ms. Piper has an extensive background in sexual assault advocacy and victim service provision. Throughout her career she has focused her efforts on enhancing individual and system responses to victims and survivors. Ms. Piper actively works on development of effective public policy and legislation related to sexual assault victimization, supervision and management of sex offenders, and community responses to sexual violence.

Brooke Burbank -Office of the Attorney General. Ms. Burbank is the Section Chief for the Sexually Violent Predator Unit of the Attorney General's Office. Prior to joining the Attorney General's Office, she was a Senior Deputy Prosecuting Attorney at the King County Prosecuting Attorney's Office, primarily handling sexual assault and SVP cases.

Kecia Rongen - DSHS Juvenile Rehabilitation Administration. Ms. Rongen has worked with juvenile sexual offenders for 13 years within JRA as a residential counselor, parole officer and treatment coordinator. Since 2005 she has been the Program Administrator for the Sexual Offender population at JRA, and is Chair of the JRA Subcommittee of the End of Sentence Review Committee. Ms. Rongen is a Board Member for the Washington Association for the Treatment of Sexual Abusers (WATSA) and serves as the Chair of the Registration and Notification committee for the Sex Offender Policy Board.

Ida Ballasiotes - Sentencing Guidelines Commission. Ms. Ballasiotes is a member of the Sentencing Guidelines Commission and served as the public representative, legislative representative, and the victims advocate representative from 1999 to 2009. Ms. Ballasiotes served in the Washington State House of Representatives, 41st District, focusing on Public Safety from 1992-2002 and Vice President on the Board for Families & Friends of Violent Crime Victims.

Brad Meryhew - Washington Association of Criminal Defense Lawyers. Mr. Meryhew has been in private practice since 2003, focusing in the last several years on sex based offenses. He began his legal career as an attorney for Society of Counsel Representing Accused Persons handling misdemeanor and felony trials (1997-2003).

Prior to his legal career he worked in politics in Washington, D.C., and as a business manager. He practices in state and federal courts throughout western Washington. He is a 1994 graduate of the University Of Puget Sound School Of Law and a 1980 graduate of the University of Utah. Brad has represented WACDL on the Sex Offender Policy Board since its inception in 2008.

Andrew Neiditz - Association of Washington Cities. Mr. Neiditz is the Lakewood City Manager, an AWC board member, and past president of the Washington City/County Management Association.

Anmarie Aylward - Department of Corrections. Ms. Aylward is Chair of the End of Sentence Review Board for Washington State. Her responsibilities include oversight of Sex Offender Treatment as well as the Enhanced Supervision and Dynamic Supervision Programs at the Department of Corrections, where she has worked for twenty years.

Maureen Saylor - Washington Association for the Treatment of Sexual Abusers. Ms. Saylor is certified sex-offender-treatment provider and a psychiatric nurse. She has 35 years of experience evaluating and treating sex offenders. She has been in private practice since 1996 when she retired after twenty – five years of service at Western State Hospital where she also worked with sex offenders for most of her career there. She has worked with both adolescents and adults. She has been active in WATSA since it's inception and has served as an officer and a board member.

Chief Ed Holmes - Washington Association of Sheriffs and Police Chiefs. Chief Holmes began his career in law enforcement in 1994 with the Mercer Island Police Department and was appointed to serve as Chief of Police in 2006. Prior to working for Mercer Island, he worked as a Juvenile Rehabilitation Counselor for incarcerated youth at Echo Glen Children's Center. He spent his time working with the youth in the Sex Offender Unit as well as the Maximum Security Unit. Chief Holmes served as the Co-Chair of WASPC's LEMAP Committee for approximately three years, and currently serves as the Chair of the Model Policy Committee. He is also an active member of WASPC's Legislative Committee. Chief Ed Holmes recently joined the Board as a member in November 2009.

The Board would also like to thank and acknowledge the services of former Board member, Sheriff Mark Brown, who worked so hard to assist in the research and policy discussions of the registration and notification committee.

Bev Emery - Office of Crime Victims Advocacy. Ms. Emery is the director of the Office of Crime Victims Advocacy (OCVA), since its creation, as part of the Community Protection Act of 1990. Prior to that, she was the Executive Director of the Washington Coalition of Sexual Assault Programs for approximately eight years. Under her leadership at OCVA, universal service definitions and standards have been developed to ensure high quality services throughout Washington for victims of crime. Ms. Emery was part of the DOC sponsored Partnership for Community Safety, an instrumental multi-disciplinary effort towards sex offender management. Ms. Emery has been a leader

in the convergence of interests between sexual assault victim interests, community safety, and sex offender management.

Mary Ellen Stone -Sentencing Guidelines Commission. Ms. Stone is the Director of the King County Sexual Assault Resource and has played an active role in changing the nature of sexual assault prevention, education and victim response in Washington State. Under her leadership, KCSARC has become one of the country's leading resources for sexual assault victims, their families, professionals and the community. She currently serves as Chair for the Sex Offenders in the Community committee.

Lynda Ring-Erickson, Ed. D. – Mason County Commissioner.

Dr. Ring-Erickson is the President of the Washington Association of Counties and is serving her second term as County Commissioner in Mason County. She is a member of the Sentencing Guidelines Commission and the Washington State Forensic Investigation Council. Dr. Ring Erickson has served as a senior policy analyst, as a corrections program officer in state and local government, and was once a police officer in the King County Department of Public Safety. From 1993 to 1999 she was the Executive Director of the Suburban Cities Association of King County.

Carey Sturgeon – DSHS Special Commitment Center. Dr. Sturgeon is a clinical psychologist and Clinical Director of the Special Commitment Center. She has previously worked as a psychologist in the High Intensity Sex Offender Treatment Program for the Correctional Services of Canada. She has presented papers regarding sex offender treatment at national and international conferences.

Judge Laura Gene Middaugh – Superior Court Judge's Association.

Judge Middaugh currently serves as a King County Superior Court Judge. She began her law practice in a small firm, then as a general litigation sole practitioner with an emphasis on family law and mediation. She was a pro tem and a Family Law Commissioner with the King County Superior Court prior to her election as a King County Superior Court Judge in 2000. Judge Middaugh has held elected positions as Trustee Superior Court Judge's Association, Chair of the Supreme Court Pattern Forms Committee, and the King County Superior Court Strategic Planning Committee.

Tom Sahlberg, Indeterminate Sentencing Review Board Representative

Mr. Sahlberg retired from the Spokane Police Department in 2004. He has also served as Victim/Witness Coordinator with the Spokane County Prosecutor's Office before joining the ISRB.

EXECUTIVE SUMMARY AND INTRODUCTION

The recognition of the extent and seriousness of sexual victimization and of its impact on individual victims and on society as a whole has expanded dramatically over the past twenty years. However, the problem persists; negatively impacting the lives of many in our society and the efforts to stop such harmful behaviors must and continue to do so.¹

The understanding that sexual assault is a “special” sort of crime that has a different impact on its victims and that, in many cases, is perpetrated by an individual whose psychology and motivation is different from that of other criminals has a number of consequences. One important consequence is that those who deal with such crimes at every stage of the intervention process need to have specialized knowledge.²

Because sexual offending is such an emotionally charged topic, it is not always easy to think clearly about how to best manage sex offenders. This report represents the efforts of a multi-disciplinary Board of experts and stakeholders involved in Washington State’s sex offender response and management system who thoughtfully reviewed the available research and knowledge base and designed proposals about how to apply it to Washington State’s policies and practices.

Taking all possible steps to prevent sexual victimization and to ensure that the rates of sexual assault continue to drop is clearly, and should be, a high priority for Washington State policymakers. Although some believe that long or indefinite or lifetime prison sentences are the best way to accomplish this goal, others take the position that even though such a response may be indicated in some cases, it is not a defensible or cost-effective response to every sexual crime.³ The reality is that, even with extended sentences, most sex offenders will eventually return to the community.⁴

For the safety and well-being of Washington State’s citizens, especially those most vulnerable to sexual assault, it is essential to manage known sex offenders living in the state’s communities in ways that most effectively reduce the likelihood that they will commit another offense, both while they are under the formal supervision of the criminal justice system as well as after that period of supervision comes to an end.⁵ Comprehensive interventions and systemic responses tailored to meet the individual levels of risk and needs of offenders are required.

It is for this reason that the Washington State Sex Offender Policy Board was created with the specific goal of conducting a review of Washington State practices in the management of sex offenders and, from the perspective of evidence-based and emerging best practices, making proposals about needed improvements. These efforts are reflected in the following report.

Washington State has a very comprehensive management system as compared to other states. This state had one the very first sex offender registration and notification systems. The Board is now looking at 20 years of research regarding sex offender management and response systems since the inception of the Washington State system.

This research has unveiled several key findings critical to the ongoing development of an effective sex offender management and response system:

- The key to ensuring public safety is to make well-informed decisions based on the best available research.
- Practical obstacles exist as to standard implementation of the current registration and notification laws as identified from stakeholder input, recent court cases, and an in-depth review of the Sex Offender Management System.
- Ongoing coordinated and collaborative efforts are required in order to stay apprised of best practices and to ensure efficient and evidence-based approaches to emerging issues within the Sex Offender Management System.
- Washington State's current system supports public safety by setting community notification standards using a risk-based analysis instead of an offense-based method. This system is built on the premise that the community and sex offender response system partner to achieve public safety.
- Empirically validated risk tools are one of the most effective ways to determine an offender's risk to re-offend. The use of standardized dynamic factors can also be helpful in risk level assignment.
- Youths who have sexually offended are different from adults who commit sex offenses in part, because of ongoing brain and neurological development. Sex and kidnapping offender laws regarding juveniles and public policy should reflect their unique amenability to treatment and vulnerability to collateral consequences due to their ongoing development.

Just as Washington State was the pioneer 20 years ago in developing sex offender laws to ensure public safety, Washington State can now become the leader in creating a sex offender management and response system that benefits from years of research and evidence based best-practices.

2SHB 2714 LEGISLATIVE DIRECTION

In 2007, Governor Gregoire's Sex Offender Task Force recommended the creation of a permanent Sex Offender Policy Board to study sex offender laws and practices, including the effectiveness of registration and notification laws.

In 2008, the Legislature found that in recent years professionals have recognized the value of developing a more coordinated and integrated response to sex offender management. The legislature further found that a comprehensive response to issues that arise, such as integrating federal and state laws or assessing whether system flaws contributed to an offense can enhance the state's interest in protecting the community

with an emphasis on public safety. While the legislature recognizes that sex offenses cannot be eliminated entirely, the interests of the public will be best served if Washington state experts and practitioners from across the continuum of the sex offender response system coordinate sex offender management planning and create a system to assess the performance of all components of the sex offender response systems statewide

In an effort to foster such coordination, the Legislature passed SSB 6596 to create the Sex Offender Policy Board. In 2008, the Legislature directed the Board to assume the following duties:

- Analyze national and state data and trends,
- Provide a forum for interagency discussion and collaboration,
- Review current laws regarding sex offender registration and public notification, and make recommendations for improvements,
- Review sentencing policies and practices and consider whether changes to the sentencing grid are needed,
- Review sex offender housing issues and options,
- Identify best practices in prevention and response,
- Create performance measures and benchmarks for the sex offense response system and for itself,
- Review specific cases to pinpoint areas where system improvement is needed, and
- Generate policy proposals for system improvements.

The same year the SOPB was created, the Legislature passed 2SHB 2714 specifically directing the Board to review the sex offender registration and notification laws, including: the appropriate class of felony and sentencing designations for a conviction of Failure to Register; the appropriate groups and classes of adult and juvenile offenders who should be required to register; the duration and termination process for sex and kidnapping offender registration and public notification; and simplification of statutory language to allow the Department of Corrections; law enforcement, and offenders to more easily identify registration and notification requirements.

SEX OFFENDER POLICY BOARD 2SHB 2714 PROCESS

On June 18, 2008, the Board met for the first time. The multi-disciplinary Board is comprised of 13 Members representing a variety of organizations critical to an effective sex offender response system.⁶ During the past year, the Board has focused its attention and resources on three primary areas: reviewing current sex offender registration and notification laws and research about the effectiveness of these laws; developing benchmarks that measure the state's sex offender response system; and improve public safety by fostering successful reintegration into the community through public education and appropriate housing. Throughout the Board's work in these areas, they have strived to take a victim centered approach to their policy decision-making. Victim-centeredness is an adherence to a principle that ensures sex offender management strategies do not

overlook the needs of victims, re-traumatize or otherwise negatively impact victims, or inadvertently jeopardize the safety of victims or other community members.⁷

In September 2008, the Board created three committees to assist it in accomplishing these tasks: Registration and Community Notification, Sex Offender in the Community and Benchmarks. On average, the full Board meets once per month and each Committee meets once per month. These meetings are open to the public. In between the in-person meetings, the Board and committees have also periodically held teleconferences to discuss emerging issues.

The Board directed the Registration and Notification Committee to review research regarding sex and kidnapping offender registration and notification and gather information about the current system in accordance with SHB 2714. In an effort to accomplish this task, the Committee formed three workgroups: Community Notification, Failure to Register/Registration/Risk Assessment, and Juvenile.

These workgroups on average meet once a month, in addition to the Committee and Full Board meetings. Members of the Board and Committees have also traveled to other jurisdictions, including Yakima, Everett, Ellensburg and Lakewood to hear from stakeholders within the sex offender management system in an effort to identify best practices used by these jurisdictions and to gather critical information as to what works in the current sex offender system and what improvements can be made. In addition to traveling to different areas, the Board and Committees have also been diligent about advertising their meetings on the SOPB website and to interested others, including legislative staff, sex offender housing providers, victim witness coordinators, local law enforcement, sex offender treatment providers, juvenile offender attorneys and advocates, juvenile probation counselors, and mental health providers.

During the last year, the Board and Committee Members spent countless hours engaging in policy discussions, delving into research assignments, drafting memoranda, reviewing research, engaging in stakeholder forums around the state. Specifically, the Board and Committee members attended and participated in over 60 multi-hour in-person meetings, dozens of teleconferences, and numerous email exchanges.

OBJECTIVES OF THE WASHINGTON STATE SEX OFFENDER POLICY BOARD

Board members brought to this effort a collective awareness of the major events in Washington State's history of responding to sexual offending. Throughout the past year, the Board has worked to review the state of knowledge and to identify well-supported best practices and promising emerging practices in the increasingly specialized field of sex offender management. In addition to looking outward, the Board devoted considerable attention to looking inward to assess and understand in detail a representative sample of the policies and practices actually employed in Washington State's current sex offender management systems.

This Board's Report is grounded upon a set of evidence-based concepts and principles that underlie the entire Report. It was critical to the members of the Board that this Report not be based simply on assumptions or popular beliefs that could not be demonstrated as being true, but rather that it be grounded in research-based practices.

PROPOSAL DECISION-MAKING PROCESS OF THE SEX OFFENDER POLICY BOARD

To facilitate achieving the registration and community notification objectives outlined above, the Washington State Sex Offender Policy Board developed a comprehensive list of proposals as to how to improve the Washington State's registration and community notification system. These proposals are provided in their entirety in the full Report.

In September and October of this year, the SOPB Registration and Notification committee presented its research and proposals to the Board. The Board and committee members then engaged in very long, thoughtful and detailed discussions about the research and proposals. After completing this process the Board decided it would be most beneficial to the Legislature if the research reviewed and the key findings made based on this research during the past year was presented in this report to the Legislature.

The Board then decided to allow each voting Board member to indicate whether the member was in favor of the proposal, objected to the proposal or chose to abstain. Often the members who objected to the proposals did so because they wanted additional time to vet these proposals with their constituent groups. Recognizing this, the Board decided to indicate under each proposal in this report which proposals were unanimous and which were strongly supported by the Board, but needed additional time to vet with some stakeholders, as well as educating these stakeholders about the proposals.

The Board performed a considerable amount of research on best practices as applied to Washington State's sex offender response and management system. During this process, the Board also started visiting stakeholders around the state to hear their concerns about the system as well as what works.

This multi-disciplinary Board took its duties very seriously when compiling and reviewing voluminous amounts of research both from Washington State and across the country. The unique make-up of this Board is its strength. The Board members bring very important and diverse expertise to the table. While working closely together from such different perspectives and backgrounds is very challenging, it is this diversity that will continue to assist this Board in providing the Legislature and Governor's Office with strong, evidence based proposals to improve Washington State's sex offender response and management system.

CONCLUSION

The Board and Committee Members maintained a focus upon evidence-based best practices and on how important the sex offender issues are to public safety. The Board spent the majority of this past year researching and developing proposals as to how to improve the registration and notification component of the sex offender management system. In the next year diverse perspectives will be brought to formalize recommendations.

The Sex Offender Policy Board also started reviewing appropriate and safe housing options for sex offenders living in the community, as well as planning how best to educate community members about sex offenders living in their communities and involve them in this decision-making process.

Further, the Benchmarks Committee of the Board spent quite a bit of time this year mapping the reentry and supervision components of the sex offender management system with the input of key stakeholders. Because an effective performance measurement system will identify practical, evidence-based baselines and gaps in performance, the Board plans to spend next year continuing to work on developing this system.

Finally, the Board remains dedicated to finalizing full recommendations by the 2011 legislative session.

ADMINISTRATIVE

In SSB 6596, the statute creating the Sex Offender Policy Board (SOPB), the Legislature assigned administrative responsibility for it to the Sentencing Guidelines Commission (SGC). RCW 9.94A.8671 states that the Legislature's intent is to promote a coordinated and integrated response to sex offender management and to create an entity to respond to issues that arise, such as integrating federal and state laws, in a way that enhances community safety.

Because of the state budget crisis, the SGC budget was reduced by 22% and staff was reduced by 30% for FY 2009-11. The annual SGC Budget is \$962,500. Administration of the Sex Offender Policy Board is included in this allotment. In its first year the Board was allotted \$75,000 for personal service contracts to purchase research as needed. That allotment was not included in the FY 2009-11 allocations.

The Board and the SGC reduced administrative costs substantially, but chose not to reduce SOPB staff. The SGC was allotted 8.7 FTEs for all activities of the SGC and the SOPB. In 2009 the SOPB combined its legislatively required reports to save money, utilizing state budget authority to delay or suspend reporting responsibilities due to staff cuts. The SOPB was staffed by Program Director Shoshana Kehoe-Ehlers and Administrative Assistant Andi May. In addition many hours of work were provided by SGC Policy Counsel Shannon Hinchcliffe.

KEY FINDINGS

1. The key to ensuring public safety is to make well-informed decisions based on the best available research.⁸

Although the label “sex offender” suggests that the individuals who commit sex offenses are essentially the same as one another, in actuality, they are a very diverse population. Sex offenders vary in terms of demographics, range of offending behaviors and patterns, motivations, intervention needs and levels of risk posed to the community.⁹ The demographics, range of offending behaviors and patterns, motivations, intervention needs and levels of risk posed by sex offenders are also varied.

In Washington, 26 crimes are defined as “sex offenses,” including the crime of Failure to Register as a Sex Offender. Everyone found guilty of a sex offense, both adults and juveniles, must register as a sex offender. The duration of registration is determined by the class of crime committed. Community notification is based primarily on risk classification; therefore a sex offender classified as a Level III risk is subject to more extensive community notification than a Level I offender.

In Washington State there were a total number of 786 adult felony sex offense sentences and 706 Failure to Register offenses for Fiscal Year 2008. See Appendix Y for a complete breakdown of the number and types of adult felony sex offenses between fiscal years 1986 through 2008. This data was compiled by the Washington State Sentencing Guidelines Commission.

The Washington State Patrol reports as of December 1, 2009 that the total number of registered sex and kidnapping offenders: 20421. This breaks down into the following classifications:

- Level 1: 13213
- Level 2: 3285
- Level 3: 1617
- Kidnapping: 144
- Unclassified: 2162

The Washington State Institute for Public Policy (WSIPP) issued a series of reports on several topics related to sex offenders. The reports found that, compared with the full population of felony offenders, sex offenders have the lowest recidivism rates for felony offenses (13 percent) and violent felony offenses (6.7 percent) but the highest recidivism rates for felony sex offenses (2.7 percent). Sex offenders who victimize children have the lowest felony recidivism rates as well as the lowest sex (2.3 percent) and violent felony (5.7 percent) recidivism rates.¹⁰

Sex offenders who completed a Special Sex Offender Sentencing Alternative (SSOSA), an outpatient treatment sentence, have the lowest recidivism rates in all categories. In

contrast, sex offenders sentenced to prison have the highest rates. Those sentenced to jail or community supervision have rates similar to, but slightly below, the recidivism rates of those sentenced to prison.¹¹

In a recent meta-analysis (Hanson & Morton-Bourgon, 2009), the following sex offender re-offense rates were reported:

- Observed sexual recidivism rate was 11.5% (n = 28 757, 100 samples)
- Sexual or violent recidivism rate was 19.5% (n= 17 421, 50 samples)
- General (any) recidivism rate was 33.2% (n = 23 343, 65 samples)

Most studies examined mixed groups of male, predominantly adult sex offenders and had an average follow-up time of 70 months. It is noted that these rates are likely underestimates given that many offenses are undetected.

In a six-year follow-up of 135 released sex offenders who were referred for commitment under Washington's Sexually Violent Predator Law, but for whom no petition was filed, the following re-offense rates were reported (Milloy, 2007):

- 50% had a new felony as their most serious new conviction, with 23% subsequently convicted of new felony sex offenses, and 10% convicted of violent (not sex) felony offenses.
- 19% of the group was convicted of the charge of failure to register as a sex offender.

There is no dispute that some sex offenders are extremely dangerous or violent and pose a severe threat to public safety. However, the perception that most of these crimes are committed against strangers is both inaccurate and misleading. In fact, most sexual perpetrators are well known to their victims. 93% of victims know their offenders. According to the Department of Justice, most child sexual abuse victims are molested by family members (34%) or close acquaintances (59%) (Bureau of Justice Statistics, 2000). About 40% of sex crimes take place in a victim's own home, and 20% take place in the home of a friend or relative (Bureau of Justice Statistics, 1997). This also holds true in Washington State. In SFY 2009, there were 10,479 victims of sexual assault who came to forward to one of the Office of Crime Victim's grantees for the first time. Of those who reported relationship to the offender, 10.8% were strangers. (This data was provided by the Washington State Office of Crime Victim's Association.)

It is also important to note that Washington State's "sexually violent predators", considered to be the most dangerous sex offenders and most likely to sexually reoffend, are dealt with in an entirely different manner, where they are often permanently removed from the community.

The reason this data is so critical to policymakers understanding of sex offenders is that it requires developing a very particular approach to addressing sex offender management issues, protecting victims and the community. As part of its task, the Board looked at both types of sex offenders in the registration and notification and the registration and notification system itself.

Although sex offender registration and community notification often go hand-in-hand, it is important to recognize that they are different systems with separate goals. The primary goals of sex offender registration is to help law enforcement investigate new sex crimes by maintaining identifying information about convicted sex offenders and using this information to keep track of sex offenders. On the other hand, the primary goal of community notification is to raise public awareness about specific sex offenders in local jurisdictions, engaging actively in their own self-protection.¹²

Unfortunately, there is limited research available that addresses to what extent the current approaches are achieving their goals. Empirical analyses of sex offender specific policies are very limited in number and scope, and remain a critical need in the overall sex offender management system. The Board requested WSIPP perform a meta-analysis to evaluate the effectiveness of sex offender registration and community notification laws. WSIPP conducted a systematic review of the research evidence throughout the United States and found nine studies which fulfilled their rigorous requirements. WSIPP commonly performs this function for the legislature on different subject areas to determine what public policies and programs work and which ones do not.¹³

The WSIPP study took into account the changes to the sex and kidnapping registration laws since they were first enacted in 1990. In the examination of the nine studies, it was found that some studies addressed the idea of general deterrence, the effect that punishment has on the general population, and some addressed specific deterrence, the effect that punishment has on an offender's subsequent criminality.¹⁴

For the seven studies which focused on specific deterrence, (five studies focused on adults and two on juvenile offenders), WSIPP found that the combined results of the studies has no statistical significant difference in recidivism rates for either sex or total offenses with regards to registration. WSIPP cautioned that additional research studies would be required before a definitive conclusion could be drawn.¹⁵ Of the two studies which focused on general deterrence, they provide some indication that sex offender registration laws lower sex offense crime rates. However, WSIPP cautioned that they were only able to analyze two studies, and that additional research is needed.¹⁶

In addition to the meta-analysis, the Board reviewed social science research which did not satisfy the rigorous criteria for WSIPP's study. The Board did, however, apply criteria to their research that was provided by Russell Lidman, Professor and Director, of the Seattle University Institute of Public Service and former director of WSIPP, at the request of the Board.¹⁷ These various studies, cited throughout the report and in the endnotes, provide rather mixed and inconclusive evidence regarding the impact and effectiveness of sex offender registration and community notification laws, both in terms of various stakeholders' perceptions and experiences and the effect on increasing public safety through deterrence.¹⁸

Although the current research provides some mixed results, the amounts of studies have increased with the passage of the Adam Walsh Act in 2006. Because the Act represents a significant shift in approach to sex offender registration and community notification laws

in many states, many researchers are looking specifically at these impacts. Therefore, it is critical that the Board continue to keep apprised of the best available research.

2. The Board identified practical obstacles to standard implementation of the current registration and notification laws through stakeholder input, recent court cases, and an in-depth review of the Sex Offender Management System

The legislature acknowledged the importance of coordinating and listening to stakeholders and experts to assess the system as a whole when they created the Sex Offender Policy Board and made the following findings in RCW 9.94A.8671.

Stakeholder input was particularly valuable to the review of registration and notification laws. In addition to monthly meetings of the Registration and Notification Committee and the Sex Offender Policy Board, the members put on a highly organized day long forum in Central Washington. The dual purposes of this forum was to both listen to stakeholder concerns, and share with the stakeholders the purpose of the Board and how they could use the Board to assist them in the future. The Board and the stakeholders also heard from speakers involved in specialized sex offender units of law enforcement, treatment providers, victim advocates, community organizations that work to provide housing for sex offenders, and mental health providers for victims.

It was a very well attended forum and provided the Board with a wealth of information as to the strengths, gaps and challenges in maintaining an effective sex offender management system. It was clear that there is a need for forums similar to this for other counties around the state, as well as a well-developed communication system for counties to collaborate with each other.

The Board also held a four-hour forum in Everett; they were invited by the Washington Association of Sheriffs and Police Chiefs (WASPC) to attend their August 2009 Sex Offender and Registration committee meeting and listen to law enforcement's concerns and suggestions; and held a meeting at Lakewood City Hall where Senators Carrell and Regala presented on their High Risk Offender Housing Focus Group, and Lakewood local law enforcement and DOC officials who work with sex offenders in the community presented the work they have been accomplished.

Two significant cases were decided during the course of the Board's work which had an impact on policy considerations. *State v. Werneth* 147 Wn.App. 208 (Div. III, 2008), and *State v. Ramos* 149 Wn.App. 266 (Div. II, 2009).

State v. Werneth addressed the current comparability process in which defendants convicted of out-of-state sex offenses are required to register in Washington. The court held that the defendant's conviction of child molestation in Georgia was not comparable to a Washington felony sex offense and therefore, the defendant was not subject to sex offender registration in Washington.

State v. Ramos discussed part of the process of risk level assignment of sex and kidnapping offenders when it becomes an element of the crime Failure to Register. The

court held that prosecutors may not criminally charge registered sex offenders Failure to Register to report under RCW 9A.44.130(7) when a risk level classification is made solely by a county sheriff and is used as an element of the crime of failure to report.¹⁹

Feedback about the current system and the recent case decisions impacted the Board's assignment, an in-depth review of the sex offender management system as it relates to registration and notification. In order to evaluate the registration and notification system thoroughly, members split into workgroups and employed the following methodology to different subject areas; they reviewed: 1) current Washington law and research, 2) other states' laws and corresponding research, 3) journal articles and social science research, 4) national standards, including the Adam Walsh Act, and other relevant federal legislation, and 5) practitioner information regarding the laws and policies as applied.

Finally, during the course the SOPB Registration and Committee's work this past year, they listened to presentations about: the current active notification process, the history of the legislative intent regarding sex offender registration and notification laws, the Department of Correction's sex offender registration and community notification policies, Washington Association of Sheriffs and Police Chiefs Model Policy, case law surrounding registration and community notification laws, a survey of law enforcement about the model policy, the End of Sentence Review Committee process, the program Offender Watch and state surveys including Juvenile Sex Offender Registration and Notification laws, Registration Requirements for Homeless Offenders, Requirements of Online Identifiers, Relief from Sex Offender Registration, Penalty for Failure to Register.

3. Ongoing coordinated and collaborative efforts are required in order to stay apprised of best practices and to ensure efficient and evidence-based approaches to emerging issues within the Sex Offender Management System.

The problem of sexual offending is complex. As such, addressing this issue requires a multifaceted and comprehensive strategy. A comprehensive approach takes into account various responses and activities throughout the criminal justice system, including investigations, prosecution and sentencing decisions, assessment practices, offender interventions, supervision and monitoring strategies and public education and prevention efforts.²⁰

There are several emerging issues which may have significant impact on the sex offender registration and notification laws in Washington such as the Sex Offender Registration and Notification provisions of the Adam Walsh Act, pending court cases, and the current state budget challenges which require a close look at how resources will be used to manage sex offenders.

The responsibility for sex offender management cannot rest solely on a single agency or discipline. Collaborative partnerships across multiple agencies and disciplines are necessary. After conducting in-depth research for several months, the Board has made some proposals regarding the current system pursuant to its assignment in 2SHB 2714 however, it strongly recommends ongoing collaborative consideration of these issues.

4. Washington State was the first state to enact a sex offender community notification law in the 1990 Community Protection Act. Washington's current system supports public safety by setting community notification standards using a risk-based analysis instead of an offense-based method. This system is built on the premise that the community and sex offender response system partner to achieve public safety.

In 1990, the Washington State Legislature unanimously passed the Community Protection Act and became the first state to authorize the release of information regarding sex offenders to the public.²¹ The law included community notification, which authorized law enforcement agencies to release sex offender information to protect the public. However, since 1990, sex offender registration and notification laws have been amended almost every year.²²

In 1994, the legislature specifically discussed its intent regarding community notification emphasizing the ability for the community to educate themselves and their children about offenders' release.

Findings -- Intent -- 1994 c 129: "The legislature finds that members of the public may be alarmed when law enforcement officers notify them that a sex offender who is about to be released from custody will live in or near their neighborhood. The legislature also finds that if the public is provided adequate notice and information, the community can develop constructive plans to prepare themselves and their children for the offender's release. A sufficient time period allows communities to meet with law enforcement to discuss and prepare for the release, to establish block watches, to obtain information about the rights and responsibilities of the community and the offender, and to provide education and counseling to their children. Therefore, the legislature intends that when law enforcement officials decide to notify the public about a sex offender's pending release that notice be given at least fourteen days before the offender's release whenever possible." [1994 c 129 § 1.]

While registration laws were originally intended solely to help law enforcement track and apprehend recidivist offenders, notification laws aimed both at reducing crime through greater public awareness and increasing the likelihood of capture after the commission of a crime. Since 1994, legislation has broadened community notification of registered offenders by requiring additional registration information, disclosing relevant information about homeless offenders,²³ making more and more offenders' information available by website,²⁴ adding kidnapping offenders to the registry,²⁵ and increasing the list of organizations which receive notifications.²⁶

Currently, community notification is conducted by law enforcement. Some types of notification are required by statute and other community notification is guided by the Washington Association of Sheriffs and Police Chiefs Model Policy of 2007.

Four years after Washington passed the Community Protection Act and its community notification law, Congress passed the Jacob Wetterling Law which required states to

implement sex offender registries. It was amended in 1996 to require states implement community notification for offenders convicted of crimes against children or sexually violent offenses. All 50 states currently maintain registries and have some form of community notification although, a survey of states systems show great variation in law.

Currently, 28 states use an offense-based system, which means that all of the registration and community notification requirements are based on the classification of the crime instead of an assessment of the individual's risk to re-offend. In 2006, the Adam Walsh Child Protection and Safety Act was passed which was intended to further standardize state laws and uses an offense-based system.²⁷

A registration and notification system focused on the highest risk offenders allows the public to readily identify the most dangerous individuals and allows law enforcement to focus its resources on the most likely threats to the community.

Although current research cannot identify a causal link between Washington's community notification laws and a reduction in recidivism,²⁸ the public has responded positively to community notification laws. A study in 1997 and follow-up in 2007 indicate that Washington State residents are familiar with community notification laws and believe they are very important.²⁹

However, results of the effect of community notification meetings highlighted some practical obstacles to their effectiveness. Survey results on expected outcomes of community notification meetings from residents who attended community notification meetings showed that:

- 80% expected to “acquire as much information as possible to safeguard against the potential threat posed by the offender,”
- 18% expected to remove or prevent the offender from residing in their neighborhood, and
- Only 5% expected to “place blame on whoever was responsible for placing the offender in the neighborhood.

Following the meetings 38% of survey respondents had increased concerns, 27% had no change in their level of concern, and 35% were less concerned than before the meeting. A significant finding of the survey was: “Attendees emerged feeling better informed BUT still feeling anxious and frustrated, with those feelings being more focused on the sex offender.”³⁰ Therefore, education of the community members about actual risk and protective strategies against predatory behavior outside of the community notification meeting is important.

Second, evidence shows that community notification laws can have an impact on sex offenders which may result in higher recidivism. A few studies have surveyed sex offenders to determine the impact that community notification laws have had upon them.³¹ They found that social stigmatization, loss of relationships, employment and

housing, and both verbal and physical assaults were experienced by a significant minority of registered sex offenders.³²

SOPB Members reviewed research which provides a helpful context. Most victims are assaulted by individuals known to them. Thus increasing public education about the dynamics of sexual assault could help potential victims recognize suspicious behaviors if displayed by friends or family members. By reserving public disclosure and notification for those who pose the greatest threat, resources can be more efficiently allocated, citizens can be appropriately warned and reintegration obstacles can be minimized.

Additionally, notification laws may be counterproductive in that public scrutiny causes additional stress to offenders who are transitioning back into the community. The fear of exposure may cause offenders to avoid treatment, and in the case of pedophiles, may encourage offenders to seek out children as a result of adult isolation. One study shows statistically significant evidence that while some first-time offenders may be deterred by community notification sanctions, referred to as the *general deterrence* concept, imposition of notification may make offenders more likely to recidivate.³³

The offender's re-entry success is directly related to increased (or decreased) public safety. Stable employment and supportive relationships lead to lower recidivism rates for sex offenders.³⁴ Social stability and support increase the likelihood of successful reintegration for criminal offenders. Developing this support network is not without its challenges. Many offenders are returning into families where the offending behavior took place and the victim(s) reside, as well as into community agencies and organizations where the offenders found their victims, such as sports leagues, faith based centers, etc.

5. Empirically validated risk tools are one of the most effective ways to determine an offender's risk to re-offend. The use of standardized dynamic factors can also be helpful in risk level assignment.

a. Risk Assessment and Recidivism

Risk assessment is a method of evaluating the likelihood of future criminal behavior by combining multiple risk factors into an overall assessment of recidivism risk.³⁵ Prediction of sexual dangerousness has improved markedly over the past decade as a result of studies identifying risk factors correlated with violent and sexual recidivism. When sexual violence risk assessment procedures have been directly compared, actuarial risk scales were better able to predict recidivism than clinical judgment alone or empirically guided assessments.³⁶

However, there are no absolutes in the process of identifying risk factors. The process is an exercise in isolating factors that tend to be associated with specific behaviors. So while the association reflects a likelihood of re-offense, it is not definitive in predicting criminal behavior. Some sex offenders will commit subsequent sex offenses regardless of the best efforts to identify risk factors. Likewise, not all sex offenders who have re-offense risk characteristics will recidivate.

b. Risk Assessment Tools

Risk assessment instruments are designed to predict the likelihood that a sex offender will recidivate. Structured actuarial scales based on empirically derived or guided risk factors have consistently been found to be the best supported measures for the prediction of sexual recidivism (Hanson & Morton-Bourgon, 2009). The majority of these instruments relies on static or relatively unchangeable, historical factors (e.g., age and prior offense history) and demonstrates moderate predictive validity (Hanson & Morton-Bourgon, 2009). In particular, the Static-99 is currently the most widely used actuarial scale and has been validated using international samples. Its norms have recently been updated and it has been revised based on research findings that older sexual offenders are at lower risk to reoffend than younger sexual offenders (Barbaree & Blanchard, 2008; Hanson, 2002, 2006).

In addition to using measures of static risk, which provide a more global assessment of an individual's long-term likelihood of reoffense, it is important to evaluate dynamic risk factors that provide an individualized, shorter-term estimate of reoffense risk. Dynamic risk includes stable factors that are often treatment targets and may change gradually over time (e.g., attitudes, relationship skills). Dynamic risk also involves acute factors that may be associated with an imminent risk for reoffense (e.g., substance abuse and victim access). Given that an individual's dynamic risk is subject to change, it is recommended that stable factors be evaluated every 6 months to a year and acute factors be evaluated at every supervision session whereby individuals with higher dynamic risk receive greater supervisory support. Tools have been developed to assess dynamic risk specifically (e.g., Violence Risk Scale: Sex Offender version, STABLE-2007, ACUTE-2007). Overall, the assessment of both static and dynamic risk is considered best practice in the field of sex offender risk assessment.

WSIPP's 2008 study of risk assessment tools points out that no statutes direct the decision-making process for assigning risk levels. Law enforcement has relied on a model policy created by WASPC which gives advisory guidelines for sex offender registration and notification. WSIPP found that since law enforcement agencies have different perspectives and different resources, they may implement assessment procedures differently.³⁷ In this study, several law enforcement personnel noted concerns about the stability of the risk assessment over time and suggested that adjustments may be warranted based on certain factors.³⁸

These concerns were echoed by local law enforcement and other organizations at the stakeholder forums. The Department of Corrections uses a list of dynamic factors that is used in the End of Sentence Review Committee (ESRC) assessment and other jurisdictions shared that they use other factors beside the Static-99 score. It is clear that those responsible for risk level assignment are attempting to use the best tools and predictors of risk but no protocol has been standardized to date.

Juvenile Sex Offender System Findings and Recommendations

Introduction

When the 1990 Community Protection Act was enacted, there was very little research available about juvenile sex offenders, from everything having to do with appropriate treatment programs, brain and social development, amenability to treatment, and the high percentage of victims being related to the juvenile offender. In view of the fact that there was little research done on juvenile sexual offenders, treatment curriculum was largely modeled after adult programs. There was a belief that all adult sex offenders began their sex offending as juveniles, offering little hope for rehabilitation. Treatment programs based on the Relapse Prevention Model developed for adults were applied to juveniles, implying their sexual offending was fixed and incurable. Many of these programs also did not account for developmental factors, learning styles and the impact of trauma in treating youths who have sexually offended. In most cases they were sex offender specific and seldom focused on areas outside of the sexual offending behavior.³⁹

The treatment of youths who have sexually offended has been further complicated by the overall increased societal attention on sex offenders as a whole and mistaken belief that the juvenile sex offender population has a high rate of recidivism. This has resulted in very little differentiation between adult and youths who have sexually offended registration and community notification laws.

During the last 19 years, the research done on youths who have sexually offended and adult sex offenders now demonstrates that youths who have sexually offended are very different than their adult counterparts. Youth who commit sexual offenses are not necessarily "little adults;" many will not continue to offend sexually.⁴⁰ Research suggests that four to eight percent of juveniles will become repeat offenders.⁴¹

Key Finding

Youths who have sexually offended are different from adults who commit sex offenses in part, because of ongoing brain and neurological development. Therefore, sex and kidnapping offender laws regarding juveniles and public policy should reflect their unique amenability to treatment and vulnerability to collateral consequences due to their ongoing development.

In developing the youths who have sexually offended key findings, the Board reviewed research on (1) neurological and adolescent brain development, provided by Dr. Terry Lee, Child and adolescent psychiatrist and Assistant Professor in the Division of Public Behavioral Health and Justice Policy, in the Department of Psychiatry and Behavioral Sciences at the University of Washington School of Medicine; (2) the effectiveness of sex offender registration and notification laws as it applies to juveniles by way of a meta-analysis performed by WSIPP; (3) Washington state sentencing data, from fiscal year

2002 through fiscal year 2008, on the number of juvenile offenders who were convicted of sex offenses, the types of sex and kidnapping offenses they committed, and the age of the offender when convicted of the offense(s); (4) youths who have sexually offended registration and notification laws in Washington state and across the country; and (5) social science literature on juvenile sex offenders and the impact of registration and notification laws and policies.

1. Youths who have sexually offended differ from their adult counterparts from a neurological and social science perspective.

a. Juvenile Brain and Social Development

Dr. Terry Lee, M.D., from University of Washington's Public Behavioral Health and Justice Policy Center, provided the Board a detailed and comprehensive look at adolescent brain development, highlighting some of the key differences between adolescent and adult decision-making, impacting their amenability to treatment and recidivism rates.⁴² During early adolescence, brain development has great potential for skill development. The two areas of the brain responsible for this are the frontal lobes and the limbic system. They are still in the process of developing during adolescence and continue to do so into a person's mid-twenties. The frontal lobes are the part of the brain involved with executing functioning, including controlling inappropriate social behavior as well as sexual arousal.⁴³

The limbic system is also still developing during adolescence; key functions are memory, emotional regulation and primary sensory integration. This system processes and manages emotion and motivation. When fully developed it helps maintain control of behavior. In the same earlier referenced study by Beauregard (2001), the limbic area was also activated during sexual arousal.

At the request of the SOPB, the Sentencing Guidelines Commission compiled research showing the number of juveniles convicted of sex offenses, the age at which they committed the offense(s) and the type of sex offense they committed.⁴⁴ The same research compilation was done for juvenile offenders declined from the juvenile justice system and convicted of a sex offense or sex offenses in adult court.⁴⁵ It is clear that the number of juveniles convicted of sex offenses in juvenile court was highest when the juvenile was between the ages of 12 and 15 years old. Based on this, the SOPB decided not to recommend that the legislature not impose a minimum age for youths who have sexually offended registration and notification. However, what this research also demonstrates is that the number of juveniles committing these sex offenses peak at an age when their brain is at a critical development phase and can most be influenced by treatment, intervention, and other rehabilitative services.

Due to the ongoing development of the frontal lobes of an adolescent, the adolescent brain must rely heavily on their limbic system when making decisions. This can be problematic in some situations because adolescents tend to use more emotional areas of the brain, and less portions that involve planning. The flipside of this is that youths who

have sexually offended are not yet capable of complex planning, such as the planning that is often observed in adult sex offenders, intervention during their adolescence can assist in reversing their sexual behavior.

Some of the key differences between juveniles who commit sex offenses and adults who commit sex offenses are: juveniles have less extreme forms of sexual aggression, fantasy and compulsivity; their sexual arousal is not fixed, it continues to develop; they are more amenable to rehabilitation; there is no clear developmental pathway from juvenile to adult offending; parental and caregiver involvement enhances rehabilitation efforts; and juveniles who commit sex offenses respond well to treatment and have low recidivism.⁴⁶ Most youth appear to engage in only transient sexual offending and will not reoffend.

Dr. John Hunter⁴⁷, a nationally and internationally renowned clinical psychologist in the area of juvenile sexual offending, has created typologies which put youth into three different categories: (1) Juvenile Onset, Non-Paraphilic; (2) Early Juvenile Onset, Paraphilic; and (3) Life Course Persistent. The first category is made up of the majority of juveniles who are participating in transient sexual offending due to risk factors in their life. The second category is made up a small group of juveniles who are developing pedophilic interests and the third category is also made up of a small percentage of juveniles whose sexual offending is likely tied to larger conduct related problems.

Juveniles involved in the criminal justice system, including youths who have sexually offended, often experience factors in their life that disrupt typical brain development, leading to their delinquent behavior.⁴⁸ These can include: substance abuse, abuse and dependence; and family and social disruptions; chronic stress and abuse, and chronic fear and hunger. This further supports the assertion that a “one size fits all” approach to dealing with youths who have sexually offended is ineffective. These factors are, however, encouraging in that they are often situational and can be changed with appropriate interventions, especially in light of the fact that juvenile brain development is ongoing and can be appropriately modified.⁴⁹ Finally, the most promising difference about juveniles that can assist in their development, and also underlines the need for a separate sex offender system for juveniles is how sensitive juveniles are to rewards as opposed to punishment.⁵⁰

b. Youths who have sexually offended Laws: Recidivism and Collateral Consequences

The best practices and research surrounding registration and community notification laws show that, currently, there is no research or studies linking community notification of juveniles to lowered recidivism. The Association for the Treatment of Sexual Abusers (ATSA) believes that juveniles should be subject to community notification procedures in only the most extreme cases and instead recommend that enhanced community monitoring and supervision should be provided to ensure public safety.⁵¹ The International Association for the Treatment of Sexual Offenders (IATSO) recommends that registries and community notification not be applied to juveniles.⁵²

For purposes of community notification, it is important to understand that like their adult counterparts, youths who have sexually offended primarily offend against “relatives or acquaintances; rarely are they strangers,” This was also true in a snapshot of Juvenile Rehabilitation Administration (JRA) youth in August of 2008, which showed 92% of offenders on parole had offended against victims who were known or related and 88% of the offenders in residence had victims who were known or related.⁵³

Finally, registration and community notification laws can have unintended consequences on juveniles that can contribute to recidivism; thereby compromising public safety. Lifetime registries can create stigmatization, social exclusion and marginalization. The SOPB listened to stakeholders who worked with juvenile sex offenders. One of the primary concerns expressed was that young adults, convicted as juvenile sex offenders, saddled with the current sex offender registration and notification requirements, have an especially difficult time obtaining housing and employment, as well as participating in pro-social activities. Experts who work with and study juvenile sex offenders, find that when they enter the adult world with these hindrances, it can set them on a course where they will never be able to fully function in mainstream society.⁵⁴

2. Other states treat youths who sexually offend differently: A Survey of 50 states juvenile sex offender laws.

The primary difference between Washington sex offender registration and notification law as compared to the other 49 states is that most states treat registration differently from notification. Shannon Hinchcliffe, SOPB staff policy counsel, conducted a 50 state survey of juvenile sex offender registration and notification laws. The Board wanted to learn what practices other states implemented since Washington State initially created its sex offender registration and notification system as well as what new juvenile social science research has found.⁵⁵

Washington State was the first state to enact juvenile registration and notification sex offenses in 1990. This state has some of the strictest sex offender laws for juveniles, making it very difficult for juvenile sex offenders to exit the system.

Washington state sex offender registration laws differ from other states in two significant ways. First, the law makes no distinction between juvenile and adult sex offenders; requiring mandatory registration for both under the same criteria, on the same registry. Several states have separate adult and juvenile registries (usually where the juvenile registry is only available to law enforcement, not to the public). Other states have discretionary registration, (a finding must be made by a judge or board that the juvenile is a threat), while some states require registration only if convicted as an adult.⁵⁶

Second, the Washington State law requires juvenile registration for “any sex offense.” Sex offense, as it is defined,⁵⁷ includes 26 different offenses, more anticipatory felony offenses, and felony offenses with a sexual motivation finding. The original “Megan’s Law” made an important distinction that an act by a juvenile that is criminal only because

of the age of the victim does *not* trigger the registration requirement for juveniles.⁵⁸ Many states require juvenile registration for a limited list of sex offenses and the federal Adam Walsh Law requires registration only if the juvenile is over 14 and the crime is comparable to or more serious than an “aggravated offense.” The definition applicable to juveniles includes use of force, or threat of force.⁵⁹

Washington State’s juvenile justice system was created to make certain that rehabilitation would be the ultimate objective in devising juvenile punishment.⁶⁰ The rationale for this separate system was that children do not have the capacity for rational thoughts as adults do and more amenable to rehabilitation.⁶¹ Washington enacted the Juvenile Justice Act of 1977 to establish a separate system to ensure that juveniles be held accountable while the state would provide punishment commensurate with the age, crime, and criminal history of the juvenile offender, as well as protect the citizenry from criminal behavior, among other objectives.⁶² This Act furthered the notion of the state as a protector of the child, better known as the doctrine of *parens patriae*.⁶³

The next part of this report identifies the issues in the juvenile who have sexually offended registration and notification system that the Board identified as some possible areas of movement for change based on the Board’s review of research and evidence based best practices. As mentioned earlier in the executive summary, some issues under discussion to fix is will have detailed proposals. These proposals will indicate whether the Board was unanimous or whether there was strong support for the proposal by the Board members, but it was not unanimous. In some areas, the Board proposed further review and refinement of the proposal during the next year. These proposals will detail the research already completed and explain why a proposed change was not yet ready.

Juvenile Recommendations

1. Create separate juvenile and adult registry and community notification statutes

The current statutory scheme combines adult and youths who have sexually offended sex and kidnapped offenders into the same chapter. See RCW 9A.44.140. As the system is currently, one registry makes sense because there are only two specific sections which apply differently to juveniles, the burden of proof for relief and school notification.

However, if juvenile-specific recommendations are implemented, having a separate statute that addresses juvenile registration and community notification statute would serve several purposes. First, by separating the registries, it recognizes juveniles as different in terms of criminal behavior, capacity for rehabilitation and recidivism. Second, participants in the sex offender management system, including law enforcement would be able to easily recognize the differences between a juvenile and adult in the registration and notification systems. Third, the treatment plans, relief from registration processes, and rehabilitative approaches would be more easily facilitated if the two systems were separate.

To accomplish the above listed purposed, the SOPB has discussed creating a separate statute for adjudicated juveniles titled the “Juvenile Sexual and Kidnapping Offender Registration and Notification Laws.”

The justice system for juveniles has traditionally been separate from the adult system because of the belief that juveniles are more amenable to treatment and rehabilitation and to respond to their unique supervision, treatment and custody needs. Since 1990, research supports treating juveniles separately.

The Board expressed strong support for this proposal, but not unanimous.

2. Fund creation of a validated juvenile risk assessment tool and training

Currently, there is no validated risk assessment tool for juvenile sex offenders used in Washington State. The tool currently used by the ESRC and Law Enforcement, titled the Washington State Sex Offender Risk Level Classification, is not considered the best it for the youths who have sexually offended population.

Due to the vast differences between adult and juvenile development and risk factors, a juvenile’s ongoing development, a separate risk assessment tool specifically designed for youths who have sexually offended is necessary. Other states have reached this conclusion as well and use a separate tool for youths who have sexually offended.⁶⁴

The SOPB proposes a twofold modification. First, that the Legislature authorize funding for the training on a current standardized and accepted juvenile risk assessment tool and

second, that the Legislature authorize funding for creation and/or validation of a risk assessment tool.

In June 2008, the Washington State Institute for Public Policy (WSIPP) looked at several risk assessment instruments that are used to determine risk of re-offense.⁶⁵ It determined that the lack of appropriate instruments for juvenile sex offenders was a topic of concern.⁶⁶ In light of the fact that risk assessment for juvenile sex offenders is a key predictor in future recidivism, risk leveling in the community and determining what services and treatment must be provided to the juvenile, developing and using a valid actuarial risk assessment tool is very important.

WSIPP interviewed a number of professionals who work with juvenile sex offenders. WSIPP concluded that there was very little consensus on the types of instruments and the best way to use them.⁶⁷ “Some groups have chosen to adopt adult measures and articulate their limitations, whereas others use instruments specifically designed for juveniles but whose validity and reliability have not been demonstrated.”⁶⁸ All of these professionals “agreed that the [risk assessment instrument] options available to them at this time are insufficient and that additional research with juveniles is needed to develop a more predictive risk instrument.”⁶⁹

The Board unanimously supported this proposal.

3. Repeal 90-day registration check-in for Juveniles.

In May 2009, Division II (149 Wn. App. 266) of the Washington State Court of Appeals, under State of Washington v. Ramos, held in part that sex offenders may not be criminally charged with the crime of Failure to Register RCW 9A.44.130(7) under State of Washington v. Ramos when a risk level classification made by a county sheriff is used as an element of a crime for failure to report under 9A.44.130(7).

Currently, both juveniles adjudicated in juvenile court and juveniles tried as adults are required to register as sex offenders if they are convicted of a sex offense, same as adult offenders. See RCW 9A.44.140. If the ESRC or Sheriff’s Office classifies the juvenile or adult sex offender as Level II or Level III risk level, that offender is required to check-in with their local Sheriff’s Office every 90 days.

Aside from the problem raised by the *Ramos* decision, some juveniles who are dependent on adults for transportation and other necessities face significant barriers in complying with this periodic check-in requirement and can be unfairly punitive.⁷⁰ Based on stakeholder input, this disproportionately affects juveniles in rural areas where they have to travel long distances to “check-in.”

The statutory 90 day check-in requirement is somewhat duplicative. Juveniles are already closely monitored by parents and/or guardians, the Department of Social and Health Services, school officials, and/or Juvenile Probation Counselors.

The Board is proposing substituting the 90 day check-in requirement for adult sex offenders required to register with law enforcement's current address verification program. (This proposal will be further discussed in the adult sex offender section of this report.) The Board would like to further study the address verification program to determine if there are unique consequences for juveniles. The Board was unable to gather enough information on this subject to make a recommendation.

4. Change statute so juvenile sex offenders first failure to register offense will not bar them from petitioning for relief from registration

Many youths who have sexually offended are technically eligible to petition the Court for relief from registration after two years in the community with no new sexual or violent offenses, and yet for a variety of reasons many of those youths who have sexually offended do not petition the Court. If they are then subsequently charged with "Failure to Register as a Sex Offender" this imposes a minimum additional 10 year duty to register.

The SOPB heard from attorneys, law enforcement and many other stakeholders who expressed concern that youth who have sexually offended and then later convicted of a "Failure to Register" offense, find themselves caught in the sex offender registration system regardless of their actual risk to the community. These same stakeholders noted that this has become a persistent problem. Many times these first offenses are related to forgetfulness, practical barriers such as no transportation, or not understanding the importance of the registration requirement. Though they may have been eligible to obtain relief from the registration requirement for years, and may have otherwise lived an offense-free life, the effects of a "Failure to Register" conviction are that they are mixed in with a pool of offenders who pose an actual risk to the community, but must still register.

The research and literature regarding risk based actuarial assessments consistently indicate that a "Failure to Register as a Sex Offender" is not considered a sexual offense or violent offense for the purposes of assessing future risk.⁷¹ In fact, a conviction for "Failure to Register" is not scored or deemed relevant in the Static 99 assessment of risk. Taking into account the fact that youths who have sexually offended are inherently less likely to reoffend, allowing those offenders an opportunity to still petition the Court after a single conviction for "Failure to Register" would not jeopardize community safety. The Board noted that in this scenario the youth who has sexually offended will still have to petition the Court and convince a judge they should be relieved of the underlying juvenile registration requirement.

The Board acknowledged that the Legislature has already started to address the problem this issue poses when it passed SSB 5236:Concerning notice to individuals convicted of a sex offense as a juvenile of their ability to terminate registration requirements, during the 2009 legislative session. This law requires that no less than annually, the Washington State Patrol (WSP) must notify sex and kidnapping offenders who committed their crime as a juvenile about their ability to petition for relief from registration. During public

testimony of this bill, it was noted that many sex offenders who were convicted as juveniles do not know that they have this right. It impacts their ability to find employment and housing, and often subjects them to harassment.

Proposal:

The Board proposes statutory modification to address the obstacles faced by registered sex offenders who were convicted of their sex offense as a juvenile:

Do not add any additional sex offender registration requirements for a first conviction for any violation of RCW 9A.44.130 (Failure to Register or Attempted Failure to Register) those offenders who were convicted as juveniles.

Allow those offenders who were convicted as juveniles to file a petition for relief from registration even where they have a single conviction for Failure to Register.

In other words, for juvenile offenders, a first offense FTR would not bar them from petitioning the Court to be relieved of the registration duty at that time or at any point down the road. Subsequent offenses for FTR would continue to have the existing requirement of 10 additional years of registration.

This Board unanimously supported this proposal.

5. Relief from registration and automatic termination for adjudicated juveniles.

Pursuant to RCW 9A.44.140, a sex or kidnapping offender who committed his or her crime as a juvenile may petition the Superior court to be relieved of the duty to register. The court must consider the nature of the offense committed by the petitioner as well as relevant conduct by the petitioner since the date of the offense. Standards differ depending on how old the petitioner was when the crime was committed.

Under current RCW, if the petitioner was 15 years of age or older, the petitioner must show by clear and convincing evidence that future registration will not serve the interests of public safety. If the petitioner was under the age of 15 years when the crime was committed, the court may relieve the petitioner of the duty to register if that person has not committed another sex offense for two years and can show by a preponderance of the evidence that future registration will not serve the interests of public safety. This provision does not apply to a juvenile prosecuted as an adult.

After hearing from stakeholders, the Board learned that while the legislature has provided an opportunity for sex offenders adjudicated as juveniles to be relieved of the duty to register, there are several barriers to accessing this. The standards for relief are vague, making it difficult for juveniles to adequately represent themselves. Currently, there is no right to an attorney and the cost can be prohibitive. Further, research clearly states

that it is critical to enable youths who have sexually offended the ability to get off the registry if they no longer pose to public safety, especially prior to adulthood.

Understanding the significance of this proposal, the Board reviewed and subsequently relied on a substantial amount of research in reaching this proposal. The foundation of this proposal is rooted in the juvenile brain development and social science research demonstrating that the majority of youths who have sexually offended are believed to have been engaging in transient sexual offending as a form of adolescent experimentation, often in compensation for lack of social skills that impair healthy peer relationship development. It is predicted that these types of youths who have sexually offended will respond well to treatment and not sexually reoffend.

The Board also reviewed and considered how the other 49 states treat juvenile sex and kidnapping offender relief from registration process.⁷² Several different methods are used for termination of registration and they are often used in combination with other methods that require registration based on the offender's risk.⁷³ Early termination procedures vary from state to state. Many states employ automatic registration termination at a certain age.⁷⁴ For some states, when an offender reaches the state's age of majority, the duty to register is automatically terminated. Alternatively, some states have an automatic hearing at the age of majority to determine whether the juvenile should be required to continue to register. In these cases, the prosecutor must show that the offender poses a threat to the safety of others and should therefore not be relieved of the duty to register..⁷⁵

Finally, the Board heard from numerous stakeholders who work with juvenile sex offenders, as well as youths who have sexually offended who have reached majority, on this issue. The overall consensus was that the focus of registration and community notification should be on those youths who have sexually offended who pose an actual risk to reoffend sexually. Youths who have sexually offended are often the least likely to sexually offend and they are likely to age out of that earlier behavior. There is a cost to monitor sex offenders and a burden on law enforcement and community resources. The cost is especially high when those resources are used to monitor all sex offenders, including those that no longer pose a risk, as opposed to directing those resources towards the high-risk offenders. There was also agreement that youths who have sexually offended who no longer pose a risk face significant obstacles transitioning into the adult world, including obtaining housing, education and employment, if required to register as a sex offender.

In Washington, juveniles are required to register as sex or kidnapping offenders based solely on the offense they committed. The requirement to register is not based on assessment of any risk factors. The Board's proposal attempts to work within the current registration system but allow those who are at a lower risk to be relieved of the duty to register with a more specific criterion.

Proposal:

Level I Juveniles who have sexually offended:

- Automatic termination from the youths who have sexually offended registry on their 21st birthday.
 - Prosecutor's Office can object to the termination. If this happens, the petitioner would have a right to an evidentiary hearing.
- The court may relieve the petitioner of the duty to register for a sex offense or kidnapping offense that was committed if the petitioner has no subsequent disqualifying offenses on their criminal history and is 24 months post supervision. These are defined as a conviction for any offense that is a felony, a conviction for a sex offense as defined in RCW 9A.44.130, a conviction for an offense with a domestic violence designation, conviction for Stalking, a conviction for any Assault charge, or a conviction for Indecent Exposure. The following criteria for consideration are illustrative only and are not necessarily intended to be specific requirements or exclusive factors in granting the request for relief:
 - The nature of the registrable offense committed including the number of victims and the length of the offense history;
 - Input from corrections officers, juvenile probation counselors, law enforcement, and/ or treatment providers; and
 - Pass an updated polygraph
 - Input from victim
- If the court determines the juvenile petitioner has not been significantly rehabilitated, the petitioner can re-petition after 12 months has elapsed.
- 24 months post supervision is consistent with current practice of many SOTP's and courts.

Level II Youths who have sexually offended :

- Automatic termination from sexual offender registration at age 25.
- May petition the court for relief from the duty to register if the petitioner demonstrates by preponderance of evidence that the petitioner is “significantly rehabilitated” to warrant removal from the Sex Offender Registry. The following criteria are illustrative only and are not necessarily intended to be specific requirements or exclusive factors in granting the request for relief:
 - The nature of the registerable offense committed including the number of victims and the length of the offense history;
 - 2 years post-supervision;
 - Have no subsequent disqualifying offenses on their criminal history. These are defined as a conviction for any offense that is a felony, a conviction for a sex offense as defined in RCW 9A.44.130, a conviction for an offense with a domestic violence designation, conviction for Stalking, a conviction for any Assault charge, or a conviction for Indecent Exposure;
 - Input from corrections officers, juvenile probation counselors, law enforcement, and/ or treatment providers; and
 - Pass an updated polygraph
 - Input from victim
- Prosecutor’s Office can object to the termination. If this happens, the petitioner would have a right to an evidentiary hearing.
- If the court determines the juvenile petitioner has not been significantly rehabilitated, the petitioner can re-petition after 12 months has elapsed.

Level III Juvenile Registered Sexual Offenders:

- May petition the court for relief from the duty to register only if the petitioner demonstrates by preponderance of evidence that the petitioner is “significantly rehabilitated” to warrant removal from the Sex Offender Registry. The following criteria are illustrative only and are not necessarily intended to be specific requirements or exclusive factors in granting the request for relief:
 - The nature of the registrable offense committed including the number of victims and the length of the offense history;
 - 5 years post-supervision;
 - Have no subsequent disqualifying offenses on their criminal history. These are defined as a conviction for any offense that is a felony, a conviction for a sex offense as defined in RCW 9A.44.130, a conviction for an offense with a domestic violence designation, conviction for Stalking, a conviction for any Assault charge, or a conviction for Indecent Exposure;
 - Input from corrections officers, juvenile probation counselors, law enforcement, and/ or treatment providers; and
 - Pass an updated polygraph
 - Input from victim
- No automatic termination provision.
- Prosecutor’s Office can object to the termination. If this happens, the petitioner would have a right to an evidentiary hearing.
- If the court determines the juvenile petitioner has not been significantly rehabilitated, the petitioner may re-petition after 12 months has elapsed.

The Board expressed strong support for this three-box proposal, but not unanimous.

6. Assigning a risk level to juvenile sex offenders

The End of Sentence Review Committee levels youths who have sexually offended that are being released from the Juvenile Rehabilitation Administration (JRA). Local Law Enforcement levels: (1) youths who have sexually offended released into the community after sentencing if they do not have to serve a sentence at JRA; (2) those that move into their county from another county; (3) and those that move into their county from out-of-state. There is no official appeal process in place when a juvenile disputes the level assigned by ESRC or Law Enforcement.

A multi-disciplinary body of experts should level all youths who have sexually offended. This would allow experts specifically trained in juvenile issues and development to consider psychological development of a juvenile and the multitude of influencing factors, such as familial, school, and psychosocial issues that impact a juvenile’s risk level.⁷⁶

There is currently no specialized training on youths who have sexually offended for law enforcement who determine risk levels for juveniles. For example, currently there is no difference in community notification between adults and juveniles. There is also no formal re-assessment of a juvenile's risk level. Clinicians recommend reassessing youth for their risk to sexually reoffend every 1 – 2 years to consider the developmental growth that has taken place for the juvenile.

Stakeholder forums solicited much input regarding risk assignment generally and from law enforcement specifically. It is clear that some law enforcement have different methods of raising or lowering offenders' risk levels. These methods often use multidisciplinary teams but are not consistent across the state.

Proposal:

- The ESRC will level all youths who have sexually offended. The ESRC will perform risk level classification for all youths who have sexually offended, including those about to be released from JRA; Special Sex Offender Sentencing Alternative (SSODA), subject to local sanctions; and those arriving from out-of-state.
- ESRC shall notify law enforcement when a juvenile offender is up for review for risk level classification.
 - Law enforcement may submit additional information to the committee for consideration for leveling purposes.
 - ESRC shall retain final authority for the level decision.
- Level 2's and 3's can request re-assessment every 2 years upon request of offender to ESRC to review developmental considerations.
- ESRC can re-assess any offender upon receipt of new information, if warranted.

The Board expressed strong support for this proposal, but not unanimous.

7. Who in the community should be notified of a juvenile registered sex offender?

a. Community Notification Laws and Recidivism

Adjudicated juveniles are treated the same as adult sex offenders when it comes to community notification. Local law enforcement has to consider statutory guidelines as to the extent of information released to the public about sex offenders. WASPC maintains a statewide registered kidnapping and sex offender website available to the public; some local law enforcement agencies also provide information via the internet to the general

public. The following lists the type of community notification required based on the risk level assigned to youths who have sexually offended:

- Level I Offenders: notify other law enforcement agencies, and, if the offender is a student, the school they attend or plan to attend, victim, witnesses or community members who live near the offender. Offenders are posted on the WASPC website only when youths who have sexually offended is out of compliance.
- Level II Offenders: same as level I along with daycares, schools, libraries, businesses, and organizations that primarily serve women, children or vulnerable adults, neighbors and community groups and are posted on the WASPC website.
- Level III Offenders: same as level I and II along with any relevant, necessary, and accurate information to the public at large. County sheriff publishes notice in one legal newspaper with general circulation in the offender's area of registered address or location. (See RCW 4.24.550.)

At this point in time, no reports can show a causal link between notification and reduced recidivism. In 1995, the Washington State Institute for Public Policy (WSIPP) conducted a study of notification and recidivism.⁷⁷ It looked at Level III offenders three years after the notification law had been implemented and compared it to a group of like offenders from before the notification law. In its Executive Summary it stated “Unfortunately, the findings suggest that community notification had little effect on recidivism as measured by new arrests for sex offenses and other types of criminal behavior.”

In December 2005, WSIPP conducted a study on the state's community notification law and its impact on reduced recidivism.⁷⁸ In this study, recidivism was defined as a conviction in Washington State for an offense committed during the five-year period after the offender leaves prison.⁷⁹ The study did not identify adults and juveniles separately, instead, it looked at 8,359 offenders before and after notification laws were passed. The study found that felony recidivism rates remained the same before and after the enactment of the statutes.⁸⁰ It did find however, that felony sex offense recidivism rates for post notification offenders were five percentage points below the pre notification rate.⁸¹ The study stated that the drop in recidivism was clear. The influence of notification could not be established as a causal link but could not be ruled out.

Reviewing WSIPP's extensive body of work on sex offense recidivism, we can get some idea of juvenile sex offense recidivism rates. In 2004, WSIPP conducted a study on general recidivism rates.⁸² The study defined recidivism as any offense resulting in a Washington legal court action committed after release to the community. These actions include convictions, dispositions, deferrals and diversions. The study surveyed 4,091 sex offenders for a period of five years after release to the community. It found that compared with the full population of felony offenders, sex offenders have the lowest recidivism rates for felony offenses (13 percent) and violent felony offenses (6.7 percent) but the highest recidivism rates for felony sex offenses (2.7 percent).

This study included juveniles and adults but did not address them separately. It did include findings about adult sex offenders who completed a Special Sex Offender Sentencing Alternative (SSOSA). It stated that sex offenders that completed SSOSA's had the lowest recidivism rates of all categories.⁸³ SSOSA's or SSODA's (Special Sex Offender Disposition Alternative) are often available to first-time offenders and require particular conditions and treatment. In 2006, 115 SSODA's were imposed on juveniles.⁸⁴

In a May 2008 WSIPP study intended to identify a valid juvenile risk assessment tool. The study surveyed 319 youths who have sexually offended which contained Level I, II, and III offenders for a five year follow-up period from the day they were released.⁸⁵ The sexual offense recidivism rate for the population was 9%.⁸⁶ This included felony and misdemeanor sex offense charges.

Although these studies provide a glimpse into juvenile sex offense recidivism rates, it is helpful to look to other reports and studies to gauge the juvenile recidivism rate. One author noted:

The fact is that low future sex crime rates among juvenile sex offenders in the United States are a well replicated, robust, and long-standing scientific finding.⁸⁷ For teenage sex offenders, the low risk news is not new—decades of U.S. studies typically report long-term future sex offense rates in the range of 5%-15% (the lower end of this range more often characterizing those who complete some sort of treatment program, and the higher end more often characterizing those who do not).⁸⁸

b. Washington State's Special Approach to Juvenile Offenders and Why Juvenile Sex Offenders Require a Similar Approach

Historically, juvenile courts have recognized the importance of confidentiality in a system that focuses on rehabilitation of children. It is believed that if the stigma of a juvenile adjudication can be avoided, a juvenile may have more impetus to become a productive citizen. Therefore diversionary programs and disposition alternatives are specifically listed in the juvenile courts and offender statutes.⁸⁹ Further, publicly identifying juvenile offenders is thought to hinder their rehabilitation by impairing their relations with those in the community, such as school administrators and teachers, friends, classmates, and prospective employers.

The perils of not approaching youths who have sexually offended with a confidential, rehabilitative approach can be seen in the collateral consequences of community notification. They include: inability to find suitable housing, inability to return to an established residence post-release, forced relocation of residence and family, difficulty finding employment/loss of employment, loss of positive social supports, excessive negative community sentiment, harassment, vigilantism, and increased fear and concern among citizens.⁹⁰

Studies have found that broad community notification can hinder juvenile rehabilitation. Typically, youths who have sexually offended have difficulty maintaining close interpersonal relations and are isolated from their peers.⁹¹ This alienation may encourage sexually aggressive behavior.⁹² Disclosure of a juvenile sex offender's past to the community may only serve to increase alienation, possibly encouraging sexually aggressive behavior and re-offending.⁹³

A number of important issues and challenges make the successful transition and community reintegration of youths who have sexually offended particularly difficult. They include, but are not limited to, the following:⁹⁴

- Negative public sentiment about sex offenders;
- Myths and misperceptions about juvenile sex offenders and the victims of these offenses;
- Highly publicized cases involving sex crimes;
- Limited housing and placement options; and
- Tighter residency restrictions specific to sex offenders.

In figuring out a way to address these challenges, the Board reviewed other states' juvenile notification laws and methods. After surveying the 50 states' juvenile notification laws, many community notification methods were identified which treat adjudicated juveniles differently. In many states, not all juveniles who are required to register are subject to community notification. In some states, courts or another body decide whether to order community notification or exempt juveniles from notification; it is not an automatic consequence of registration.

Out of the states that subject juveniles to community notification, many states restrict the type of notification that is given. There are seven types of restrictive methods for juvenile notification: (1) juveniles not subject to notification unless ordered to; (2) courts restrict dissemination of information if its not necessary for public safety; (3) limited to schools; (4) not unless they are out of compliance; (5) only for limited offenses; (6) limited to law enforcement; and (7) available only upon request, and can only be requested by certain entities.

In all states except Washington, there is some type of exception or exemption process for juvenile community notification. This below proposal does not significantly alter community notification via the internet but takes risk level into consideration when allowing public access to juvenile information via the internet.

Registration and community notification for sex offenders was at least partly justified by the belief that sex offending is an innate, pathological quality resulting in exceptionally high recidivism rates.⁹⁵ The ability to treat offenders as juveniles has proved effective in preventing their continuation of abuse as adults.⁹⁶ Researchers concede that some offenders with serious personality and mental problems will not respond to treatment.⁹⁷ However, these youths who have sexually offended are the minority.

After the Board's thorough review of research and the commission of a meta-analysis by WSIPP, the Board found no current research or studies that causally link community notification of adjudicated juveniles to lowered recidivism. The Board did find literature and anecdotal evidence that suggests community notification can significantly hinder a juvenile's reintegration into the community. Development of social networks and stable relationships are important factors for juveniles in their rehabilitation.

Proposals:

- Level 1 and II Offenders: Information is given to law enforcement, schools, and upon request to victims and witnesses. Offenders are posted on the statewide sex offender website only when the juvenile sexual offender is out of compliance. No distribution of fliers in the neighborhood where they reside.
- Level III Offenders: The Board recommended no change to the current law regarding Level III Juvenile Offenders. The current law is notification shall go to daycares, schools, libraries, businesses and organizations that primarily serve women, children or vulnerable adults, neighbors and community groups and are posted on the WASPC website.

The Board expressed strong support for these proposals, but not unanimous.

Adult Sex Offender Registration and Notification System Findings and System Issues

1. Risk assessment and the assignment of risk levels to adult sex offenders.

Currently, those being released from the Department of Corrections or Eastern or Western State Hospitals are assigned a risk level by the End of Sentence Review Committee (ESRC). The ESRC uses tools including the Static-99 risk assessment and a list of mitigating and aggravating factors to determine an offenders' risk level.

Local law enforcement agencies then review available risk level classifications, assign risk level classifications to all offenders about whom information will be disseminated, and make a good faith effort to notify the public within specific time frames.⁹⁸ If local law enforcement agencies classify an offender differently than the ESRC, they are required to submit notice to the ESRC and other agencies which includes the reasons for the change.⁹⁹

For those offenders not reviewed by the ESRC (e.g. out-of-state offenders, federal offenders, and offenders sentenced only to jail) local law enforcement is responsible for assessing and assigning the risk level. The Washington Association of Sheriffs and Police Chiefs (WASPC) created an advisory model policy for implementing these responsibilities.

Proposals for juvenile risk assessment are located within another section of this report, therefore only adults are addressed in this proposal. Based on the research reviewed, the Registration and Community Notification committee has learned that:

- Risk assessment should be based on the best available information,
- The risk assessment bodies should use standardized static and dynamic factors including empirically validated actuarial tools,
- Multi-disciplinary teams are the preferred way of conducting risk level assignment,
- Passage of time can affect the offender's risk therefore; risk re-assessment is valuable.
- Risk level classifications primarily drive the level and type of community notification that is required for an individual sex offender, although there are some other consequences attached to the risk level assigned.

Based on stakeholder input from forums and meetings various concerns were raised about the current risk assessment and leveling system. Some of those concerns include:

- Whether there are more efficient ways to gather and share data regarding information used for the risk assessment process,
- That law enforcement has an obligation to and liability for the community notification of offenders,
- The ability to have input (offenders and/or victim's) in the process and ability to appeal a risk level classification,
- Whether the current risk level assignment structure results in predictable and standardized results for the community and the offender; and
- Need more collaboration between local law enforcement and ESRC regarding use of risk assessment tools.

Varying Methods for Assessing Risk

Research of other states' practices show that approximately 28 states assign consequences to individual offenders (such as community notification, duration of registration and other requirements) as a result of their type of offense, 19 states (like Washington), assign consequences based on a risk assessment process, and four states use a combination of a qualifying offense and level of risk to determine certain registration and notification consequences. States vary widely in their risk assessment process, some use actuarial tools, standardized dynamic factors, psychological evaluations, or a combination of the above.

States also vary widely as to which decision making body conducts the risk level assignment. Some examples include the sentencing judge, a multi-disciplinary committee or board, the Department of Corrections and Department for Public Safety. Some states use a referral process, for example, a prosecutor would engage in the risk assessment process and make a risk level recommendation to a judge who would make the final decision regarding level assignment.

States also commonly establish independent multi-disciplinary boards or committees which are responsible for establishing registration and/or notification guidelines, risk assessment or sex offender treatment provider protocols, and/or hear offender appeals. These boards and committees are often not involved with risk level assignment for individuals but rather the policies that guide the risk level assignment.

Out of the 19 states that conduct risk level assignments which have corresponding consequences, approximately 12 of those states have some type of due process safeguards. Due process can include a limited ability to appeal classification level, a full hearing to determine risk level, or appeal to an administrative law judge. Washington State has no official appeals process once a risk level has been assigned.

Because Washington was a leader in 1990 with the Community Protection Act, there is a long legislative and policy history to risk assessment and corresponding registration and notification requirements. The Board believes it is important not only to investigate these changes but their corresponding effects on different groups such as law enforcement, victims, and offenders. Additionally, the current structure may be inefficient and a

burden for local Law Enforcement, however; any potential change to the structure should be thoroughly vetted to be consistent with concerns for community and public safety.

Proposal:

The future work of the Board will be to:

- 1) provide a history of the community protection act and any amendments or additions over time and;
- 2) clarify and align leveling, registration and notification of adult offenders.

The Board unanimously supported this proposal.

2. Statutory criteria for relief from registration for registered sex and kidnapping offenders

Members of the Board recognized that the statute which guides the process for relief from registration for adult offenders was simple but not very helpful. Currently, an eligible adult sex or kidnapping offender may petition the court for relief from registration requirements after the required time has passed and they have had no new criminal offenses. The current statute reads in part:

“....The court shall consider the nature of the registrable offense committed, and the criminal and relevant noncriminal behavior of the petitioner both before and after adjudication and may consider other factors. Except as provided in subsection (4) of this section, the court may relieve the petitioner of the duty to register only if the petitioner shows, with clear and convincing evidence, that future registration of the petitioner will not serve the purposes of RCW 9A.44.130, 10.01.200, 43.43.540, 46.20.187, 70.48.470, and 72.09.330. RCW 9A.44.140 (3)(a).

The absence of any meaningful criteria fails to provide all parties involved with factors that reflect a reduced risk to the community. Providing the Court with criteria which include factors that indicate the offender is a lower risk to the community would enable the court to make evidence-based decisions about actual risk. This change will also give offenders clear steps and potentially motivate them to comply with overall requirements.

Approximately 29 jurisdictions have some type of petition or relief process. Most of those states offer a variety of criteria for the court to consider. Members identified which criteria encompass similar static and dynamic risk factors which research has validated for determining an offender’s relative risk to the community.

Proposal:

The proposed criteria and language for the statute are:

The court shall consider the following factors in evaluating a petition to be relieved of sex offender registration. These criteria are illustrative only and are not intended to be specific requirements or exclusive factors to be considered in granting these requests:

- The nature of the registrable offense committed including the number of victims and the length of the offense history;
- any subsequent criminal history;
- the offender's compliance with supervision requirements;
- the length of time since the charged incident(s) occurred;
- any input from corrections officers, law enforcement or treatment providers;
- participation in sex offender treatment;
- participation in other treatment and rehabilitative programs;
- the offender's stability in employment and housing;
- the offender's community and personal support systems;
- any risk assessments or evaluations prepared by a qualified professional;
- any updated polygraph examination;
- any input of the victim, {any physical disabilities or advanced age of the person; and
- any other relevant factors

Except as provided in subsection (4) of this section, the court may relieve the petitioner of the duty to register only if the petitioner shows, with clear and convincing evidence that the petitioner is sufficiently rehabilitated to warrant removal from the sex offender registry.

Although it adds length to the statute, the Board believes in effect, it will simplify and standardize the process and assist in making relief decisions based on those factors found by research to be helpful in assessing actual risk to re-offend.

The Board unanimously supported this proposal (This has been amended from the previous draft published on December 2, 2009. The previous draft **incorrectly** stated that *the Board expressed strong support for this proposal, but not unanimous.*)

3. Repeal 90 day in person reporting requirement and continue with the law enforcement address verification program for adults.

Currently, level II and level III sex and kidnapping offenders are required to report in person to the county sheriff's office where they are registered every 90 days.¹⁰⁰ The recent court case, *State v. Ramos*, determined that it was a violation of the separation of

powers for local law enforcement to create an element of a crime.¹⁰¹ This happened as a result of local law enforcement assigning a risk level to Mr. Ramos who had not been previously assigned a risk level by the ESRC. The risk level required him to report in person every 90 days and when he did not, he was charged and convicted of Failure to register as a Sex Offender.

Input from law enforcement suggests that the address verification program has been more effective than the check-in requirement. Address verification is outlined in RCW 9A.44.135 and law enforcement recently received dedicated funding to carrying out the program.

Conducting in-person address verifications can have significant workload and resource implications for law enforcement agencies, but some agency officials believe that the accountability and monitoring benefits far outweigh the costs.¹⁰² Examples of the benefits include identifying any changes in offenders' physical appearance or condition, updating other important information such as employment status, and sending a clear message to offenders about being held accountable.

The value becomes even greater when patrol officers use address verifications for more than just satisfying a policy requirement and instead take the opportunity to use them as purposeful contacts.¹⁰³ For example, capitalizing on the address verification contact allows officers to assess important risk-related changes in offenders' circumstances and establish and maintain rapport with offenders.

Proposal:

Repeal 90-day registration requirement for Level II and III adult sex offenders. The Board also supports law enforcement's address verification program.

The Board expressed strong support for this proposal, but not unanimous.

4. Tier the class of felony for Failure to Register as a Sex Offender

In Washington State, felonies are divided into three classes: A, B, and C. The class of felony determines the statutory maximum for the offense. The term of confinement plus any term of community custody may not exceed this statutory maximum. The maximums for the different classes of felonies are as follows:

- Class A felonies: Life in prison and \$50,000.
- Class B felonies: 10 years in prison and \$20,000.
- Class C felonies: Five years in prison and \$10,000.

The crime of Failure to Register as a Sex Offender is currently a Class C offense in Washington, unless the underlying registrable offense was a misdemeanor, in which case the crime is a Gross Misdemeanor. The crime is "unranked" on the first offense, which means the offender is subject to a term of confinement within a standard range of zero to 12 months in a county jail. For second and subsequent offenses, the offense is ranked at

seriousness level II, which means the offender, assuming he or she has no other prior offenses, would be subject to a term of confinement of 12+-14 months. An offender with significant criminal history can be sentenced to as much as 43 – 57 months in prison. All offenders convicted of Failure to Register as a Sex Offender are subject to a mandatory term of community custody of 36 months upon release into the community.

In 2008, 2SHB 2714 raised the felony class designation for Failure to Register as a Sex Offender (FTR) from a Class C offense to a Class B offense and becomes effective 90 days after 2010 sine die. Within the same bill, the newly created Sex Offender Policy Board was asked to conduct a review of the Failure to Register penalty and make recommendations.

A review of the intent of the Sentencing Reform Act gives some sentencing considerations:

The purpose of this chapter is to make the criminal justice system accountable to the public by developing a system for the sentencing of felony offenders which structures, but does not eliminate, discretionary decisions affecting sentences, and to:

- (1) Ensure that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender's criminal history;
- (2) Promote respect for the law by providing punishment which is just;
- (3) Be commensurate with the punishment imposed on others committing similar offenses;
- (4) Protect the public;
- (5) Offer the offender an opportunity to improve him or herself;
- (6) Make frugal use of the state's and local governments' resources; and
- (7) Reduce the risk of reoffending by offenders in the community.

See RCW 9.94A.010.

WSIPP research tells us that almost one-fifth of sex offenders required to register are convicted of Failure to Register and that it is not possible to accurately predict the characteristics of those likely to fail to register by examining demographic characteristics and criminal history.¹⁰⁴ The report also examined the relationship between failure to register and subsequent recidivism. It found that in general, sex offenders convicted of failure to register have higher recidivism rates. However, recidivism rates for felony sex convictions remain relatively low between the two groups. The group of sex offenders with a Failure to Register offense is 4.3 percent versus 2.8 percent for the group that do not have a Failure to Register offense.¹⁰⁵

Under the current law, there is relatively little time left to supervise an offender with significant criminal history who gets the maximum sentence range of 43 – 57 months. Since an offenders custody and community supervision combined cannot exceed the statutory maximum for the offense (60 months for Class C), an offender serving 43 months would have only 17 months of supervision available upon release, and an offender serving 57 months would have only 3 months of supervision available.

Many states employ a tiered or progressive sentencing scheme for Failure to Register crimes, with some first offenses treated as misdemeanors or low class felonies, but subsequent convictions are raised in Class and/or penalty. Washington's designation of a first Failure to Register offense as an "unranked" offense is based upon a similar principle of increased punishment for repeated behavior. However, the Washington State Legislature during the 2008 legislative session moved the first Failure to Register offense from a Class C to a Class B, set to go into effect June 9, 2010.

Proposal:

Adopt a tiered approach to the class of felony for Failure to Register as a Sex Offender. A first and second offense would remain Class C felonies with a maximum of 60 months incarceration. A conviction for a third or more offenses would be a Class B Felony, subject to a maximum sentence of 120 months. If FTR is elevated to a Class B offense for a third offense, an offender who serves 57 months could still be supervised for the statutorily mandated 36 months, as the maximum sentence is 10 years for combined time in prison and on supervision.

The Board unanimously supported this proposal (This has been amended from the previous draft published on December 2, 2009. The previous draft **incorrectly** stated that *The Board expressed strong support for this proposal, but not unanimous.*)

5. Community custody range for first failure to register conviction

Failure to Register as a Sex Offender now imposes community supervision for 36 months. This supervision period stems from Failure to Register as a Sex Offender classification as a "sex offense." Increased FTR convictions have dramatically increased in number of convictions and sentences in recent years and have had an especially large impact on DOC supervision costs.

The rationale for this period of supervision is the correlation between FTR and criminal reoffense in general found by WSIPP in the 2006 study. According to the study by WSIPP, there is a correlation between those who fail to register and the commission of other crimes. The study also found that those who had only one Failure to Register had a significantly lower rate of recidivism than offenders with 2 or more convictions for Failure to Register. The demands placed on the system by supervising first offense Failure to Register cases are quite significant. Any other unranked offense or any other sex offense resulting in less than a year in custody would require 12 months of community supervision. A felony domestic violence offense does not receive this much time on community supervision. One year of supervision may be adequate to get the person back in compliance and to insure they understand their obligations completely. Where offenders have multiple offenses, ongoing supervision is more justified in that these individuals do pose a greater risk of reoffense.

Proposal:

Reduce community supervision for the first FTR as a sex offense conviction to 12 months. Second and subsequent offenses would continue to have 36 months of community supervision.

The Board unanimously supported this proposal.

6. Provide incentives to offenders by allowing all to petition for relief from registration.

Originally, Washington law had provided all offenders convicted of registrable offenses a right to petition the court to be relieved of the duty to register after spending 10 consecutive years in the community with no new offenses. In 2001, the law was changed to reflect new federal requirements of lifetime registration for certain aggravated sex offenses.

Washington's law currently requires lifetime registration for offenders convicted of a sexually violent offense, offenses against children under the age of 12, or offenses against children age 12 – 16 which involve forcible compulsion or the use of drugs to commit the crime if they were committed after June 8, 2000 for some offenses or after March 12, 2002 for certain other offenses. Offenses committed before those dates remain eligible to petition the court to be relieved of the registration duty under current Washington law once they have spent ten consecutive years in the community with no new offenses.

Several recidivism studies indicate that most recidivists are apprehended within the first few years at large, and that risk decreases as offenders spend more time in the community offense-free.¹⁰⁶

Offenders who complete the SSOSA or other sexual deviancy treatment, and who do well in the community for many years, are at a low risk to reoffend. Familial offenses that are very likely not to be repeated can still result in lifetime registration, even for the model offender who does everything they are asked to do. This blanket requirement, without consideration of the individual risk factors and the success the offender has achieved in the community, means that many low risk offenders would remain on the sex offender registration rolls. It makes sense to give those offenders an incentive to succeed, and some hope for the future if they can reintegrate successfully into the community.

There are some studies that show offenders who view punishment as too severe or inescapable may be more likely to reoffend.¹⁰⁷ Many offenders subject to lifetime registration requirements feel the government has opened the door to a life of endless harassment and stigmatization. Yet the research demonstrates that where there is an opportunity to demonstrate their reduced risk to the community, offenders have a greater incentive to comply and succeed. In a recent sampling of individual sex offender perceptions, several offenders observed that the ability to have a risk evaluation completed while on the registry would provide an incentive and motivation to pursue treatment, to avoid problematic situations, and maintain a crime free lifestyle.¹⁰⁸ There

was a study that specifically evaluated the social and psychological effects of registration on sex offenders. It found that many experienced feelings of despair and hopelessness in the absence of individualized assessment. One respondent stated, “no one believes I can change so why even try?”¹⁰⁹

The SOPB has heard from community members and law enforcement about their view of the benefits of giving offenders the opportunity to achieve relief if they meet the behavioral benchmarks. That hope provides them with a strong incentive to live an offense free life, to participate in treatment, and to otherwise demonstrate their reduced risk to the community.

Proposal:

Provide all offenders, including those that are on lifetime registration, the ability to petition the Court for relief from registration after 15 consecutive years in the community with no disqualifying offenses. This would likewise apply to out of state offenses from state courts, but Washington law cannot change or remove the lifetime registration requirement imposed for federal sex offenses. The supremacy clause makes those requirements beyond the authority of the Washington Legislature.

The Board expressed strong support for this proposal, but not unanimous.

The next section will focus on the current community notification system, what gaps exist in this system; lay out the purpose and value of community notification and how the system may be improved. The Board intends to continue refining these recommendations and gather broader stakeholder input during the next year on these preliminary recommendations.

Community Notification and Education

Introduction

Be fearful the media warns. Be afraid our emotions tell us. An unknown assailant is lurking, poised behind the trees waiting for the perfect moment to attack and sexually assault the unwitting woman walking to her car in the evening. This is what the media would have you believe; that most sexual assaults are perpetrated by strangers. But the truth is actually very different. Research and data paint an entirely different picture. Most victims know their perpetrator. They look like anyone else. They are our friends, family members, and community leaders. They are most often people we know and trust. To help protect the public from sexual offenders, whether known or strangers, and to assist law enforcement in the protection of their community's people, community notification laws were created.

In 1990, in an effort to restrict the access of known sex offenders to vulnerable populations, as well as to improve law enforcement's ability to identify convicted offenders, the Washington Legislature passed the Community Protection Act (the Act). Among many provisions, the Act requires convicted sex offenders who are released from custody or are under community supervision and reside in Washington to register with law enforcement (RCW 9A.44.130) and requires authorized officials to notify the public when sex offenders are released into the community (RCW 4.24.550). With the inception of the Act, Washington became the first state to authorize the release of information regarding sex offenders to the public.

“Release of information about sexual predators to public agencies and under limited circumstances, the general public, will further the governmental interests of public safety and public scrutiny of the criminal and mental health systems so long as the information released is rationally related to the furtherance of those goals. Therefore, this state’s policy as expressed in RCW 4.24.550 is to require the exchange of relevant information about sexual predators among public agencies and officials to authorize the release of necessary and relevant information about sexual predators to members of the general public.” [1990 WA Laws 3 § 116.]

The inclusion of the term “sexual predator”, back in 1990 set the foundation for treating all sex offenders the same and painting the picture for the public of the assailant as a stranger. What we know now, is that most sexual offenders are known to the victim and only a small percentage of these offenders are classified as sexual predators, therefore warranting special civil commitment.

What We Know Today

Over the past 20 years, Washington has revised and adapted the Act as well as modified and enhanced our sex offender management system. Given the intent of the original 1990 Act, and what we know now about sex offenders and community notification, the Sex Offender Policy Board has been tasked with examining the effectiveness of Washington's community notification laws and to make future recommendations to further the intent of enhancing public safety and offender accountability, while taking in to consideration what we knew then and what we know now.

The Community Notification committee examined a breadth of research including community notification studies, other states' community notification laws, an exhaustive literature review, as well as community forums in which the following framework emerged as an essential concept when considering the role, efficacy and enhancements to community notification:

- A clear delineation between sex offender registration and community notification must be made; and
- The addition of a separate and distinct community education and prevention component, different from the community notification process.

While the intent of sex offender registration and community notification are similar - increased public safety and offender accountability - these two aspects of the sex offender management system serve very different functions and must therefore be looked at separately.

For the purposes of the Sex Offender Policy Board, sex offender registration includes the risk level assessment and assignment of a Level I, II, or III and the subsequent registration with law enforcement based on the designated level. Community Notification, on the other hand, includes information available to law enforcement, specific organizations or entities, and the public at large. Community Notification includes the online sex offender registry which details information about the offender, the crime convicted, and the known address where the offender resides. Community Notification also includes legal announcements in local newspapers as well as community meetings in which community members are invited by local law enforcement to learn more about a specific offender located in their neighborhood as well as educational materials to help in the prevention of future sexual violence.

There is also vast confusion among communities, offenders, and various criminal and social service organizations about registration and community notification. These two components are very confusing and inter-dependent, and therefore it is important to distinguish between registration and community notification when analyzing Washington's sex offender management system.

The Community Notification committee also recognizes the overwhelming need to create and implement another component of the sex offender management system; community education and prevention. Community members often times have little to no knowledge

on how to judge their risk of victimization. While at the same time the demand for community notification laws have become more insistent and detailed by the public over the years as a result of being told in notification meetings that citizens are integral to holding sex offenders' accountable and vulnerable people safe.

“Community notification laws have been in effect for... years. Surprisingly, little research has been conducted on the impact of these laws. Perhaps this dearth of research is due to the tremendous variation among the states, and even within states, in how these statutes have been implemented. Regardless of what research does (or does not) tell us, notification has tremendous support from the public...” (Center for Sex Offender Management, Community Notification and Education, April 2001).

It is also very important to draw the distinction between community notification and community education and prevention. Community notification, as required by statute and guided by the WASPC model policy, is a function and duty of law enforcement. The intent of community notification is to inform a community, a neighborhood, about the presence of a known sex offender living among them. Typically these community notification meetings include information about a specific offender and the role of law enforcement and correctional staff in the monitoring of the offender. Many jurisdictions attempt to create a community education atmosphere when conducting community notification meetings. These meetings may include a sexual offender treatment provider, a sexual assault victim advocate, and other relevant service providers. It's important to recognize this method of communication serves the purpose of informing the public about a specific offender, which is essential, but is not necessarily a means to conduct a public education and prevention campaign.

For people to absorb information, the message must be consistent, repetitive, and developmentally appropriate for the audience. Based on a survey conducted by the Washington State Institute for Public Policy entitled, *Community Notification as Viewed by Washington's Citizens: A 10-Year Follow-Up*, seventy-eight percent of respondents indicated they felt safer knowing about convicted sex offenders living in their communities because of community notification. The goal of the Community Notification committee is to enhance this knowledge of known sex offenders and expand their knowledge to prevent future sexual assaults from occurring. One such way to achieve an educated community is through the use of multi-disciplinary teams, collaborating within a community to educate the public about sexual assault prevention strategies for home, school, work and recreation that go beyond the notification meetings and flyers provided by law enforcement when a sex offender transitions into a local neighborhood.

Community education would include consistent, repetitive factual information that is integrated in to other public health forums. Those knowledgeable of sexual assault and prevention strategies would team with other community members and organizations to design community education forums where the public receives pragmatic and relevant information using a prevention frame, rather than fear-based, to help the public

understand the steps they can take to protect themselves, their children, and their community.

To address the need for community education, the Community Notification committee is developing a best practice model that synthesizes all we know about sexual assault, public health prevention strategies, adult and child learning styles, as well as community partnership models to engage the public in their safety and the prevention of sexual violence.

“For the benefits of community notification to be realized to the greatest extent possible, notification should be used as an opportunity to educate the public. Notification should be accompanied with community discussions about the nature and extent of sexual offending, what is known about sex offenders, sex offenders’ right, and actions that citizens can take to protect themselves and their families. Communities also need to be educated about the role notification plays in sex offender management. An increased awareness of sexual assault and how to prevent it may well be the best possible outcome of community notification.” (Center for Sex Offender Management, Report on Community Notification and Education, April 2001.)

[There are many] “advantages of sex offender notification at a community meeting: [it] gives community members concrete information about the offender and provides an excellent opportunity for community education. In addition, trained presenters can counter misinformation, quell fears, discourage vigilantism and offer actions that citizens can take to enhance their safety. The meetings also provide opportunities for supervision officers, treatment providers, law enforcement officials, victim advocates, and others to work together to present information to the community. There are disadvantages as well; for if not properly conducted a “mob mentality” may emerge; presenters should be trained and a curriculum must be in place prior to conducting these meetings.” (Center for Sex Offender Management, Report on Community Notification and Education, April 2001.)

Since the creation of the Board in 2008, the Community Notification committee has been working to analyze the role of community notification within the sex offender management system, and to develop recommendations and best practices to increase the effectiveness of notifying and informing the community about sex offenders in their neighborhood. WASPC’s, *Guidelines for Washington State Law Enforcement, Adult and Juvenile Sex Offender Registration and Community Notification*, serves as a model policy for law enforcement in the application of community notification. Research and face-to-face discussions with law enforcement and the public reveal an inconsistent application of community notification meetings across jurisdictions in Washington. Our state has extensive policies for community notification when a sex offender transitions into a neighborhood, but there is still inconsistency in the structure of community notification meetings and the information disseminated at those meetings. Many areas throughout the state use a multi-disciplinary approach when conducting these meetings, while other

jurisdictions don't use the community notification meeting model, but rather rely on the internet or legal notices in local newspapers to inform the public.

Washington State has a model policy which was first created in 1998, refurbished in 2007, and updated in 2009. The policy has been used and updated to improve upon the successes and avoid the negatives that may arise at community notification meetings. The model policy is a baseline, and with further enhancements to existing protocol, greater standardization can be achieved in the application of community notification laws. Enhancements under consideration to the model policy include stronger language, which would require adherence to the model policy, the development of common terms and definitions, as well as the use of multi-disciplinary teams when conducting community notification meetings.

The committee is considering enhancements to the model policy that will result in a more standardized application of community notification laws as well as the inclusion of multi-disciplinary teams to support law enforcement when conducting community notification meetings. The following is a short description of the feedback heard by the committee which in turn will drive and inform the future work and recommendations of the Board:

- Citizens have little to no knowledge of how to judge their risk of victimization. This is not often part of the education component of a community notification meeting or flyer. A community education approach would have the time to highlight this important information.
- There is too much community anger and fear for this to work.
- No one will show up to these meetings.
- You will just be talking to the same people at these meetings.
- Since the forums are attempting to collaborate with existing meetings of already established groups, you will not reach the people who do not normally attend community notification meetings.
- Some counties and/or law enforcement jurisdictions already have a community notification meeting model.
- Many times the meetings are presented by staff that is inexperienced in presenting on such volatile topics. Therefore, a consistent model will serve as a strategy to maintain the legislative intent of the law.
- A multi-disciplinary team will be able to offer more resources for the community.
- Community notification meetings just get people excited and angry.
- Some jurisdictions do not want community notification meetings; they would rather use the internet.
- An unintended impact of community notification is offender accountability is that we are aware and watching them.
- An unintended impact of community notification is the effect on the offender's ability to integrate into the community. For example, it may impact their ability to gain employment or housing, as examples.

With the importance of community notification meetings realized, the Board and committee, over the coming months, will continue to seek out and refine best practice models as another engagement method to ensuring public safety while holding sex offenders accountable.

As a state we now have almost 20 years of practical information available to analyze and determine the effectiveness of the Community Protection Act and specifically, community notification. We know now that most sexual offenders are known to the victim, and not strangers, and that sexual offenders have some of the lowest recidivism rates among all offenders. The Community Notification committee is balancing this new information with current practice, and developing recommendations to further the intent of community notification laws and increase public awareness with community education and prevention strategies. As the Board recommendations emerge and solidify, the committee will incorporate these changes with identified best practices and research to further refine community notification laws and practice.

The Board expressed strong support for these preliminary proposals. They look forward to continuing to develop and refine the proposals and seek broader stakeholder input.

General System Issues

1. Registration requirement deadlines in 9A.44.130

Members reviewed the laws regarding sex and kidnapping offenders to determine if there were ways to simplify or standardize the statutory language. The Board recognizes the importance of clear expectations and easy to understand laws for easier enforcement and compliance.¹¹⁰

In reviewing the relevant statutes, the Board discussed clarifying other requirements to encourage enforcement and offender compliance. These included clarifying the definitions of “residence,” providing for registration in two places (otherwise known as dual registration), and looking at ways to clarify the statute when it comes to homeless sex offenders. These issues continue to be under discussion; however, members agreed that standardizing the timelines for registration requirements would be immediately helpful.

Upon review of requirements in RCW 9.94A.130, the Board discovered there were several different time requirements for offenders to register. The deadlines varied between “immediately,” “24 hours,” “48 hours,” “three business days” and “10” or “14” days. In addition to the variable deadlines, it was discovered offenders were not always able to comply with the law. For example, it would be impossible for offenders to comply if ordered to register “immediately” or “within 24 hours” if the controlling jurisdiction’s office was only open during business hours and an offender was released late in the day on Friday.

During this review, law enforcement and attorneys expressed frustration over the difficulty of interpreting and enforcing these many deadlines. Currently, there are no published studies on this subject. However, the Board was specifically tasked with looking at ways to simplify the law in SHB 2714.

In efforts to determine a best practice, a cursory review of other states’ deadlines for registration requirements showed that states varied widely in the time required (there was no clear standard of time) but, that often they used only one or two different timelines throughout their statute.

The Board analyzed the effect of a change of three business days, as applied to most timelines, and determined that a standardized timeline would make the law easier to understand and enforce and an offender’s ability to comply. The Board does not anticipate an increased threat to public safety as a result.

Proposal:

Standardize essentially all registration requirement deadlines within RCW 9A.44.130 to “three business days” with few exceptions.

The Board unanimously supported this proposal.

2. Registration of offenders with out-of-state or federal convictions for sex or kidnapping offenses

In Washington, convicted sex and kidnapping offenders are required to register with local law enforcement. Therefore, if a sex or kidnapping offender living in Washington was convicted of a federal or out-of-state sex offense, an analysis of their conviction has to be conducted to determine whether it is equivalent to an offense in Washington.

When the Community Protection Act of 1990 was passed, many other states did not have sex offender registration or notification laws. Since that time, federal legislation has changed the course of sex offender registration laws and now all states have these laws.

Currently, there is no statutory guidance on the analysis or “comparability,” of crimes, the guidance comes solely from the courts. The courts have held that a federal or out-of-state conviction must be legally or factually comparable to a Washington sex offense in order to trigger registration requirements. The Division III Court of Appeals has recently held in *State v. Werneth*,¹¹¹ that in order to determine whether an out-of-state conviction triggers registration, the court must: 1) convert the out-of-state crime into a Washington crime equivalent counterpart; 2) determine whether the Washington counterpart was a felony sex offense on the date the current offense was committed; and 3) assign the same consequence (registration requirement), if any, to the out-of-state conviction.

As a practical consideration, law enforcement must gather information from other states and conduct the analysis, along with input from prosecutors, to determine whether the offender is subject to registration in Washington. This can be a time consuming and complicated process.

Based on stakeholder input, law enforcement discussed the obstacles to do this analysis based on limited resources and the inability to obtain out-of-state records efficiently. Also, the legal analysis of comparing crimes can be very complicated and recent court decisions have called into question comparability of out of state offenses that are clearly sex offenses but which lack an element of Washington law that makes them otherwise comparable.

Several other states have addressed this issue by incorporating a “full faith and credit” approach, which in plain terms means that offenders must register in Washington if their out-of-state or federal conviction requires sex offense registration.

Proposal:

Require offenders to register in Washington if they are required to register in their state of conviction or under federal law, and cease the comparability analysis all together. The concept is to make the time period for registration equivalent to what their court of conviction has imposed and to create a mechanism for offenders with out of state lifetime registration requirements to petition for relief from registration after 15 consecutive years in the community with no new disqualifying offenses, consistent with other proposals being made by the Committee.

The Board unanimously supported this proposal (This has been amended from the previous draft published on December 2, 2009. The previous draft **incorrectly** stated that *The Board expressed strong support for this proposal, but not unanimous.*)

3. Define disqualifying offenses

Pursuant to RCW 9A.44.140, an offender's duty to register can expire once the person has spent a specified period of time in the community with "no new offenses," as long as they have not been determined to be a sexually violent predator or to have committed certain offenses. The committee learned that practical interpretation of "no new offenses," has come to mean no criminal offense whatsoever. Thus, offenders who commit relatively minor criminal offenses, such as misdemeanor traffic offenses, are required to restart the waiting period as a result of that conviction.

Although sex offenders are more likely to be rearrested for non-sexual crimes than sex offenses there is little evidence to suggest that the commission of minor offenses makes an offender more likely to sexually re-offend. The commonly used risk tool, Static-99, defines remaining "offense free" as no new sexual or violent convictions, or non-violent convictions that would have resulted in more than minimal jail time (1-2 months)."¹¹²

The primary goal of registration and community notification is to promote community safety by increasing the visibility of convicted sex offenders in the community. However, there is no research to indicate that restarting the original period of registration based on a minor offense promotes community safety, in fact it may reduce it based on the research which discusses the adverse effect community notification has on an offender and potential risk to re-offend. It is also important to remember that sex offender registration and notification laws were to assist law enforcement investigations and notify community members of offenders who have a moderate to high level risk of committing another *sexual* offense, not criminal offense.

Proposal:

Change the language to read, “A disqualifying offense is defined as a conviction for any offense that is a felony, a conviction for a sex offense as defined in RCW 9A.44.130 (10), a crime against children or persons as defined in RCW 43.43.830(5) and RCW 9.94A.411 (2)(a), a conviction for an offense with a domestic violence designation, a conviction for patronizing a prostitute, a conviction for permitting commercial sex abuse of a minor, or a conviction for Indecent Exposure or Public Indecency.”

The Board expressed strong support for this proposal, but not unanimous.

4. Online identifiers

Currently, no online identifiers such as email addresses, instant messenger names or other online addresses are required of registered sex and kidnapping offenders. ESHB 2035 directed the Board to review and make recommendations regarding the appropriate groups, if any, that should be required to submit internet communication names for purposes of monitoring potentially inappropriate online behavior, the appropriate sanctions, as well as any other issues associated with establishing and implementing such requirements.

In discussions the Board recognized there are sex and kidnapping offenses that are committed using the internet. However, the Board was unable to locate current evidence indicating that collection of online identifier information increases public safety and/or has a deterrent effect on offense or re-offense.

On the other hand, sexual abuse is a special challenge, different from other types of crime and violence problems. Internationally, enormous strides have been made to understand the problem, educate the public, and mobilize resources in the prevention and intervention of sexual violence. It is estimated that one in seven youth (between the ages of 10 and 17) will receive an unwanted sexual solicitation over the Internet. Four percent of youths have experienced an “aggressive” solicitation, where someone attempted to contact the child offline.¹¹³

Based on the research reviewed, sex offenders, once detected, have a lower recidivism rate in general and their crimes are committed against known victims in very high proportion. Also, the Department of Justice found that many more new sex crimes were committed by other types of criminals (87%) than by previously identified sex offenders (13%). Given the lack of adequate resources to actively collect and monitor usage of online identifiers, such a law could give a false sense of security and public safety.

The fiscal implications of implementing the requirement would be considerable and would impact entities such as the State Patrol, Washington Association of Sheriffs and Police Chiefs, Department of Corrections and local law enforcement agencies at a minimum. In addition, technological and potential legal challenges require detailed

analysis and discussion to ensure any such requirement would be in line with the provisions of the Washington State Constitution.

The Committee found that there is evidence to show that education of both parents and children on internet safety and sexual abuse prevention has an impact on public safety; therefore if funds are allocated for the purposes of monitoring potentially inappropriate online behavior, they should be concentrated on education and prevention efforts instead.

Proposals:

#1: No legislative action that would require the collection of online identifier information of all registered sex and kidnapping offenders.

#2: Education and prevention efforts should be focused on those vulnerable populations who are subject to grooming and exploitation by the internet or other means.

#3: There is value in continuing to look at the requirement of online identifiers where there is a direct link between internet usage and the commission of a sexual offense (which may include grooming of the victim and/or contact with potential victims).

The Board expressed strong support for these proposals, but not unanimous.

In addition, further review and consideration of current efforts in Washington State to address the education of both parents and children on internet safety and sexual abuse prevention would be warranted. For example, the Attorney General has information for internet safety geared towards different populations such as adults, teens, seniors and educators. It would be useful to look at these and other types of programs to see if they currently address these issues or could be expanded to address them.

The Adam Walsh Act

- **Background of the AWA**

The federal government enacted the Adam Walsh Child Protection and Safety Act of 2006 P.L. 109-248 (AWA). The AWA's Title I Sex Offender Registration and Notification Act (SORNA) evinces the federal goal of establishing a comprehensive national system of sex offender registration and community notification. It also intended to create a unified system for registering and tracking sex offenders who move between states or between the federal and state criminal justice systems. It provides a detailed scheme regarding sex offender registration and notification that contain "minimum national standards" states are required to meet.

- **Obstacles and Concerns**

- Cost

States are not obligated to comply, but unless granted an extension, states have until July 2010, to be in "substantial compliance" with the requirements of SORNA or face a 10% reduction of federal justice assistance funding under 42 U.S.C. 3750 *et seq* (Byrne Grants).¹¹⁴ Extensions to comply with SORNA are available. In Washington, the Byrne Grants are used primarily to fund local drug task forces. Washington received Byrne Grant funding in 2006 totaling \$3,538,836 and thus a cut to that funding would total approximately \$353,800 at the currently funded rate. By contrast, one estimate by the Justice Policy Institute avers that it would cost Washington State \$10,491,519 to comply with the provisions of the AWA.

- Risk based vs. Offense Based

While the stated goals of AWA are essentially the same as those provided in the original 1990 Washington Community Protection Act, Washington's laws differ substantially in implementation of the goals. Adopting many of the requirements of the AWA here in Washington would have a profound effect on the current system. Most especially, Washington's system for classifying sex offenders is risk-based while SORNA is strictly crime based. Currently, of the 20,000 registered sex offenders in Washington, 70% are level I, and 30% are Level II and III. Registration based on crime alone would nearly invert those statistics. It would be a major conceptual change from current, long-standing practice which is based in large measure on individualized risk assessments. It would also dramatically increase the number of level III offenders with low risk offenders and therefore those requiring 90 day visits/check-ins, notice to neighborhoods and communities at large, and would dramatically increase the number of offenders required to be subject to intense monitoring by enforcement.

For the better part of two decades the legislature and executive branch, together with community organizations and law enforcement, have worked to educate citizens about Washington's registration and notification system. This change to a crime-based system would also require extensive community reorientation and education.

➤ Nationwide legal challenges, including Ohio

Since the enactment of the AWA, several states have passed legislation to implement the provisions of the federal law in an attempt to be in "substantial compliance". Despite this, to date, the only state that has been determined by the SMART office (Office of Sex Offender Sentencing, Monitoring, Registering, and Tracking) to be in substantial compliance is Ohio. The SMART Office, an Office of Justice Program under the U.S. Department of Justice, was created to provide jurisdictions with guidance regarding the implementation of the Adam Walsh Act, and technical assistance to the states, territories, Indian tribes, local governments, and to public and private organizations. The SMART Office also tracks legislative and legal developments related to sex offenders and administers grant programs related to the registration, notification, tracking, and monitoring of sex offenders.

In the states that have passed legislation, constitutional challenges by offenders are plentiful. These challenges have been heard or will be heard by both State Supreme Court and Federal Courts. Despite, the SMART Office finding Ohio in "substantial compliance", on November 4, 2009, the Ohio Supreme Court heard four cases that challenge the constitutionality of Senate Bill 10, Ohio's SORNA implementation legislation.

• **Nationwide Support to Not Comply with SORNA**

Despite efforts by some states to substantially comply with AWA, the majority of states, including a number of organizations across the country representing a wide array of professional fields, including but not limited to, state and tribal governments, criminal justice and law enforcement, sex offender treatment and management, and the civil and human rights communities do not support SORNA as currently written.¹¹⁵ Other states cite similar concerns as described above and have asked that the SMART Office reopen and revise the final guidelines pertaining to this Act where were promulgated in June, 2008 by the SMART Office.

➤ Byrne Grant Committee Ltr.

The Members were told by the Byrne Justice Assistance Grant (JAG) Advisory Committee, that the committee has major concerns about how a 10% reduction in the JAG grant, as a penalty for non compliance with the AWA, would impact JAG programs; already heavily impacted by budget reductions. However, this Committee recognizes the overall fiscal cost to Washington and other states that AWA compliance would require is far greater. Furthermore, they strongly agree that the changes to Washington's sex offender registration system that AWA compliance requires would create a system

considered to be inferior to the risk-based system already in place in Washington State. In view of these issues, the JAG Advisory Committee supports the recommendation that Washington State not comply with AWA.

➤ Extension Request Granted

Washington State along with the other 49 states was granted a one-year extension to July 2011. After the change in the national administration, the SMART Office reached out states to understand the concerns they had with AWA. Because of this shift, Washington petitioned for an extension in the hopes that the additional time will be used to work with SMART in demonstrating the strengths of Washington State's Sex Offender Registration and Notification system. The petition described the history of Washington State's sex offender laws, the areas similar to AWA requirements and the concerns Washington has about the system adopted under AWA. (*See Appendix R.*)

On June 9, 2009, the SMART Office sent the SOPB a letter acknowledging the work that Washington State has done and notifying us that U.S. Attorney General Eric Holder issued a blanket extension to all jurisdictions responsible for implementing SORNA, indicating that it looked forward to working with Washington.

➤ Meeting with SMART and SOPB Position

In August 2009, the SMART Office invited stakeholders responsible for policy development, implementation and enforcement of Washington State registration and notification law to meet with them regarding the implementation of SORNA. On September 30, 2009, representatives from the SMART office, including Scott Mattson, a former staff member of WSIPP, met with the various stakeholders and government entities including, the Governor's Office, Department of Corrections, Washington State Association of Sheriffs and Police Chiefs (WASPC), Juvenile Rehabilitation Administration, Office of Crime Victim's Association, Washington State Patrol, Sex Offender Policy Board, and the Byrne Justice Assistance Grant Committee. Led by a representative of WASPC each organization expressed deep concerns about a decision to implement SORNA, including the significant public safety risks the AWA's tier offense based system poses. The SMART representative acknowledged these concerns and assured the stakeholders that they would continue to work with Washington in addressing the obstacles of implementing SORNA. They also said that a further extension may be available.

SEX OFFENDER IN THE COMMUNITY:

Housing and Education

INTRODUCTION

The Sex Offender in the Community Committee was created by the Board in part to deepen the expertise of Board Members through interagency communication, coordination and collaboration. It was also a means to focus on the very troublesome, but critical issue of sex offender housing. The availability or lack thereof, of sex offender housing is seen as directly affecting recidivism and community safety.

In June 2008 Governor Gregoire sent a letter asking the Board to investigate sex offender housing issues.¹¹⁶ She credited Washington State as being a national leader in addressing sex offender issues, especially in implementing laws and enforcing them to improve community safety. She noted, however, that these actions have also made it more difficult for sex offenders to find suitable housing. She pointed out that research finds that sex offenders are less likely to re-offend if they have stable housing, and asked the Board to review current research and best practices being employed in other states.

In creating its workplan, the Sex Offender in the Community Committee took Governor Gregoire's request very seriously. In its research, meetings with stakeholders, and discussion amongst each, the Committee realized that housing must be addressed in tandem with public education.

The Committee agreed that community education is a vital piece of creating successful housing options. Members really struggled with whether a community education campaign should first be launched prior to developing housing plans. There have been past instances where cities and towns actually have the funding to support sex offender work release housing. However, the community's fear and concern about sex offenders living in their neighborhoods often leads to the failure of these housing projects. Initially, the Committee identified its purpose as working to "normalize" sex offender reentry as a public safety and education strategy. After much thoughtful and well reasoned discussion, the Committee revised its purpose statement to more accurately reflect the necessity to marry housing options with community education. The Committee now sees its purpose as "To improve public safety by fostering successful reintegration into the community through public education and appropriate housing."

In an effort to accomplish this mission, the Committee designed a workplan that included reviewing research and best practices in Washington State, as well as across the nation; and meeting with stakeholders across the state. The Committee met on average once a month, including teleconferences when pressing issues emerged.

1. WSU Literature Review

The Sex Offender Policy Board requested that the Washington State University's Social and Economic Sciences Research Center (SESRC), Puget Sound Division perform a literature review on sex offender housing options in Washington State and across the country. The SESRC completed this literature review in June 2009. They found that the primary issue in investigating housing for sex offenders returning to the community is that little research exists that demonstrates the specific effect of housing on sex offender transition. This is not to say that there is no evidence at all regarding sex offender housing, rather that it is too indiscrete and there is simply too little altogether to be a compelling body of evidence.

Having said that, WSU found that therefore policy makers rely on “evidence” regarding the importance of housing sex offender transition from:

- General correlations between housing and crime or housing and offender transitions. According to the Justice Policy Institute, of the ten states that spent the largest proportion of their total expenditures on housing, all ten had re-incarceration rates lower than the national average.¹¹⁷
- The testimony provided by sex offenders themselves, who regularly cite a lack of housing as one of the difficulties they face on release from prison.
- Theories such as social disintegration, which profiles environmental conditions that are conducive to crime and therefore to recidivism. When sex offenders are faced with housing limitations they may be more likely to find themselves in socially disrupted neighborhoods, heightening the risk of reoffending.

The following are excerpts from WSU's Report:

For sex offender to find housing, housing must not only be available and affordable, but landlords must accept them as tenants. Transitioning offenders face the issue of availability and affordability, particularly when they struggle to find employment and employers often require a permanent (non-transient) address.

The attitudes of landlords plays the most immediate and challenging obstacle for sex offender housing. Landlords fear that they will be held responsible for actions of a tenant and express concern for safety for other tenants, residents themselves and their family. The offender housing programs' that closely work with landlords appears to be a key to the success of these programs.

Where appropriate housing is a part of the reintegration experience, advocates assert that sex offender recidivism is lower that where it is lacking. This is true whether the sex offender is placed specifically into housing that is part of a transition program (such as New York's Freedom House or Seattle's Interaction Transition House) or is enrolled in a supportive transition program that includes housing support as one of its responsibilities (Circles of Support and Accountability, for example.)

To date, few programs have engaged in rigorous evaluation and, in some cases, evidently no evaluation exists at all. Even when evaluations have been done, programs have been too small or too infrequently replicate to be considered a proven best practice. Nonetheless, several warrant exploration as emerging or promising practices.

Most incarcerated offenders return to family, at least temporarily, upon release. Other options include community-based correctional facilities, “transition” housing (housing provided, with varying amounts of support services, but not corrections, nor federal housing); federally subsidized and administered housing; homeless shelters; housing provided financial assistance or supportive programs; and the private market.

The SERC actually identified and reviewed several housing options for offenders and sex offenders across the country. These housing programs are further discussed in the SERC literature review which can be found in the appendices section of this SOPB report. Of particular note are two models that garner the most attention nationwide, the Shared Living Arrangements (SLA), and the Circles of Support and Accountability (COSA).

The SLA is a housing program for sex offenders located in Colorado. This program found success in housing sex offenders together. SLA reduced recidivism rates and improved how promptly parole or treatment violations were apprehended. The program is an extension and integration of the therapeutic community treatment, in which offenders’ living environments are as an extension of both treatment and monitoring.

The Circles of Support and Accountability (COSA) program began as a faith-based community support initiative for high-risk offenders in Canada. They have since been adapted and utilized by a wide variety of agencies and organizations, with Minnesota as an early adopter in the U.S. COSA creates an “inner circle” of four-to-seven community volunteers who meet as a group with the offender individually as often as daily. The volunteers are in close communication with each other and partnership with professional service providers and the offender’s community supervisor. The intent is to reverse the traditional patterns of providers into a lesser role.

2. Stakeholders

The full Board and Sex Offender in the Community Committee heard from a number of stakeholders this past year. There were a few programs and community forums specifically addressing sex offender housing and community response that stood out.

- *The S.T.A.R. Project*

During the June 2009 SOPB Sex Offender Management System Forum in Yakima, Washington, the program director at the time from S.T.A.R. (Successful Transition & Reentry) Project located in Walla Walla, Washington, presented on how their program assists offenders, including sex offenders, to obtain and retain housing.

The STAR Project is a 501 (c)(3) non-profit organization serving Walla Walla and Columbia counties of Washington State. They provide two levels of client services:

Phase I – Operating within Washington State Penitentiary, STAR volunteers meet with inmates to provide pre-release assistance.

Phase II – Re-entry services in the community include temporary emergency housing, support groups, employment counseling, one-on-one mentoring and other services. Incorporated in 2004, STAR Project works in collaboration with Department of Corrections (DOC), Department of Social and Health Services (DSHS), Walla Walla area churches and community organizations to provide coordinated services for individuals who have been released from prison or jail. They find that their evidence based services contribute to the public safety of their communities by reducing recidivism.

Incorporated in 2004, the S.T.A.R. Project works in collaboration with the Department of Corrections (DOC), Department of Social and Health Services (DSHS), Walla Walla area churches and community organizations to provide coordinated services for individuals who have been released from prison from or jail.

- *SOPB Stakeholder Meeting in Everett, Washington*

As part of the Board's duties to provide a forum for interagency discussion and collaboration; and to identify best practices in prevention and response, as well as gaps in the system that need improvement, the Sex Offender Policy Board travelled to several cities around Washington State to hear from community professionals involved in the sex offender management system, including victims' representatives. In August 2009, the Board travelled to Everett to hear from stakeholders in Snohomish, Skagit and Whatcom Counties. The meeting was well attended by professionals and community members with a wealth of expertise and knowledge about the sex offender response system.

The Board first heard a presentation by two representatives from the Everett Local Sex Offender Task Force. This task force was formed by the City of Everett in September 2008 after the public expressed great concern about sex offenders moving into the community in a few concentrated areas of the city. The situation that led to the concern resulted from a couple landlords buying a couple mansions, turning them into apartment units and renting these units sex offenders.

The members of the task force represented a cross section of the criminal justice system and citizens from the community. The task force met for six weeks. During this time period, the task force diligently worked to understand the sex offender management system, the actual risks that sex offenders pose, how stable housing for sex offenders promotes recidivism and what protective measures neighborhoods can implement to further public safety.

During the August 2009 presentation, the task force reported that the six week process turned out to be a very positive experience. They found that this method of community communication about a difficult and complex public safety issue was very effective. The task force was struck by the stark differences between what they thought were risk factors versus what actually are risk factors. For example, they were surprised and relieved at the same time to learn that the sex offender criminal class has the lowest recidivism rate. The task force found it very helpful to learn that a sex offender with stable housing is far less likely to recidivate than a homeless sex offender. The task force feels strongly that communities need a single source of evidence-based information that is accessible to the public. They also support the notion that education amongst each other was and continues to be a very effective method for addressing fear and safety concerns in the neighborhood. The Board explained that it would serve as an information center in the future.

The Everett Local Task Force was a good example of how community education, especially when facilitated by the community members themselves, helps debunk the myths about sex offender risks, allowing them to become more receptive to sex offenders living in the community. These efforts provide the community a sense of ownership of their public safety. This was echoed by the law enforcement members of who participated in this meeting. They expressed their concern that their role to educate the public about public safety and sex offenders in the community needs to be in conjunction with an organized effort to educate each other. The education needs to be ongoing and with a community friendly backdrop.

- *Senator Regala and Senator Carrell's Bipartisan Housing Focus Group*

Washington State Senators Debbie Regala and Mike Carrell co-chair a bipartisan workgroup to look at ways to protect the public by locating housing for high-risk individuals. This group has been working with everyone from the Rental Housing Association to Columbia Legal Services and the Homeless Alliance. The SOPB Sex Offender in the Community Committee invited the Senators to a meeting it held in Lakewood, Washington. The meeting in Lakewood was to provide some stakeholders an opportunity to share their experiences with the both best practice models as well as gaps in their sex offender response system. Senators Regala and Carrell were both from that area and attended the meeting to present information about their high risk offender housing focus group.

On September 1, 2009, Senators Regala and Carrell held a day long housing task force to address the obstacles high risk offenders have in securing housing and how that impacts public safety. While this task force did not specifically focus on sex offenders, the meeting did address that population. The meeting was well-attended by landlords, landlord/rental associations, housing program providers, and interested agencies. Landlords and housing providers identified a number of challenges they faced in renting to high risk offenders including: methods for addressing problematic tenant behavior; a tenant's inability to sometimes pay rent timely and consistently; landlord liability that

may ensue for having offender tenants; and ease in removing or evicting an offender tenant when necessary.

Local and state agency housing and treatment programs presented some successful approaches used by apartment managers when renting to offenders. These included random UA programs; communication with Community Corrections Officers; personal interaction with neighbors to alleviate fears; mentoring; involving offenders in their surrounding community, such as neighborhood clean-up projects; and case management (life-skills, employment, mentoring sober support groups.)

The forum concluded with a discussion on how to assist offenders to obtain short-term/long-term housing. Some of the ideas were: month-to-month leases to allow for quicker evictions; mitigation of risks and landlord liability; certification program identifying “responsible tenants”; amend Landlord/Tenant Act to specifically address offender housing; landlord education (how to manage risk, identifying available tools and resources for landlords when problems arise, working with treatment, law enforcement and community corrections agencies).

Many of the problems and proposals identified in this forum are the same as those discussed in the various SOPB meetings with stakeholders and described in the WSU literature review. Senators Regala and Carrell indicated in the August 2009 meeting with the SOPB and during their September 2009 housing forum that they are interested in pursuing some type of legislation possibly during the upcoming 2010 legislative session. The SOPB looks forward to staying in communication with the Senators and assisting them in any way possible in developing legislation or policy that will benefit public safety through sex offender housing options.

General Proposals:

- Public education regarding the necessity of community education forums and a variety of methods.
- Education needs to occur regarding the difference between juvenile sex offenders and adult sex offenders.
- Dual Registration: assisting in the problems of housing and homelessness.
- Exploring the collateral consequences of registration and notification
- Research and public education regarding Shared Housing.
- Veer away from exclusionary policies such as residency restrictions and crime-free housing.

Next Steps

The committee will continue to focus on improving public safety by fostering successful reintegration of sex offenders into the community through public education and appropriate housing.

We expect a major effort in the coming year on education about sex offenders. It is not a coincidence that other committees, notably the community notification committee, also call this out as a needed strategy. The Sex Offender in the Community committee will work in tandem with them to identify necessary elements for successfully increasing the public understanding about sex offenders.

While our literature review and community forums regarding housing concluded there are no researched best practices, there are specific programs, anecdotal information and board experience to guide us in this area.

In response to the Governor's request we will make recommendations on housing later in 2010 and communication with the Senators and assisting them in any way possible in developing legislation or policy that will benefit public safety through sex offender housing options.

BENCHMARKS:

Measuring Washington State’s Sex Offender Response and Management System

1. Purpose of Committee and Plan for 2009

The primary purpose of the Board is to make recommendations to the legislature as to how to develop a more coordinated and integrated response to sex offender management to decrease sexual victimization and increase community safety. In furtherance of this, the Board created the Benchmarks Committee to develop and report on benchmarks that measure the performance across the state’s sex offender response system.

As the Benchmarks committee began to review the scope and focus of its work for this initial year, we became aware of the enormity and importance of the charge. As the whole SOPB similarly contemplated and planned for this year’s work, we were struck by how much value there is in future evaluation and how past evaluation could have informed and led our work. While we could only wish that benchmarks and an evaluative system had been created in 1990, we took our present task seriously and made a commitment that twenty years from now, the SOPB of 2029 will not take any time *wishing* for evaluation, but will in fact, benefit from our twenty years of evaluation efforts and results.

2. Benchmarks Workgroup to Date

One of the first tasks of this effort was to begin a process of mapping the sex offender management system in Washington. This effort is an attempt to demonstrate the myriad of events and activities that can occur from the moment an incident of sexual assault occurs through offender re-entry to the community and the victim’s road to recovery. Like with the overarching theme and perspective of the SOPB, a victim-centered approach is paramount.

Members of the SOPB recognize that an effective response to sex offenses requires careful thought about the functioning and the integration of numerous system components, and policy decisions based on research and good data. To begin, the Benchmarks Committee reviewed a similar assessment, “The Comprehensive Protocol: A Systemwide Review of Adult and Juvenile Sex Offender Management Strategies,” prepared by the renowned Center for Sex Offender Management, a project of the U.S. Department of Justice in 2007.¹¹⁸

The Board is using the Sentencing Reform Act definition of “sex offense” as found in RCW 9.94A.030. After reviewing the legislative mandate, the Board decided that the “system” to be measured will be one that begins “from once a sex offense becomes

known.” A comprehensive approach to “sex offender response system” includes seven key areas of practice:

- Victim reporting and support,
- Investigation, prosecution and disposition,
- Assessment,
- Supervision,
- Treatment,
- Reentry, and
- Registration and Community Notification

This year the Committee assessed what is involved in the operation of the sex offender community reentry and supervision areas of the sex offender response system related to adult male sex offenders (the predominant offender population).

When drafting the performance measurements for these components, the Committee adhered to the following fundamental principles:

- Abide by evidence-based practices,
- Specialized knowledge and training,
- A victim-centered approach,
- Consistency with the purposes of the Sentencing Reform Act (RCW 9.94A)
- Collaboration,
- Public education, and
- Monitoring and evaluation.

Another initial step was to make some general inquiries with major systems players such as victim services, corrections, juvenile rehabilitation, and law enforcement to review what data and what evaluative work has been done to date on specific aspects of the sex offender management system in Washington.

The SOPB has reviewed as much data, research, professional experience, and community input as we could find. This review has included reading and presentation of research, both newly commissioned and existing, interviews, surveys, community meetings, and discussion among the variety of peer groups and associations represented on the SOPB.

The Sex Offender Policy Board requested that the Washington State University’s Social and Economic Sciences Research Center (SESRC), Puget Sound Division conduct a survey of the sex offender treatment providers (SOTP) licensed by the State of Washington to assist sex offenders transitioning into Washington Communities.¹¹⁹ The intent of the survey was to sample opinions from the treatment provider constituency regarding the efficacy and efficiency of sex offender transition. This survey was limited to providers serving adult male offenders, including both transition from Washington prisons and jails. The SESRC provided the Board a copy of the survey results in June 2009 and then presented their findings to the Benchmarks Committee in July 2009.

Working with the Benchmarks Committee and SOPB staff, SESRC prepared a protocol of questions regarding the SOTP's observations of sex offender transition. The survey investigated issues of housing, employment, and community support for the offender as well as the operation of the transition "system". This included the SOTP's assessment of the coordination of services, management of supporting records, and other issues identified as salient by the "The Comprehensive Protocol: A Systemwide Review of Adult and Juvenile Sex Offender Management Strategies," prepared by the Center for Sex Offender Management."

The survey asked treatment providers their opinions regarding communication between providers and other parts of the transition system; about the support and services provided transitioning sex offenders, as they observe them, and about their interactions with other community service providers.

Generally, survey respondents varied widely in how critical they were of the partnership around sex offender transition planning, support and supervision. A small number of respondents regularly responded that they always received the documents they needed, participated in joint planning and help supported by their partners. Others responded consistently that they did not. The majority of respondents were critical of the degree to which they are included as a partner in planning and supervision, and they provided very similar suggestions about how to improve transition for the sex offenders they treat. Although their own tasks would be made easier and perhaps more effective with greater communication among all the stakeholders, it their shared opinion that their clients would benefit from improved support for basic skills (including life skills), employment and housing.

This information provided by WSU, along with the data and input from other stakeholder groups has not only gone into the formulation of SOPB recommendations, but has also informed and guided the work of the Benchmarks Committee.

3. Next Steps

The next steps of the Benchmarks Committee is to continue the work to map Washington's system; gather and review data and research; and also establish measurements for the recommendations contained in this report. The committee will review current data and establish a baseline measurement and then develop measures by which to gauge the success, impact, and result of each recommendation. Thus, as recommendations are adopted, we can begin immediately to gather data and draw conclusions about the efficacy of each recommendation – constantly improving and shifting efforts to achieve the result desired.

¹ California Sex Offender Management Task Force, “Making California Communities Safer and Evidence Based Strategies for Effective Sex Offender Management”, p.1 (July 2007)

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³ Ibid.

⁴ Ibid.

⁵ Ibid.

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⁴³ This includes: planning, judgment, initiating and stopping actions, anticipating outcomes and consequences, and inhibiting and suppressing inappropriate social behavior. The frontal lobes are also the last area of the brain to develop, finishing during a person's mid-twenties.

⁴⁴ See Appendix E.

⁴⁵ Ibid.

⁴⁶ A meta-analysis of 3730 treated juvenile offenders showed their sexual recidivism was 11.87% (Reitzell & Carbonella, 2006.) In addition, one study of 249 juvenile male sex offenders and 1,780 non-sex offending delinquents, released from a secure institution found that the sexual recidivism was 6.8% and 5.7% respectively, which was not a significant difference (Caldwell, 2007).

⁴⁷ Dr. John Hunter, well known nationally, and internationally, for his clinical and research expertise on juvenile sexual offending has published over 40 articles or book chapters on the subject of sexual offenders and sexual trauma, and has been the recipient of seven federal research grants in this area of study. Most recently, he received a "Career Development Award" from the National Institute of Mental Health to further study subtypes of sexually aggressive youth and their hypothesized differential developmental trajectories. Dr. Hunter has directed both community-based and residential treatment programs for juvenile and adult sexual offenders, and is a former member of the Board of Directors for the Association for the Treatment of Sexual Abusers (ATSA).

⁴⁸ In Washington State there are approximately 650 juveniles under supervision within Juvenile Rehabilitation Administration (JRA) or under county probation in the Special Sex Offender Disposition Alternative (SSODA) at any one time. JRA tracks our youth with serious and acute service needs to include medical fragility, sexual offending, cognitive impairment, chemical dependency or mental illness. Within the JRA system approximately 58% of our population requires care for at least two disorders and some as many as four. This translates into complex treatment services for difficult youth. It's important that the youth are receiving treatment for all of their treatment needs and not just their sexual offending.

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¹¹⁶ See Appendix P.

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CSOM is a national project that supports state and local jurisdictions in the effective management of sex offenders under community supervision. NIC and SJI, in collaboration with the American Probation and Parole Association, joined OJP in managing the project, and are devoting additional resources to support corrections professionals and the judiciary as they address this critical issue within their specific disciplines. The project is administered through a cooperative agreement between OJP and the Center for Effective Public Policy. A National Resource Group has been established to guide the activities of the project. The members of the National Resource Group include some of the country's leading experts and practitioners in the fields of sex offender management, treatment, and supervision.

CSOM's primary goal is to enhance public safety by preventing further victimization through improving the management of sex offenders in the community. CSOM's goals are carried out through three primary activity areas: an information exchange, training and technical assistance, and support to select Resources Sites and OJP grantees.” See CSOM Website link: <http://www.csom.org/about/about.html>.

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Sex Offender Policy Board

Chapter 261, Laws of 2015 Findings and Recommendations by the Sex Offender Policy Board (SSB 5154 Section 16)

December 2015

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Indeterminate Sentence Review Board

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EXECUTIVE SUMMARY

The Washington State Sex Offender Policy Board (SOPB) was created to advise the Governor and the Legislature as necessary on issues relating to sex offender management. RCW 9.94A.8673 authorizes the Governor or a legislative committee to request the SOPB be convened to "undertake projects to assist policymakers in making informed judgments about issues relating to sex offender policy."

In the 2015 legislative session, Governor Jay Inslee signed into law Chapter 261, Laws of 2015 (SSB 5154) on May 14, 2015. Section 16 of this law required the SOPB to make findings and recommendations regarding the following:

- (a) Disclosure to the public of information compiled and submitted for the purposes of sex offender and kidnapping offender registries that is currently held by public agencies, including the relationship between Chapter 42.56 RCW and RCW 4.24.550;
- (b) Any other best practices adopted by or under consideration in other states regarding public disclosure of information compiled and submitted for the purposes of sex offender and kidnapping offender registries;
- (c) Ability of registered sex offenders and kidnapping offenders to petition for review of their assigned risk level classification and whether such a review process should be conducted according to a uniform statewide standard; and
- (d) The guidelines established under RCW 4.24.5501 addressing sex offender community notification, including whether and how public access to the guidelines can be improved.

After collecting information, reviewing available literature and discussing various policy options over the course of several months' time, the SOPB submits the following recommendations:

Section 16(a) Recommendations

A) RCW 4.24.550 be amended to include the following sentence:

Sex offender and kidnapping offender registration information is exempt from public disclosure under chapter 42.56 RCW.

B) RCW 42.56.240 be amended to include the following sentence:

The following investigative, law enforcement, and crime victim information is exempt from public inspection and copying under this chapter:

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.

Section 16(b) Recommendations

The SOPB recognizes that adults and juveniles are generally different. Many states acknowledge these differences in their statutes related to sex offender registration and community notification and treat juveniles differently. As such, the SOPB believes this issue warrants additional consideration by Washington policymakers.

Section 16(c) Recommendations

To the Legislature:

- A) The SOPB recommends that the SOPB be authorized to develop best practices for the process and criteria regarding a sex or kidnapping offender's request for assigned risk level classification review*.

The board is not recommending any statutory change to RCW 4.24.550(6)(d) at this time.

*The SOPB has been directed by the Governor to carry out this task.

To Law Enforcement:

Through the course of deliberations, the SOPB came to a consensus on the following recommendations to law enforcement.

- B) The SOPB recommends that each law enforcement agency responsible for sex and kidnapping offender registration and community notification have an established process to accept and review a sex or kidnapping offender's request for assigned risk level classification review and use criteria to reduce or increase that level that are supported by current research as much as practicable.
- C) The SOPB recommends that the Washington Association of Sheriffs and Police Chiefs amend its model policy created pursuant to RCW 4.24.5501 to recommend that each law enforcement agency responsible for sex and kidnapping offender registration and community notification have an established process to review the assigned risk classification level when requested by an offender registered in their jurisdiction. Furthermore, the SOPB recommends that the model policy incorporates or references the best practices referenced above, once developed.
- D) The SOPB recommends that the Washington Association of Sheriffs and Police Chiefs conduct a survey to assess which agencies have an established process to review a sex or kidnapping offender's request for assigned risk level classification review and what that process is, and share the results of such survey with the SOPB by December 1, 2016. While many jurisdictions have created processes to consider requests from offenders to reduce their community notification risk level, the statute has not explicitly authorized this process until the passage of Chapter 261, Laws of 2015 (SSB 5154).

Section 16(d) Recommendation

The SOPB recommends the Legislature take no action on this topic.

INTRODUCTION

In 2015, the Legislature passed Chapter 261, Laws of 2015 (SSB 5154). Section 16 of this bill required the Sex Offender Policy Board (SOPB) to make findings and recommendations regarding the following:

- (a) Disclosure to the public of information compiled and submitted for the purposes of sex offender and kidnapping offender registries that is currently held by public agencies, including the relationship between Chapter 42.56 RCW and RCW 4.24.550;
- (b) Any other best practices adopted by or under consideration in other states regarding public disclosure of information compiled and submitted for the purposes of sex offender and kidnapping offender registries;
- (c) Ability of registered sex offenders and kidnapping offenders to petition for review of their assigned risk level classification and whether such a review process should be conducted according to a uniform statewide standard; and
- (d) The guidelines established under RCW 4.24.5501 addressing sex offender community notification, including whether and how public access to the guidelines can be improved.

Back in 2009, the SOPB reviewed twenty years of research and adopted several key findings critical to the development of an effective sex offender management system.¹ These key findings included, in part, that:

- Washington state's current system supports public safety by setting community notification standards using a risk-based analysis instead of an offense-based method. The system is built on the premise that the community and sex and kidnapping offender response system partner to achieve public safety.
- Empirically validated risk tools are one of the most effective ways to determine an offender's risk to reoffend and that standardized dynamic factors can also be helpful in risk level assignment.
- Youths who have sexually offended are different from adults who commit sex offenses, in part, because of ongoing brain and neurological development. Sex and kidnapping offender laws regarding juveniles and the corresponding public policy should reflect their unique amenability to treatment as well as their vulnerability to collateral consequences due to their ongoing development.
- The key to ensuring public safety is to make well-informed decisions based on the best available research.

These findings are relevant to the current examination of disclosure of sex and kidnapping offender registration information to the public. The work herein builds on the SOPB's previous research and findings.

¹ Annual report to the legislature (2009). Olympia: Washington State Sex Offender Policy Board.

SEC. 16(a) DISCLOSURE TO THE PUBLIC OF INFORMATION COMPILED AND SUBMITTED FOR THE PURPOSES OF SEX OFFENDER AND KIDNAPPING OFFENDER REGISTRIES THAT IS CURRENTLY HELD BY PUBLIC AGENCIES, INCLUDING THE RELATIONSHIP BETWEEN CHAPTER 42.56 RCW AND RCW 4.24.550

In 1990, when Washington state enacted the Community Protection Act and became the first jurisdiction to authorize the release of sex and kidnapping offender information to the public, it was predicated on the premise that sex and kidnapping offenders had a high likelihood to reoffend and that increased distribution of personal information kept the public safe. It was also believed that widespread distribution of sex and kidnapping offender registration information would create a deterrent effect; offenders who were known by the community would be on notice that people were watching their behavior and would be less likely to reoffend.

However, studies have not shown that community notification has a decreased effect on recidivism and there is little correlation to either general or specific deterrence.² Instead, much of the recent literature indicates that destabilization of the offender may make reintegration more challenging and therefore, possibly increase their likelihood of reoffending.

Discussions within the literature regarding the disclosure of sex and kidnapping offender registration information are ordinarily found in articles related to “community notification”. However, the concept of community notification can often be different than releasing information pursuant to an individualized request. Community notification generally refers to disclosure of information both “passively” and “actively”. Passive notification ordinarily refers to publishing information on the Internet or maintaining lists of offenders for those who request it. Active notification requires an entity, usually law enforcement, to affirmatively notify communities, daycare and schools, among other organizations, about the existence of the offender in their geographic location.³ Active notification can include community meetings, bulletins and/or press releases. Community notification often does not refer specifically to public disclosure in response to public requests. The SOPB did not find literature that was specifically limited to disclosure pursuant to individual requests, therefore, we reviewed articles related to notification or disclosure of sex and kidnapping offender information generally.

Currently, Washington limits their Internet publication of information to eligible, convicted sex offenders who have been assessed as a level II or level III risk, level I registered sex offenders who are out of compliance or lack a fixed address and all registered kidnapping offenders, while other states have variations on the information that they publish via the Internet.

Generally, the disclosure of sex and kidnapping offender registration information to the public is found within the community notification provisions of a state’s adopted Sex Offender Registration and Notification Act Laws (SORNA). Some also refer to the community notification portion of sex

² Drake, E.K., and Aos, S (2009). *Does Sex Offender Registration and Notification Reduce Crime? A Systematic Review of the Research Literature*. Olympia: Washington State Institute for Public Policy, Document No. 09-06-1101.

³ Locke, C., and Chamberlin, B. F. (2007). Safe From Sex Offenders? Legislating Internet Publication of Sex Offender Registries.” *The Urban Lawyer* 39 (2007):1-18.

and kidnapping offender laws as “Megan’s Laws” named after Megan Kanka, a girl in New Jersey who was raped and killed in 1994 by her neighbor, a convicted sex offender. States have various ways of distributing convicted sex and kidnapping offender registration information under the notification provisions. These methods are ordinarily referred to as “community notification” which can include community meetings, flyer distributions, and Internet publication of registrant information. Thus, authors often look at the entire system of registration and notification or “community notification” generally, instead of Internet public disclosure specifically.

Literature Review on Disclosure of Registration Information

A review of current literature on public disclosure of sex and kidnapping registration information reveals evidence that shows widespread disclosure has a negative impact on offenders’ stability in the community. Sex and kidnapping offenders may experience physical assault and injury,⁴ harassment⁵ and even death⁶ as a result of disclosure of information. Widespread public disclosure of sex and kidnapping offender information also triggers consequences such as unemployment and housing challenges, which in turn can result in an enhanced risk of recidivism.⁷ In a study of female sex offenders in two states, every respondent reported at least one negative effect of being identified by the public registry.⁸

Other articles cite that it is not just offenders who are affected by the disclosure of their identities and their personal information. The offenders’ significant others, children, and families are also significantly impacted by disclosure. In an in-depth study of offenders and their experiences with community notification, among other things, the study found that most offenders surveyed either experienced the loss of housing or employment or the ongoing fear of those things.⁹ Offenders expressed that there is a large amount of stress on their families which strains the network of supportive relationships and, in turn, successful re-integration.¹⁰

The stigma of registration and lengthy registration periods are particularly challenging for juveniles.¹¹ Registration and notification burdens are felt for a longer period of time and in ways more onerous

⁴ Turner, Chrisandrea, L. “Convicted Sex Offenders vs. Our Children, Whose Interests Deserve the Greater Protection?” *Ky. LJ* 86 (1997): 477.

⁵ Lasher, Michael P. & Robert J. McGrath. “The impact of community notification on sex offender registration: A qualitative review of the research literature.” *International Journal of Offender Therapy and Comparative Criminology*, 56 no. 1 (2012): 6-28.

⁶ Martin, Jonathan, & O’Hagan, Maureen, “Killings of 2 Bellingham Sex Offenders May Be Vigilante, Policy Say” *Seattle Times*, August 30, 2005. *See also*, Pandell, Lexi, “The Vigilante of Clallam County,” *The Atlantic*, Dec. 4, 2013.

⁷ Periman, Deborah. Revisiting Alaska’s Sex Offender Registration and Public Notification Statute, *Alaska Justice Forum* 25(1-2):2-5. (Spring 2008-Summer 2008).

⁸ Vandiver, Donna M., Kelly Cheeseman Dial, and Robert M. Worley. “A Qualitative Assessment of Registered Female Sex Offenders Judicial Processing Experiences and Perceived Effects of a Public Registry.” *Criminal Justice Review* 33, no. 2 (2008): 177-198.

⁹ Zevitz, Richard G., and M. A. Farkas. “Sex offender community notification: Managing high risk criminals or exacting further vengeance.” *Pogrebin, M eds* (2004): 114-123.

¹⁰ *Id.*

¹¹ Carpenter, Catherine L. “Against Juvenile Sex Offender Registration,” Available at SSRN 2319139 (2013).

for juveniles than their adult counterparts.¹² While studies have found that youth offender brains are still developing and are more amenable to treatment, they can also experience profound damage to their self-esteem and feel isolated as a result of registration and notification.¹³

For both adults and juveniles, evidence suggests that unintended and collateral consequences can have a negative impact on offender behavior and stability. Instability and inability to re-integrate can become a criminogenic factor that contributes to a *higher* risk of recidivism¹⁴ and a potential *decrease* in public safety.

It is clear that the focus of sex and kidnapping offender registration laws is not on the privacy rights of the offender, nor does the SOPB promote that policy should be created based on that premise. The Legislature originally recognized a reduced expectation of privacy¹⁵ in offenders' personal information because of the nature of the crime they committed; however, in light of the significant impact of collateral consequences which heightens the risk of reoffense, recent literature prompts further evaluation of any decision that would allow blanket public disclosure of low-risk offender identity or personal information.

Some articles review whether some constitutional level of privacy should be provided for offenders that are deemed a low risk to reoffend.¹⁶ For example, one author observed that Montana has what is described as a "heightened right to privacy" within their state constitution.¹⁷ The author asserted that the right of individual privacy must not be infringed upon without a showing of compelling interest and a strict scrutiny analysis requires that the law be narrowly tailored to serve the compelling state interest. Arguably, because level I offenders are classified at the lowest risk to reoffend, the decision to disclose their information to the public is not narrowly tailored and therefore is unconstitutional. Even though several articles review whether state SORNA laws violate an offender's privacy rights, courts have repeatedly held that there is no *per se* privacy right in the personal information of a sex offender.¹⁸

The Washington Supreme Court previously looked at the need to limit disclosure of sex offender registration information when determining whether imposing the state's Community Protection Act to a felony sex offense was an ex post facto violation. In *State v. Ward*,¹⁹ the court extensively discussed *limited* public disclosure provisions related to sex offender information. The court was

¹² *Id.* At 771.

¹³ Pittman, Nicole, and Allison Parker. *Raised on the registry: The irreparable harm of placing children on sex offender registries in the US*. 2013. See also Freeman-Longo, Robert E. "Revisiting Megan's Law and Sex Offender Registration: Prevention or Problem." *Sexual violence: Policies, practices, and challenges in the United States and Canada* (2002): 223.

¹⁴ Prescott, J.J. "Do Sex Offenders Make Us Less Safe?" *35 Regulation* 48 (2012-2013).

¹⁵ Laws of 1990, ch. 3 § 116.

¹⁶ Preble, Johnna. "The Shame Game: Montana's Right to Privacy for Level I Sex Offenders," *Mont. L. Rev.* 25 (2014): 297. See also, Kabat, Alan, R. "Scarlet letter sex offender databases and community notification sacrificing personal privacy for a symbol's sake," *Am. Crim. L. Rev.* 35 (1988): 333.

¹⁷ Mont. Const. art. II § 10.

¹⁸ Trinkle, Catherine A. "Federal Standards for Sex Offender Registration: Public Disclosure Confronts the Right to Privacy," *Wm. & Mary L. Rev.* 37 (1995): 299. See also Turner, Chrisandrea L. "Convicted Sex Offenders vs. Our Children, Whose Interests Deserve the Greater Protection?" *Ky L.J.* 86 (1997): 477.

¹⁹ *State v. Ward*, 123 Wn.2d 488, (1994).

asked to review whether retroactively applying the Community Protection Act to felony sex offenses was an ex post facto violation.²⁰ The court concluded that retroactive application of the statute did not violate either the appellants' equal protection or due process rights under the federal and state constitutions.

A review of the court's analysis in this decision indicates that they considered the statutory framework to be one of "limited disclosure".²¹ Their holding concluded:

“We hold, however, that because the Legislature had limited the disclosure of registration to the public, the statutory registration scheme does not impose additional punishment on registrants”.

The court did not review the question of disclosing sex offender registration information pursuant to the Public Disclosure Act (PDA) Chapter 42.17 RCW which was in effect at the time. The court is currently considering the question of disclosing sex and kidnapping offender registration information in relation to the current Public Records Act (PRA) Chapter 42.56 RCW and RCW 4.24.550 in *Doe v. Washington State Patrol*. However, it is unlikely that the case's resolution will depend on an examination of the individual offender's rights and will more likely rest on whether the information in RCW 4.24.550 is subject to a general public records analysis.

Aside from the impact of release of information on the offender's ability to reintegrate, there is little question that the public feels safer when they have access to sex and kidnapping offender registration information. The Washington State Institute for Public Policy (WSIPP) performed two studies on public perception; one in 1998²² and a follow-up in 2008.²³ Both studies conducted a random digit-dialing survey to measure the respondent's familiarity with, opinion of, and reaction to the law as well as its purposes and importance. The majority of respondents indicated they felt safer knowing about sex and kidnapping offenders in their community and they indicated that Washington's community notification law was important.²⁴ Fifty-four percent of the respondents thought that community notification makes it easier for citizens to harass, threaten or abuse the released sex or kidnapping offender.²⁵ Seventy-eight percent of the respondents thought that special care should be taken to prevent such harassment and eighty-four percent of respondents thought that notification would make it harder for offenders to rent a house, find a new job, or establish a new life.²⁶

²⁰ *Id.* at 495.

²¹ *Id.* at 499.

²² Phillips, Dretha M. (1998). *Community Notification as Viewed by Washington's Citizens*. Olympia: Washington State Institute for Public Policy, Document No. 98-03-1101.

²³ Lieb, Roxanne and Corey Nunlist (2008). *Community Notification as Viewed by Washington's Citizens: A Ten-Year Follow-Up*. Olympia: Washington State Institute for Public Policy, Document No. 08-03-1101.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

Other articles report similar results, that even if the public does not actively use offender registration information, they feel better when it is available.²⁷ This perception of public safety due to large-scale disclosure has been criticized in recent years. Community notification laws were originally enacted based on the premise that sex offenders have a high recidivism rate and jeopardize general public safety.²⁸ Now, 25 years later, there is some question as to whether blanket disclosure of sex offender information actually perpetuates a false sense of security.²⁹ Acknowledging that most sexual assault is committed by a person known to the victim and given advances in prevention, the body of literature has evolved and indicates that while “stranger danger” is an important theme to educate around, it would be more meaningful to expend education efforts focusing on known persons such as family members, friends and acquaintances.³⁰

A one-size-fits-all approach to disclosure of sex and kidnapping offender information is not only ill-advised but may cause harm. Disclosing less offender information, rather than more information, may seem counter-intuitive to some, but research demonstrates broad information dissemination has real and significant consequences for victims and offenders and can impact community safety.³¹ The SOPB finds that there is an important balance to strike between records availability and an offender’s ability to re-integrate as well as victim considerations and helping ensure a safer public. Thoughtful consideration of reviewing Washington state’s disclosure policy falls in line with many states that are re-examining certain provisions within their sex offender registration and notification laws.³²

See Appendix A for the literature review that was completed for the SOPB on this issue.

Public Information Compiled for Sex and Kidnapping Registry Offenses and the Relationship Between Chapter 42.56 and RCW 4.24.550

The public disclosure of sex and kidnapping registration information in Washington is unique because of how many different governmental agencies handle related information and each agency’s independent obligations to comply with the Public Records Act. There are various forms of sex and

²⁷ Boyle, Douglas J., Laura M. Ragusa-Salerno, Andrea Fleisch Marcus, Marian R. Passannante, and Susan Furrer. “Public knowledge and use of sexual offender internet registries: Results from a random digit dialing telephone survey.” *Journal of Interpersonal Violence* (2013): 0886260513511698. See also, McCartan, Kieran. “From a lack of engagement and mistrust to partnership? Public attitudes to the disclosure of sex offender information.” *International Journal of Police Science & Management* 15, no. 3 (2013): 219-236.

²⁸ Laws of 1990, ch. 3 § 116, Laws of 1994, ch. 129 §1, Laws of 1997, ch. 113 §1,

²⁹ Amyot, Vanessa. “Sex Offender Registries: Labelling Folk Devils,” *Crim. L. Q.* 55 (2009):188. See also Prescott, J.J. “Do Sex Offender Registries Make Us Less Safe?” *Regulation* 35 (2012): 48.

³⁰ Yung, Corey Rayburn. “The Ticking Sex-Offender Bomb” *J. Gender Race & Just.* 15 (2012): 81.

³¹ Logan, Wayne. “Megan’s Law as a Case Study in Political Stasis,” *Syracuse L. Rev.* 61 (2011): 371.

³² Mather, Kate and Kim, Victoria. “California eases Jessica’s Law Restrictions on Some Sex Offenders,” *Los Angeles Times*, March 26, 2015. Retrieved at: <http://www.latimes.com/local/crime/la-me-jessica-law-20150327-story.html>, Neyfackh, Leon. *California’s Sane New Approach to Sex Offenders and Why No Other State is Following Its Example*, www.slate.com (April 2, 2015). Retrieved at: http://www.slate.com/articles/news_and_politics/crime/2015/04/california_s_sane_new_approach_to_sex_offenders_and_why_no_one_is_following.html Schwartz, Robert G. “Time to Revisit Sex Offender Registration Laws,” *29 Crim. Just.* 43 (2014-2015).

kidnapping offender registration information that reside within multiple agencies. This information is required by different statutes, most notably RCW 9A.44.130, which pertains to registration of sex offenders and kidnapping offenders.

An offender who is required to register pursuant to RCW 9A.44.130 must, in some format, provide to the county sheriff: name, any aliases used, accurate residential address or if lacking a fixed residence, where he or she plans to stay, date and place of birth, place of employment, crime for which he or she has been convicted, date and place of conviction, social security number, photograph, and fingerprints.³³ The registrant must also provide the sheriff with an accurate accounting of where he or she stayed during the week if he or she lacks a fixed residence.³⁴ If a person subject to registration requirements applies to change his or her name pursuant to RCW 4.24.130, he or she must provide the sheriff with a copy of the application.³⁵

The county sheriff is required to send this registration information, photographs, fingerprints, risk level notification, and any change of address to the Washington State Patrol (WSP).³⁶ The WSP is required to maintain a central registry of sex offenders and kidnapping offenders who are required to register pursuant to RCW 9A.44.130.³⁷ WSP acts as a repository for the sex and kidnapping offender registration forms submitted by the county sheriffs for retention and enters the registration data from these “source documents” into the database.³⁸ These documents also include the offender’s current risk level classification; it is unknown whether the WSP maintains any documents in support of the classification decision such as the completed classification tool or records related to discretionary leveling decisions. WSP asserts that the State Patrol Database only includes the offender’s name, residential address, date of birth, crime for which he or she was convicted, date of conviction, and county of registry.³⁹

In addition to this legislative mandate, RCW 4.24.550 requires the Washington Association of Sheriffs and Police Chiefs (WASPC) to, subject to funding, maintain a statewide registered kidnapping and sex offender website that is available to the public.⁴⁰ The website is required to post information regarding eligible, convicted sex offenders who have been assessed as a level II and level III offender, level I registered offenders who are out of compliance or lack a fixed address, and all kidnapping offenders.⁴¹ Although WASPC stresses that they are not generally a state agency subject

³³ RCW 9A.44.130(2)(a).

³⁴ RCW 9A.44.130(5)(b).

³⁵ RCW 9A.44.130(6).

³⁶ RCW 43.43.540(1).

³⁷ RCW 43.43.540(2).

³⁸ Brief of Appellant Washington State Patrol at 1, John Doe A, et al v. Washington State Patrol et al, No. 90413-8.

³⁹ Washington State Patrol’s Answer to Amicus Brief at 1-2, John Doe A, et al v. Washington State Patrol et al, No. 90413-8.

⁴⁰ RCW 4.24.550(5)(a).

⁴¹ *Id.*

to the PRA, they agree that pursuant to specific legislative mandate, they maintain a defined public database with the information in the database constituting a public record.⁴²

Although law enforcement agencies are primarily responsible for maintaining registration information, many other public agencies are responsible for the initial risk classification and notifications. Other agencies that may maintain sex and kidnapping offender registration information include, but are not limited to, the Department of Social and Health Services, the Juvenile Justice & Rehabilitation Administration, the Department of Corrections, the Special Commitment Center at the Department of Social and Health Services, as well as other agencies that may provide services to offenders that require the use of sex and kidnapping offender information. As governmental entities, these agencies are all subject to the PRA.

In addition to each individual agency's requirement to comply with the PRA, the release of information regarding sex and kidnapping offenders is governed by RCW 4.24.550. It authorizes public agencies to release certain offender information under certain circumstances. The statute does not specifically prohibit disclosure of offender information and in fact asserts that information under the section should *not* be considered confidential except otherwise provided for by law.⁴³ However, it also sets forth narrowly tailored criteria for the release of offender information based on who is releasing it and what information is to be released. Release of information pursuant to RCW 4.24.550 is dependent on the offender's risk level.

It is important to note that the public policy behind the PRA is to allow citizens to maintain control over their government, while the public policy related to release of sex and kidnapping offender information is to further public safety. The actual legal relationship between Chapter 42.56 RCW and RCW 4.24.550 may be decided by the Supreme Court when they issue their decision on *Doe*. Until then, observations can be made by examining these statutes together and looking at how other states treat disclosure of registration information.

The PRA requires a government agency to respond to a request for information within five days. Within that timeframe, an office or agency must either provide the record, an Internet link to the information, or an acknowledgement of the request with a predicted time frame of when the agency can respond or deny the request.⁴⁴ Although RCW 42.56.060 protects agencies, officials, public employees or custodians from a cause of action related to loss or damage based upon the release of a record if they acted in good faith in an attempt to comply with the chapter, the PRA has strict monetary penalties for delay or non-disclosure of records.

By contrast, RCW 4.24.550(7) provides immunity from civil liability to public officials, public employees, a public agency as defined in RCW 4.24.470 or units of local government and its employees as provided in RCW 36.28A.010 unless they act with gross negligence or in bad faith. It also includes a statement of non-liability for failure to release information under the section.

⁴² Brief in Response Washington Association of Sheriffs & Police Chiefs ("WASPC") at 8, John Doe A, et al v. Washington State Patrol et al, No. 90413-8.

⁴³ RCW 4.24.550(9).

⁴⁴ RCW 42.56.520.

The contrast between the approaches of the two statutes becomes apparent when an agency receives a request for sex and kidnapping offender records. If an agency is asked to comply with the disclosure requirements of both Chapter 42.56 RCW and RCW 4.24.550, it is clear that the most prudent route for an agency to take is to liberally disclose records because there is a strict monetary penalty for non-disclosure under the PRA, and immunity of disclosure or non-disclosure of a record is provided for under RCW 4.24.550. There is little incentive to adhere to the guidelines of RCW 4.24.550, as the agency is liable for potentially large financial penalties under Chapter 42.56 RCW if it withholds a document that is considered public.

See Appendix B for full analysis on the relationship between Chapter 42.56 and RCW 4.24.550.

Findings

- **Washington's comprehensive statutory scheme controlling the release of information to the public regarding sex and kidnapping offenders contained in RCW 4.24.550 has worked well since its inception with the passage of the Community Protection Act in 1990.**

The limitations on public disclosure of sex and kidnapping offender registration information contained in RCW 4.24.550 have proven an appropriate balance of the public's right and need to know about higher risk sex and kidnapping offenders in the community with the legitimate needs to protect the privacy of sex and kidnapping offenders, their families and their victims, and to foster reintegration of offenders into the community while protecting community safety.

The Washington State Legislature mandated that the registration records of level I sex and kidnapping offenders - those deemed to be the lowest risk to sexually reoffend in the community - shall only be released to the public under limited circumstances, namely when release of the records is necessary and relevant. The public agency determines which records are exempt from public disclosure by applying RCW 4.24.550, which serves as an "other statute" under the PRA.

RCW 4.24.550 states that an "agency may disclose, upon request, relevant, necessary, and accurate information" about any sex and kidnapping offender, but that the "extent of the public disclosure of relevant and necessary information shall be rationally related to (a) the level of risk posed by the offender to the community; (b) the locations where the offender resides, expects to reside, or is regularly found; and (c) the needs of the affected community members for information to enhance their individual and collective safety".

RCW 4.24.550 balances this limitation on the release of information for level I sex and kidnapping offenders in response to public requests with two mandatory disclosures relevant to level I offenders. First, under section 3(a), local law enforcement must share information with other appropriate law enforcement agencies and any public or private schools that the offender attends. Second, under section 5(a), the Washington Association of Sheriffs and Police Chiefs shall create a public website posting all eligible, convicted level II and level III sex offenders, plus all level I sex offenders who are out of compliance with the registration requirements or lack a fixed address and all registered kidnapping offenders.

Sex and kidnapping offender registration information about level I offenders may also be disclosed under two specific provisions of RCW 4.24.550. Law enforcement may release information regarding any offender, including level I offenders, to any victim or witness to the offense and to any individual community member who lives near the residence where the offender resides, expects to reside, or is regularly found. In addition, in 2015 the Legislature enacted Chapter 261, Laws of 2015 which expanded the information about level I offenders that may be released to include any individual who requests information regarding a specific offender. This provision has only been in effect since July 24, 2015.

- **RCW 4.24.550 should be considered an “other statute” under RCW 42.56.070. Washington’s Public Records Act requires agencies to produce public records upon request “unless the record falls within the specific exemptions of this chapter, or any other statute which exempts or prohibits disclosure of specific information or records”. See RCW 42.56.070.**

RCW 42.56.070 is clear in that it exempts certain records from the PRA that are exempt or prohibited from disclosure by “other statutes”. On its face, RCW 4.24.550 governs the “public disclosure” of information regarding sex and kidnapping offenders upon the request of community members⁴⁵.

The Legislature intended RCW 4.24.550 to limit public disclosure regarding some of the information gathered under RCW 9A.44.130. The legislative history of RCW 4.24.550 supports this reading. The statute was first crafted with public disclosure laws in mind, with the Legislature specifically remarking that RCW 4.24.550 was necessary to correct the “reduced willingness to release information that could be appropriately released under the public disclosure laws”.⁴⁶ Not reading RCW 4.24.550 as an “other statute” would undermine the entire risk-based system Washington has adopted for community notification and registration information release.

- **Release of level I sex and kidnapping offender information would be the equivalent to broad-based community notification which is generally reserved for higher risk sex and kidnapping offenders in our state. This would functionally eliminate our tiered risk level approach to community notification which the Legislature and many other stakeholders have worked diligently over the last 20 plus years to develop, implement and improve.**

The SOPB assumes that, if the Legislature were to allow the widespread dissemination of information obtained regarding sex and kidnapping offenders under RCW 9A.44.130, this would lead to the establishment of an online searchable database and effectively lead to widespread community notification of *all* offenders. The original requestor of this information in the *John Doe v.*

⁴⁵ See RCW 4.24.550(2) (“the extent of the public disclosure of relevant and necessary information shall be rationally related to: (a) the level of risk posed by the offender to the community; (b) the locations where the offender resides, expects to reside, or is regularly found; and (c) the needs of the affected community members for information to enhance their individual and collective safety.”) and RCW 4.24.550(3) (“... local law enforcement agencies shall consider the following guidelines in determining the extent of a public disclosure”).

⁴⁶ Laws of 1990, Chapter 3, § 116.

Washington State Patrol, et al. case currently pending before the Washington Supreme Court, has demonstrated the intent to post the results of the PRA request on a website available to, and searchable by, the general public. This person has already posted registration records she obtained from Franklin County in 2013 to her public Google+ website.

The creation of a searchable online database would render our risk-based system of community notification and sex offender management effectively replaced by universal community notification. Research tells us this would dilute the effectiveness of community notification and make it much more difficult for the public to identify those individuals who pose an actual increased risk to them and their friends and families.

- **The widespread dissemination of level I offender information would have a deleterious effect on victims who are often known or related to offenders or otherwise connected with offenders. This would particularly impact the level I offenders who have not been subject to community notification or the widespread dissemination of their sex and kidnapping offender registration information.**

If RCW 4.24.550 and RCW 42.56.070 were read to allow the widespread dissemination of level I sex and kidnapping offender registration information that is not currently available to the general public, the potential impact on the victims of those offenses could and likely would be profound. In the past, RCW 4.24.550 has always been read as an “other statute” under the PRA and information regarding offenders set at a level I, and information regarding their victims, has not previously been widely disseminated.

If not conducted carefully, the sudden and widespread dissemination of this information can inadvertently reveal the identity of the victim, particularly in cases where the offender and the victim are in the same family or when information is distributed in the neighborhood where the offender's victim lives. Indeed, there are reports that victims' identities have been disclosed as a result of community notification⁴⁷. The majority of both female and male rape victims knew their perpetrator⁴⁸. It is important to note that sexual crimes that are committed by known persons, such as incest, often result in a level I designation as the risk to the general community is typically considered to be lower. Level I offenders comprise the largest portion of the current registry. The sudden dissemination of this information without the controls now in place through the community notification process would pose a great risk to those victims.

A landmark study about the effect of sexual assault on victims found that the "fear of others knowing" that they had been sexually assaulted ranked top among victim concerns that influenced their decision to report or not report the assault⁴⁹. The consequences of losing privacy and unintended re-victimization through sensitive and personal victim information being more readily

⁴⁷ Center for Sex Offender Management (2001). Community Notification and Education. Silver Spring, MD.

⁴⁸ Black, M.C., Basile, K.C., Breiding, M.J., Smith, S.G., Walters, M.L., Merrick, M.T., Chen, J., & Stevens, M.R. (2011). The National Intimate Partner and Sexual Violence Survey (NISVS): 2010 Summary Report. Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention.

⁴⁹ Kilpatrick, D.G., Edmunds, C., Seymour, A. (1992). Rape in America: A report to the nation. Charleston, SC: National Victim Center & the Crime Victims Research and Treatment Center, Medical University of South Carolina.

public cannot be ignored. It may have a chilling impact on the willingness of victims to come forward and report victimization out of fear that their information will be made further available to the public, which, in turn, impacts general community safety when crimes go unaddressed.

To prevent the inadvertent disclosure of victim identity, a number of jurisdictions across the country developed protocols to guide criminal justice officials in implementing a notification program. Wisconsin, for example, has notification guidelines that address the danger that a victim's privacy may be violated through notification and "underscore the grave desire that the situation be avoided"⁵⁰. The WASPC Model Policy also addresses these concerns.

If information regarding sex and kidnapping offenders were released wholesale in a way that did not include these protections, the impact on the victims of these crimes could be extremely serious.

- **The social science research reviewed by the SOPB indicates that widespread dissemination of information collected for all sexual offenders often has the unintended consequence of creating obstacles to community reentry that may actually undermine, rather than enhance, public safety.**

Widespread disclosure of information on all sex and kidnapping offenders, regardless of their level of risk to the general public, dilutes the efficacy of notification and undermines public safety and rehabilitation. Offenders and their families face grave mental, emotional, physical, and economic consequences as a result of being "outed" as a registered sex and kidnapping offender.

The harms caused by the widespread dissemination of sex and kidnapping offender registration records go far beyond that caused by public availability of conviction records. At the outset, conviction records (such as court records or records obtained under Chapter 10.97 RCW) do not contain all of the information available in sex and kidnapping offender registration records, such as exact residential addresses, current employers or schools, treatment information and photographs as well as victim information and or victim impact statements as part of the court record.

It should be noted that in recent years Washington has witnessed a double homicide of sex offenders whose locations were determined based upon registry information that then included the full residential address. Washington has since ended the practice of publishing the last two digits of the residential address, but widespread dissemination of this information under the PRA would likely include this sensitive and potentially dangerous information.

- **The widespread dissemination of level I offender information would have even greater collateral consequences for low-risk juvenile offenders and their families. Juvenile sex offenders already have many challenges re-integrating into society and this would be another obstacle. The release of their information would likely negatively impact a variety of known risk factors, which may ultimately increase their risk for participating in future criminal behavior.**

⁵⁰ Zevitz, Richard G. and Mary Ann Farkas (2000). Sex Offender Community Notification: Assessing the Impact in Wisconsin. Washington, D.C.: National Institute of Justice.

Adult and juvenile sex offenders are different. Based on a review of the growing body of literature about collateral consequences of sex offender registration and community notification for juvenile offenders, there is a significant potential for harm to level I juvenile sex offenders if their information is made available to the general public. The impacts, as demonstrated through neurological and social science, have a greater effect on juveniles than the adult population, based on where they are at in their formative developmental years^{51 52}.

Widespread dissemination of information collected on level I juvenile sex offenders, which is the outcome of releasing their information via public disclosure, would have varied and harsh consequences for these youth potentially lasting their lifetime. The anticipated impacts include (but are not limited to):

- Additional barriers to admission in school programs at all levels, thus impacting employability,
- Increased victimization and bullying by both peers and adults leading to social isolation,
- Significant barriers to the development of normal social/peer relationships which may lead them to develop relationships with anti-social peers,
- Additional barriers to employment which may lead to increased homelessness and general delinquency,
- Additional barriers to obtain housing resulting in increased homelessness,
- Lasting social stigma impacting their ability to develop normal peer relationships and be socialized in a pro-social manner,
- Inability to experience normal adolescent development, increasing risk for future delinquent behavior,
- Inability to maintain family relationships or experience normal intimate relationships.

It is of paramount importance to note that youth who have committed sex offenses have extremely low reoffense rates according to both national and in-state data. A meta-analysis demonstrates sexual recidivism rates range from 3 percent to 14 percent⁵³. Additionally, evaluations completed by WSIPP indicated sexual recidivism rates at 10 percent and 9 percent in two separate evaluations with five year follow-ups that included both misdemeanor and felony sexual reoffenses^{54 55}. The recidivism rates for the WSIPP studies include all levels of juvenile sex offenders from the lowest level Is to the highest risk level 3s. It is reasonable to assume that if the analysis only looked at level I offenders, the rates would be even lower.

⁵¹ Dr. Terry Lee, *Adolescent Brain Development PowerPoint Presentation*, (July 2009).

⁵² *Roper v. Simmons* (03-633), 543 U.S. 551 (2005).

⁵³ Reitzel, L., Carbonell (2006). The Effectiveness of sexual offender treatment for juveniles as measured by recidivism: a meta-analysis, *Sex Abuse* 18:401-421.

⁵⁴ Leib, R. (1998). *Sex offenses in WA state: 1998 Update*. Olympia: Washington State Institute for Public Policy, Document No. 98-08-1101.

⁵⁵ Barnowski, R. (2008). *Assessing the risk of juvenile sex offenders using the intensive parole sex offender domain*. Olympia: Washington State Institute for Public Policy, Document No. 08-05-1101.

It is important to recognize that a significant portion of the level I juvenile offender population with adjudicated sex offense behavior occurred at very young ages, with the highest frequency occurring between the ages of 12-15 years of age⁵⁶. Because of the early age linked to their sexual behavior and the absence of paraphilic interests, treatment interventions are often more successful with juveniles than their adult counterparts⁵⁷.

Recognizing the significance and inherent differences between the juvenile and adult sex offender populations, the SOPB recommended the creation of separate statutes to address these differences both related to juvenile community notification and registration⁵⁸.

- **Widespread dissemination of sex and kidnapping offender registration information would undermine the legal rationale for upholding the constitutionality of sex and kidnapping offender registration and notification adopted by the Washington Supreme Court.**

When the Washington Supreme Court examined whether sex and kidnapping offender registration constituted *ex post facto* punishment, the court found it did not on the very basis that "[t]he Legislature placed significant limits on (1) whether an agency may disclose registrant information, (2) what the agency may disclose, and (3) where it may disclose the information". The court also found disclosure was tied to risk and "the geographic scope of dissemination must rationally relate to the threat posed"⁵⁹. In so holding, this court relied on legislative history which instructed that release be made to public agencies "and under limited circumstances, the general public" which protected sex and kidnapping offenders from a "badge of infamy" through the limited disclosure of registration information. The court added, "We hold, however, that because the Legislature has limited the disclosure of registration information to the public, the statutory registration scheme does not impose additional punishment on registrants"⁶⁰.

The widespread dissemination of sex offenders' information would undermine this rationale, and could lead the court to revisit its holding that the current scheme of sex and kidnapping offender registration and community notification meets the constitutional tests of the Washington constitution.

The Supreme Court noted in *Ward*, "the Legislature has broad discretion to determine what the public interest demands and what measures are necessary to secure and protect that interest" and in the case of sex and kidnapping offender records, determined that "disclosure would serve no legitimate purpose" if not for the careful structure established under RCW 4.24.550.⁶¹ The court holding in *Ward* was clearly written with an awareness of the competing considerations of the PRA, and clearly considered RCW 4.24.550 an "other statute" that was exempt from PRA disclosure. It is

⁵⁶ Annual report to the legislature (2009). Olympia: Washington State Sex Offender Policy Board.

⁵⁷ Hunter, J. A. (2006). Understanding diversity in juvenile sexual offenders: Implications for assessment, treatment, and legal management. In R.E. Longo & D.S. Prescott (eds), *Current perspectives: Working with sexually aggressive youth and youth with sexual behavior problems* (p. 63-78). Holyoke, MA: NEARI Press.

⁵⁸ Annual report to the legislature (2009). Olympia: Washington State Sex Offender Policy Board.

⁵⁹ State v. Ward, 123 Wn.2d 488, 502-04, 869 P.2d 1062 (1994)

⁶⁰ State v. Ward, 123 Wn.2d 488, 502-04, 869 P.2d 1062 (1994)

⁶¹ State v. Ward, 123 Wn.2d at 502. 516

impossible to read the holding in the *Ward* case as anything other than an implicit finding that the provisions of RCW 4.24.550 are an exception to the PRA.

Recommendations

A) RCW 4.24.550 be amended to include the following sentence:

Sex offender and kidnapping offender registration information is exempt from public disclosure under chapter 42.56 RCW.

B) RCW 42.56.240 be amended to include the following sentence:

The following investigative, law enforcement, and crime victim information is exempt from public inspection and copying under this chapter:

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.

SEC. 16(b) ANY OTHER BEST PRACTICES ADOPTED BY OR UNDER CONSIDERATION IN OTHER STATES REGARDING PUBLIC DISCLOSURE OF INFORMATION COMPILED AND SUBMITTED FOR THE PURPOSES OF SEX OFFENDER AND KIDNAPPING OFFENDER REGISTRIES

The phrase “best practice” within the context of public disclosure of sex and kidnapping offender information may be a misnomer. Sex and kidnapping offender registration and community notification are different systems with different goals. Many states have adopted an offense-based registration system which bases registration, and sometimes notification, only on the commitment of a specific sex or violent offense – not on any assessment of risk. Instead, Washington state relies on risk level classification to determine how to distribute sex and kidnapping registration information.⁶²

Instead of limiting the state survey to only states that have adopted a risk-based registration and notification system, the SOPB has surveyed all states to find good and common practices related to public disclosure of sex and kidnapping offender information. Five areas related to the release of information which could be considered in Washington state were found.

- Clear identification of the relationship between the state’s public records act statutes and sex and kidnapping offender registration and notification act statutes.

⁶² RCW 4.24.550.

- Limited availability or disclosure of sex and kidnapping offender registration information based on risk level.
- Distinguished differences between publicly disclosed information and offender information gathered for the purposes of registration.
- Clear definition in statute of the specific information to be disclosed, included, exempted, or deemed confidential.
- Creation of criminal and/or civil penalties specifically for misuse of registration information, not just for using the information in relation to the commission of a crime against an offender.

Six states clearly identify the relationship between the state's public records act and the state's sex and kidnapping offender registration and notification laws. States establish this relationship in several ways. Usually, it's either by clearly identifying an exemption to the state public records act within the SORNA statute, an affirmative statement that the SORNA statutes exclusively govern disclosure of sex and kidnapping offender registration information, or that the SORNA statutes are not subject to the state's public records act.

Louisiana and Alabama affirmatively state that collection and dissemination of registration information is governed by their SORNA statutes.⁶³ New Hampshire and West Virginia exempt the information located within their SORNA provisions from their respective public records acts.⁶⁴ Both Kansas and Florida SORNA laws reference their state's public records acts and clarify that the information within the state SORNA law is subject to public records laws.⁶⁵ By clearly identifying which provision governs disclosure of sex and kidnapping offender information, whether it is the state SORNA law or the state public records law, it leaves no room for doubt if there is a conflict. This lack of clarity is what led to the legal issues in the Washington Supreme Court case *Doe v. Washington State Patrol*.⁶⁶

Seven states limit blanket availability of information based on risk level. Montana distinguishes not only between disseminating information based on risk level but they have also chosen to disclose more registration information if the offense was committed against a child.⁶⁷ Massachusetts publishes level 2 and level 3 offender information on the Internet but has specific guidelines written by the Sex Offender Registry Board related to any public disclosure of level I information.⁶⁸ Nevada publishes tier 2 and 3 offenders on the Internet and maintains tier 0-1 in its central repository which is limited to law enforcement agencies and the courts.⁶⁹

⁶³ La. Rev. Stat. Ann. § 15:548 and Ala. Code §15-20A-42.

⁶⁴ N.H. Rev. Stat. Ann. §651-B:7 and W. Va. Code §15-12-5.

⁶⁵ Fla. Stat. §775.21.

⁶⁶ No. 90413-8.

⁶⁷ Mont. Code Ann. §46-23-508.

⁶⁸ Mass. Gen. Laws §178J(b).

⁶⁹ Nev. Rev. Stat. §179B.280-290.

In Rhode Island, information is disclosed freely about level 2 or level 3 offenders (unless they are juveniles⁷⁰) and restricts dissemination of information of non-public registration information without the written consent of the person. Connecticut has a Risk Assessment Board that recommends which level of offenders should be available through the Internet as does New Jersey which has an Internet Registry Advisory Council. New Jersey also maintains guidelines for law enforcement related to the implementation of SORNA laws, including disclosure of information to the public.⁷¹ Iowa takes the extraordinary step of considering all sex offender registry records which are not specifically publicly available via the Internet or sheriff's office to be confidential.⁷²

Most states require more personal information from a registrant for law enforcement purposes than they allow to be public-facing or publicly disclosed. Some states accomplish this by maintaining separate databases for law enforcement information versus publicly accessible data.⁷³ Other states accomplish this by defining which information is “public” or “relevant”. A few states have combined methods of disclosure limiting some information for law enforcement, listing some information on the Internet and making more information available pursuant to individual request.⁷⁴ Three states, Oregon, Pennsylvania and Wisconsin, provide victim-specific access to non-public offender information.⁷⁵

Low-risk offenders (level 0 or 1) and juveniles are commonly excluded from web publication and/or disclosure other than for law enforcement purposes. Some of these determinations are made as a result of registration laws which limit registration requirements for juveniles, other determinations are made on an individual basis or pursuant to a policy decision about notification.

Several states clearly define what information is to be disclosed publicly or limited to law enforcement or official purposes. For example, Connecticut defines the word “registry” to identify the information held in the central, public database but restricts dissemination of certain information held in the registry.⁷⁶ Delaware defines “searchable records,”⁷⁷ Montana defines “Public Criminal Justice Information,”⁷⁸ and Tennessee defines “relevant and necessary information”.⁷⁹ Other states such as Hawaii,⁸⁰ Iowa,⁸¹ and Utah⁸² specifically define aspects of records or the website. While this practice seems basic, it can clear up confusion about which records are intended to be publicly accessible, instead of referring vaguely to “website”, “database” or “registration information”.

⁷⁰ R.I. Gen. Laws §11-37.1-14(4).

⁷¹ N.J. Rev. Stat. 2C:7-6 and Kan. Stat. Ann. §22-4907.

⁷² Iowa Code §692A.121(14).

⁷³ Ala. Code §15-20A-7 & 8(b), Ariz. Rev. Stat. §13-3823, Ca. Penal Code §290.46, Idaho Code Ann. §18-8305, Iowa Code 692A.121, Mich. Comp. Laws §28.730, N.C. Gen. Stat. §14-208.14, §14-208.15, and §14-208.29.

⁷⁴ Me. Rev. Stat. Ann. Tit. §11281(7)(c), Mass. Gen. Laws §178J, NY Code 168.

⁷⁵ Or. Rev. Stat. §181.843, 42 Pa. C. S. §9799.26, Wis. Stat. §301.46.

⁷⁶ Conn. Gen. Stat. §54-255(a).

⁷⁷ Del. Code Ann. Tit. 11 §4120.

⁷⁸ Mont. Code Ann. §44-5-103.

⁷⁹ Tenn. Code Ann. §40-39-206(d)(1)-(15).

⁸⁰ Haw. Rev. Stat. §846-3(3)(b).

⁸¹ Chapter 692A Code of Iowa.

⁸² Utah Code Ann. §77-41-110.

Most states have some type of enhanced penalty for using registration information to commit a crime. However, California, Florida, Idaho, Indiana, Illinois, Mississippi, Nevada and Virginia have more severe criminal penalties for misuse of information. Illinois defines and criminalizes “unauthorized release of information”. In Virginia, use of registry information which is not authorized is prohibited and unlawful. The use of information to intimidate or harass is a class 1 misdemeanor.⁸³

California and Nevada allow for a civil action for damages which are incurred as a result of someone misusing website information. California has the most comprehensive set of criminal penalties and civil recourse for misuse of website information. If someone uses registry information to commit a misdemeanor, they become liable for an additional \$10,000 to \$50,000 fine. If they commit a felony, they are subject to an additional five year imprisonment. The state also allows an aggrieved person or the Attorney General to bring a civil action for misuse.⁸⁴

Findings

- A number of states limit the disclosure of sex offender registration information for juvenile offenders. Washington has no such limitations in our current statutory scheme.
- A number of states use a system similar to Washington where the disclosure of sex offender registration information is largely limited to high risk and moderate risk offenders, and low-risk offenders’ information is not disclosed except in certain narrow circumstances.
- Some states allow the crime victims to have greater access to sex offender registration information than other members of the public. Washington law likewise gives victims and witnesses greater access to this information than the general public.
- Some states have made exceptions to their disclosure rules to allow legitimate academic and social science research to be done using personal identifiers for research purposes only.

Recommendations

The SOPB recognizes that adults and juveniles are generally different. Many states acknowledge these differences in their statutes related to sex offender registration and community notification and treat juveniles differently. As such, the SOPB believes this issue warrants additional consideration by Washington policymakers.

⁸³ Va. Code Ann. §9.1-918.

⁸⁴ Ca. Penal Code §290.46.

SEC. 16(c) ABILITY OF REGISTERED SEX OFFENDERS AND KIDNAPPING OFFENDERS TO PETITION FOR REVIEW OF THEIR ASSIGNED RISK LEVEL CLASSIFICATION AND WHETHER SUCH A REVIEW PROCESS SHOULD BE CONDUCTED ACCORDING TO A UNIFORM STATEWIDE STANDARD

Several changes occurred in the statutes that govern the sex and kidnapping offender registration and notification system in Washington state with the passage of Chapter 261, Laws of 2015 (SSB 5154). One change included RCW 4.24.550(6)(d) which was enacted and read as follows, “Agencies may develop a process to allow an offender to petition for review of the offender’s assigned risk level classification. The timing, frequency, and process for review are at the sole discretion of the agency”.

This statutory change provides clear authority to local law enforcement to develop a review process and leaves each entity with discretion as to what their process includes and to the standards they will use in their review. As a result of this change, the SOPB was directed by the Legislature to look more closely at this issue and make findings and recommendations.

To assist in the review, the SOPB examined the current risk level review processes that are in place in ten counties across the state as provided by Washington Association of Sheriffs and Police Chiefs SOPB. Each of the counties reviewed has a local risk level committee that is generally responsible for reviewing requests for risk level reduction. These committees are the same entities that complete the risk level assignment for offenders with a registration requirement in their county. The process established in most of the counties reviewed was substantially similar, though there were some differences in criteria used by counties in their review process. The SOPB’s review of these ten counties’ processes and criteria for an offender’s request for assigned risk level classification reduction led the SOPB to believe that there are benefits from applying research and recommendations for best practices and consistency in this area.

Findings

As a result of Chapter 261, Laws of 2015, agencies now have clear authority and discretion regarding whether or not to develop a review process and discretion regarding the process that they will use if they choose to adopt such a practice. The SOPB finds the following:

- **Availability of a review process assists in maintaining a consistent approach to sex offender management.**

A sex or kidnapping offender’s risk of reoffense in the community may change as the offender successfully integrates into the community. An established process to review an offender’s request for risk level reduction facilitates the successful outcome of those offenders who pose a lower risk to the community than when they were first registered and is helpful in ensuring the most accurate registry of offenders in the community.

- **Criteria for risk level determination should be based in research and linked to risk to the community.**

Research-based Decision Making - The SOPB believes that risk level determinations should be grounded in research/evidence whenever possible. Using criteria that have been reviewed and are supported by the literature is important to ensure the best predictive value of these assessments, as well as reduce potential harm to the community.

Recommendations

The SOPB supports the concept of each county having an established process to review the risk classification level when requested by an offender registered in their jurisdiction. After considerable discussion and debate, the SOPB makes the following recommendations:

To the Legislature:

- A) The SOPB recommends that the SOPB be authorized to develop best practices for the process and criteria regarding a sex or kidnapping offender's request for assigned risk level classification review*.

The board is not recommending any statutory change to RCW 4.24.550(6)(d) at this time.

*The SOPB has been directed by Governor Inslee to carry out this task.

To Law Enforcement:

Through the course of deliberations, the SOPB came to a consensus on the following recommendation to law enforcement.

- B) The SOPB recommends that each law enforcement agency responsible for sex and kidnapping offender registration and community notification have an established process to accept and review a sex or kidnapping offender's request for assigned risk level classification review and use criteria to reduce or increase that level that are supported by current research as much as practicable.
- C) The SOPB recommends that the Washington Association of Sheriffs and Police Chiefs amend its model policy created pursuant to RCW 4.24.5501 to recommend that each law enforcement agency responsible for sex and kidnapping offender registration and community notification have an established process to review the assigned risk classification level when requested by an offender registered in their jurisdiction. Furthermore, the SOPB recommends that the model policy incorporates or references the best practices referenced above, once developed.
- D) The SOPB recommends that the Washington Association of Sheriffs and Police Chiefs conduct a survey to assess which agencies have an established process to review a sex or kidnapping offender's request for assigned risk level classification review and what that process is, and share the results of such survey with the SOPB by December 1, 2016. While many jurisdictions have created processes to consider requests from offenders to reduce their community notification risk level, the statute has not explicitly authorized this process until the passage of Chapter 261, Laws of 2015 (SSB 5154).

SEC. 16(d) THE GUIDELINES ESTABLISHED UNDER RCW 4.24.5501 ADDRESSING SEX OFFENDER COMMUNITY NOTIFICATION, INCLUDING WHETHER AND HOW PUBLIC ACCESS TO THE GUIDELINES CAN BE IMPROVED

The guidelines established under RCW 4.24.5501 serve as a resource for law enforcement agencies and do not serve in and of itself as a mandatory policy in any law enforcement agency in this state. Though they may use information from the guidelines, law enforcement agencies establish their own policies, which may or may not be consistent with the guidelines.

Findings

While the guidelines are not a policy, it is a document that has been made easily available to the public since its original adoption and continues to be made easily available to the public via the following online locations:

- <http://www.waspc.org/sex-offender-information>
- <http://www.waspc.org/model-policies>
- http://sheriffalerts.com/cap_safety_1.php?office=54528

Actual policies adopted by law enforcement agencies are available upon request at each law enforcement agency.

Recommendations

The SOPB recommends the Legislature take no action on this topic.

APPENDIX A

SEX OFFENDER POLICY BOARD

Literature Review on Disclosing Registry Information to the Public

General Bibliography

September 25, 2015

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Introduction

In 1990, Washington state became the first jurisdiction to authorize the release of sex offender information to the public. Since then, several amendments related to the disclosure of sex offender information have been enacted. Currently, Washington has limited their internet publication of information to those eligible convicted sex and kidnapping offenders who have been assessed as a Level II or Level III risk, while other states have variations on the information that they publish via the internet.

Generally, the disclosure of sex offender registration information to the public is found within the community notification provisions of a state's adopted Sex Offender Registration and Notification Act Laws (SORNA). Some also refer to the community notification portion of sex offender laws as "Megan's Laws" named after Megan Kanka, a girl in New Jersey who was raped and killed in 1994 by her neighbor, a convicted sex offender. States have various ways of distributing convicted sex offender registration information under the notification provisions. These methods are ordinarily referred to generally as "community notification" which can include community meetings, flyer distributions, and internet publication of registrant information. Thus, authors often look at the entire system of registration and notification or "community notification" generally, instead of internet public disclosure specifically.

This literature review attempts to identify the universe in which authors have discussed various aspects of public disclosure of sex offender information to the public, privacy-related issues, and the collateral consequences based on the disclosure of information.

Methodology

To obtain information relevant to public disclosure of sex offender information, multiple sources were consulted including government publications, journal articles, news articles, and law review articles. Main databases consulted include: HeinOnline, SSRN.com, Sage Publications, and Google Scholar. Articles submitted by the Sex Offender Policy Board members were reviewed and generally included. The original bibliography from the 2009 Report to the Legislature was included.

Generally, the summarized articles represent those which identifiably contributed to the discussion of issues surrounding public disclosure of sex offender information. Other articles referenced in the general bibliography were reviewed and either did not add additional value to the enumerated section or were too stale to be considered in light of today's discussion. Other resources which were not reviewed in full, those in which the abstract was reviewed only, are listed at the bottom of the general biography. Articles which included *some* disclosure discussion but were specifically focused on recidivism, juveniles, or other topics were not summarized. Articles which were available for public view are linked within the citation.

Organization of Material

The organization of this review includes six sections: 1) Public perception of community notification laws, 2) Comparative reviews of state practices related to community notification, 3) Treatment of sex offender laws by the courts and case law, 4) Offender privacy vs. the public's right-

to-know, 5) Collateral consequences and reintegration issues, 6) Notification as a false sense of security, and 7) Political Climate and Trends.

Generally, when asked about whether or not community notification, and/or public disclosure of sex offender information is important, the public responds affirmatively. In Washington state, residents polled have an awareness of the sex offender registry and believe it is valuable and makes offenders behave better.

In Washington state, disclosure of sex offender information follows what is called a “police-discretion” model. Although a sex offender is given a risk level assessment upon release, local sheriff’s offices may re-assess the offender when they come to register. Disclosure of registry information is often non-standard and the bounds are unclear. Law enforcement agencies are immune from civil liability for disclosure of information or non-disclosure of information. Although some other states have similar provisions, many employ different models and different standards of disclosure.

The U.S. Supreme Court has decided several cases related to sex offender registration and notification laws. Most notably, their decision in *State v. Doe*, set the tone for other states to determine that registration and notification laws were not punitive and therefore, could be applied retroactively. Other varied challenges have been successful, although none, to date, have held that an offender has a privacy right in light of the goals of disclosure to advance public safety.

Many articles reviewed discuss an offender’s right to privacy and assert, at the very least, that Level or Tier I offender information should not be disclosed because of they are at low risk to reoffend and therefore the state’s compelling interest to notify the public does not outweigh the offender’s right to privacy. Further, several articles suggest that laws should be reviewed to tailor the disclosure more appropriately to the level of risk due to fear of harassment and proven cases of vigilantism.

Why does reviewing the level of public disclosure of sex offender information important? Because the collateral consequences of having the information available by internet and other means results in actual harassment, barriers to employment, barriers to housing and stress and fear in the offender’s social network which are key to successful reintegration.

Finally, the political climate is one of increased legislation and disclosure, not less. Strengthening sex offender registration and notification laws are politically attractive to legislators and the political cost to change direction is too great although the empirical evidence does not show that community notification reduces recidivism. The only change to lessen restrictions in recent years came in a California this year when the California Supreme Court ruled that residency restrictions as applied in San Diego were unconstitutional.

I. Perception of the Public Related to Community Notification Laws

Boyle, Douglas J., Laura M. Ragusa-Salerno, Andrea Fleisch Marcus, Marian R. Passannante, and Susan Furrer. "Public knowledge and use of sexual offender internet registries: Results from a random digit dialing telephone survey." *Journal of Interpersonal Violence* (2013): 0886260513511698.

This study performed a review of approximately 1,000 New Jersey residents to determine public awareness, and use of, the New Jersey Sex Offender Internet Registry (NJSOIR). They reported that roughly 51% reported that knowledge of the site and that 17% had accessed the site. Of those who accessed the site, 68% reported that they took some preventative measures based on the information. The study concluded that the results suggest an intervention would increase the public awareness of the registries and provide specific preventative measures the public can take.

McCartan, Kieran. "From a lack of engagement and mistrust to partnership? Public attitudes to the disclosure of sex offender information." *International Journal of Police Science & Management* 15, no. 3 (2013): 219-236.

A review of focus groups in the UK about the limited public disclosure of sex offender information. The results produced three interconnected themes: 1) community attitudes to sexual abuse and sexual offenders, 2) attitudes to the structure of, regulation and functionality of the limited disclosure scheme; and 3) resentment surrounding applicant background checks and confidentiality. Participants were conflicted over the usefulness of, and need for, the public disclosure of sex offender information. In practice, the participants took one of two positions in respect to sex offender disclosure, those who wanted full disclosure and those who wanted no disclosure.

Phillips, Dretha M. *Community notification as viewed by Washington's citizens*. Olympia, WA: Washington State Institute for Public Policy, 1998. Retrieved from: http://www.wsipp.wa.gov/ReportFile/1281/Wsipp_Community-Notification-as-Viewed-by-Washingtons-Citizens_Full-Report.pdf

In 1998, the author conducted a random digit-dialing of 400 Washington state residents in urban and rural areas regarding the state's community notification law. Nearly 80 percent of the respondents were familiar with the community notification law although only one-third were aware of released sex offenders living in their communities. More than six in ten residents agreed that community notification makes released sex offenders behave better than if no one in the community knew about them.

The vast majority of those surveyed felt safer knowing about sex offenders living in their communities. While about half of the respondents thought community notification makes it easy for citizens to take the law into their own hands and harass, threaten, or abuse the released sex offender, more than two out of three surveyed thought special care should be taken to prevent such harassment. Overall, more than eight out of ten respondents indicated Washington's community notification law is very important.

Lieb, Roxanne and Corey Nunlist. "Community notification as Viewed by Washington's Citizens" A 10-Year Follow-Up. Olympia, WA: Washington State Institute for Public Policy (2008). Retrieved from: http://www.wsipp.wa.gov/ReportFile/1010/Wsipp_Community-Notification-as-Viewed-by-Washingtons-Citizens-A-10-Year-Follow-Up_Full-Report.pdf

In 2007, the author conducted a follow-up survey of 643 Washington state residents using random digit dialing to determine the respondent's familiarity with, opinion of, and reaction to the law, as well as its purposes and importance. 81 percent of the respondents were familiar with the community notification law. Thirteen percent more respondents in 2007, than in 1998, were aware of one sex offender living nearby. Sixty-eight percent reported that they learned more about sex offenses and sex offenders because of community notification. Sixty-three percent of respondents agreed with the statement that community notification make sex offenders behave better. Seventy-eight percent of respondents indicated they felt safer knowing about convicted sex offenders living in their communities. Sixty percent disagreed with the statement "Alerting the community to the highest risk sex offenders will make citizens pay less attention to the risks posed by other sex offenders, such as those who may be known and trusted by the victim."

Regarding potential harassment of sex offenders fifty-four percent of respondents thought community notification makes it easier for citizens to take harass, threaten or abuse the released sex offender. 78 percent thought special care should be taken to prevent such harassment. Eighty-four percent of respondents thought that notification could make it more difficult for a sex offender to rent a house, find a job, or establish a new life. Respondents were evenly split when asked if they favor or opposed changing the law so that juveniles could be removed from community notification at a judge's discretion. 80 percent of respondent's indicated that Washington's community notification law is very important.

II. Comparative Reviews of State Practices Related to Community Notification and Registries and a Review of Washington's Progression of Disclosure

Lieb, Roxanne & Milloy, Cheryl. "Washington State's Community Notification Law: 15 Years of Change," Washington State Institute for Public Policy. (2006). Retrieved from: http://www.wsipp.wa.gov/ReportFile/936/Wsipp_Washington-States-Community-Notification-Law-15-Years-of-Change_Full-Report.pdf

In 1990, Washington state became the first state to authorize the release of information regarding sex offenders to the public. Since that time the law was amended several times to expand its application and to increase citizen access to information. In 2002, the Legislature directed the Washington Association of Sheriffs and Police Chiefs (WASPC) to create a statewide internet website and post information related to sex offenders assessed as a Level III risk. It was intended for the public to easily access information including name, relevant criminal convictions, address by the hundred block designation, physical description, and photograph. The site was also to provide mapping capabilities so the public could search for the released sex offender.

In 2003, the Legislature expanded the internet publication of information to Level II offenders. In 2005, the Legislature again expanded disclosure of sex offender information to include

kidnapping offenders, reporting relevant information to schools the offender planned to attend and establishing “community protection zones.”

Locke, Christina and Chamberlin, Dr. Bill F. “Safe From Sex Offenders Legislating Internet Publication of Sex Offender Registries,” 39 *Urb. Law I* (2007).

The purpose of the article was to examine the statutory provisions of every state and the District of Columbia regarding the use of the Internet as a tool to administering Megan’s Law. The article discusses different types of community notification and characterizes them as “active” and “passive.” Internet distribution is considered “passive” notification. In 2006, the federal government created the Dru Sjodin National Sex Offender Website and all states, as of 2007, allow computer users access to individual profiles of sex offenders. State statutes which required internet dissemination often specified six types of data: 1) types of offenders, 2) registry information updates, 3) website security, 4) user registration requirements, 5) disclaimer requirements, and 6) provisions for publicizing the website.

Also at the time of publication, twenty-five states and the District of Columbia restrict the Internet to specific types of offenders. In twenty-one states, Megan’s Law statutes indicate that all sex offenders could be subject to having their personal information made available to the public via the Internet. A federal law passed in 2006 required that all state website display warnings of penalties for unlawful use of registry information.

Wieder, Nori. “Sealing the Record: An Analysis of Jurisdictional Variations of Juvenile Sex Offender Record and Sealing Laws,” 24 *Health Matrix* 377 (2014).

The author reviews four models that states follow regarding juvenile sex offender record sealing laws. Approximately one-quarter of states allow all juvenile records to be sealed. Another quarter of states prohibit all juvenile sex offender records from being sealed. The majority of states allow sex offender records to be sealed but leave the decision to the judge on a case-by-case basis. A minority of states permit some sex offenses to be sealed but exclude the records of the most heinous sex offenses from being sealed. Three states fail to address whether a juvenile is permitted to have his record sealed or not. The paper compares competing jurisdictions policies on sealing juvenile sex offender records.

III. Treatment of Sex Offender Law by the Courts and Case Law

Mancini, Christina & Mears, Daniel P. “U.S. Supreme Court Decisions and Sex Offender Legislation: Evidence or Evidence-Based Policy?” 103 *J. Crim. L. & Criminology* 1115 (2013).

The goal of the study was to supplement scholarship on the Court’s role in contributing to evidence-based crime and criminal justice policy as it relates to sex crime laws. The article reviews to what extent the Supreme Court makes reference to scholarly work in its decisions and how the Court uses and interprets research and the larger body of scholarship related to sexual offending. It reviews Sex Offender Laws nationally and cases that have impacted the laws. The study found that while the Court does include empirical research within its decisions it found substantial variation in their interpretation of the work. The conclusion offers that a further review of how judges review

and use social science research, and an examination of the treatment of the research in lower court decisions may be helpful.

“Sex Offender Registration and Notification in the United States: Current Case Law and Issues,” U.S. Department of Justice, (SMART) (September 2014). Retrieved at:
http://www.smart.gov/caselaw/handbook_sept2014.pdf

This article is the regular review by the SMART office on recent case law and issues surrounding SORNA implementation federally and statewide. It provides detailed information related to all of the federal databases which hold sex offender information and discusses unique situations related to military registration, Bureau of Indian Affairs and Immigration and Customs Enforcement. In 2003, the U.S. Supreme Court decided *State v. Doe*, which held that registration and notification, under the specific facts considered, were not punitive and therefore could be retroactively imposed. Several states have issued opinions that follow the holding in *Doe* to retroactively apply their sex offender laws. The article reviews other successful and unsuccessful legal challenges including six successful state challenges that have held that the retroactive application of the registration and notification laws violate their state constitutions, the unsuccessful challenge of need for a jury determination of the registration requirement under *Apprendi*, ineffective assistance of counsel challenges, and others.

IV. Offender Privacy vs. Public's Right-To-Know

Kabat, Alan R. “Scarlet Letter Sex Offender Databases and Community Notification Sacrificing Personal Privacy For a Symbol's Sake,” 35 *Am. Crim. L. Rev.* 333 (Winter 1998).

As a part of the review in assessing the issues related to the “Right to Privacy” contrasting with community notification, the author reviews some foundational law related to privacy and criminal offenders along with state-level responses to the issue. The author reviews right to privacy jurisprudence with a discussion of *Griswold v. Connecticut*, *Katz v. United States*, *Paul v. Davis*, and *Whalen v. Roe*. Although the author concedes that there is no *per se* right of privacy for sex offenders, he argues that they should be afforded some constitutional level of privacy. The article reviewed the state of the notification laws and public disclosure in 1998 when there was limited availability of records and internet publication. Although the fundamental principles of the article are sound, the article is dated which makes much of the information stale.

Preble, Johnna. “The Shame Game: Montana’s Right to Privacy for Level I Sex Offenders.” 75 *Mont. L. Rev.* 297 (2014).

In Montana, there is a “heightened right to privacy” as the author describes it due to their state constitutional privacy provision found in Article II Section 10 which states “The right of individual privacy is essential to the well-being of a free society and shall not be infringed upon without the showing of a compelling state interest.” The author argues that because Level I offenders are low risk to reoffend as their definition that the burden placed on them to register for the public is outweighed by their right to privacy.

Strict scrutiny analysis requires the law to be narrowly tailored to serve a compelling state interest. Montana’s courts decided issues related to *ex post facto* application and a different state

constitutional provision that requires a full restoration of rights after termination of state supervision for any offense against the state in *State v. Mount*, 78 P.3d 829 (Mont. 2003). The court found that the state's sex offender registration laws were to be nonpunitive in nature and that although Mount's right to privacy was implicated by having to register, the state had a compelling interest to protect the public. The court also decided *State v. Brooks*, 289 P.3d 105 (2012) which held that it was not a violation of the violent offender's (not sex offender's) rights to require him to register because the laws are even more narrowly tailored for violent offenders because they generally require registration for less time. The author argues that when the legislature intentionally created different level of offenders, based on their risk of re-offense, it indicates that they should not all be treated the same way.

Trinkle, Catherine A. "Federal Standards for Sex Offender Registration: Public Disclosure Confronts the Right to Privacy," 37 *Wm. & Mary L. Rev.* 299 (1995).
<http://scholarship.law.wm.edu/wmlr/vol37/iss1/11>.

This article reviews the Federal Registration Act and an analysis of its constitutionality in relation to the strict standard burden when it comes to a right to privacy. It opines that the statute has a low threshold for triggering release of public disclosure information and should be reviewed to narrow the list of offenders subject to privacy right amendments to the greatest possible degree. The Act should also allow offenders to petition for release from duty to register upon an adequate showing of rehabilitation. (p. 334-335).

Turner, Chrisandrea L. "Convicted Sex Offenders vs. Our Children, Whose Interests Deserve the Greater Protection?" 86 *Ky. L. J.* 477 (1997-1998).

This note looks at registration and community notification laws, the four basic models for community notification laws, arguments in favor of community notification laws, successful and unsuccessful constitutional challenges, and public policy arguments against the laws. It comments that the "police-discretion" model, which Washington state is considered to be, provides very little guidance as to the quantity of information to be released, the manner in which the police are to release it or the circumstances which call for its release. Abuse by law-enforcement is a possibility and immunity from civil liability damages unless acting in gross negligence or bad faith allows for inconsistent dissemination.

The author explains that there are two major limitations on the right to privacy that make it difficult for convicted sex offenders to successfully argue against disclosure. "The first is that the facts must truly be private to avoid publication and matters of public record are not private facts. The right of privacy will not be infringed when the publication concerns a matter of legitimate public interest. If a court considers the information provided by the convicted sex offender a matter of public record, then a right-to-privacy claim will be defeated." This article also highlights the risk of vigilantism and reviewed several incidents from Washington state as an example.

Weiss, Debra L. "The Sex Offender Registration and Community Notification Acts Does Disclosure Violate an Offender's Right to Privacy?" 20 *Hamline L. Rev.* 557 (Winter 1996).

The article reviews the development of the right to privacy through various Supreme Court cases. It also reviews jurisprudence that imposed limitations on privacy as a fundamental right. The

article explores case law surrounding privacy and confidentiality and discusses the *Nolley* test which reviews the right to privacy versus governmental interests. The article discusses sex offender registration and notification laws at the time, in 1996, and looks at many models including what is described as *The Police Discretion Model: Washington*. The author explores different states' privacy challenges to Megan's Law including an examination of Washington's *State v. Ward* which found that the release of information must be supported by the evidence that the offender poses a threat to the community because disclosure is to prevent future harm, not punish past offenses and that the information be relevant and necessary to the protection of the community, based on the degree of harm the offender poses to the community. Finally the article reviews the negative impacts of Notification Measures on the Community and the Offender including real estate values, stigma to the offender, and vigilantism. Several of the examples of vigilantism are cited from Washington state.

V. Collateral Consequences and Reintegration Issues

Carpenter, Catherine L. "Against Juvenile Sex Offender Registration," 82 U. Cin. L. Rev. 747 (2013-2014).

This article reviews the competing goals of the juvenile justice system compared with treatment of juvenile sex offenders. It discusses the stigma of registration and the long-lasting punishment of complying with registry requirements. The article looks at the difference between the practical reality of juvenile offenses vs. adult offenses (e.g. Romeo and Juliet offenses requiring the same registry consequences as an adult's child molestation offense). The prevailing and fundamental policies of child registration and public notification run counter to the prevailing and fundamental policies of rehabilitation and confidentiality of the justice system. The author maps the argument of 'Cruel and Unusual Punishment' under the Eighth Amendment for child registration.

Lasher, M. & McGrath R.J. "The impact of community notification on sex offender reintegration: A qualitative review of the research literature." *International Journal of Offender Therapy and Comparative Criminology*, 56(1) 6-28 (2012).

In a review of eight individual surveys on SORN's impact on sexual offenders subject to it, the authors found that 8 percent of sex offenders reported physical assault or injury, 14 percent reported property damage, 20 percent report being threatened or harassed, 30 percent reported job loss, 19% reported loss of housing, 16 percent reported a family member or roommate being harassed or assaulted and 40-60 percent reported negative psychological consequences.

Periman, Deborah. *Revisiting Alaska's Sex Offender Registration and Public Notification Statute*, Alaska Justice Forum 25(1-2): 2-5. (Spring 2008-Summer 2008). Retrieved at: http://justice.uaa.alaska.edu/forum/25/1-2springsummer2008/c_asora.html

Alaska's registry is an offense-based system and was one of relatively few states to require Internet dissemination of registration information for all offenders. The author argues that the Sex Offender Registration and Notification Laws rest were created on the premise that the registration and notification systems advance public safety but empirical research does not support the premise (citing Tewksbury & Lees, 2007). Instead of making the public safer, the system triggers consequences such as unemployment, instability and enhanced risk of recidivism. The Alaska

Supreme Court in *Doe v. State*, 92 P.3d 398, 410 (Alaska 2004) noted the “potentially destructive practical consequences that flow from registration and widespread governmental distribution of disclosed information” are grave.

Vandiver, Donna M., Kelly Cheeseman Dial, and Robert M. Worley. "A Qualitative Assessment of Registered Female Sex Offenders Judicial Processing Experiences and Perceived Effects of a Public Registry." *Criminal Justice Review* 33, no. 2 (2008): 177-198.

The study reviewed the effect the sex offender registry had on female sex offenders in two states. It talked to female offenders from Illinois and Texas and found that every respondent reported at least one negative effect as a result of being identified on the public registry.

Yoder, Steven. *Collateral Damage: Harsh Sex Offender Laws May Put Whole Families at Risk*, Aljazeera America, August 27, 2015. Retrieved at: <http://america.aljazeera.com/articles/2015/8/27/harsh-sex-offender-laws-may-put-whole-families-at-risk.html>

The author looks at some individual sex offenders and the actual collateral consequences to their families, this includes the inability to live together as a family based on the residency requirements and the ability to find affordable housing, a recount of a report published in 2009 which studied 600 families and found significant impacts on housing and harassment of offenders and their kids, and the isolation of feeling like when a member of family is on the registry, the whole family is.

Zevitz, Richard G., and M. A. Farkas. "Sex offender community notification: Managing high risk criminals or exacting further vengeance." *Pogrebin, M eds* (2004): 114-123.

An in-depth study of Level III sex offender's experiences within Wisconsin's community notification law. They interviewed thirty Level III offenders in thirteen counties about their face-to-face registration experience, and about their experiences with the community notification and the impact it had on their lives and the lives of their families. The study found that while a handful of interviewees claimed that some registration requirements serve as a safeguard for them, most offenders either experienced the loss of employment and housing or the ongoing fear of such things. Offenders expressed that there is a large amount of stress on their families which the authors say strains the network of supportive relationships and in turn, successful integration.

VI. Sex Offender Notification as a False Sense of Security

Amyot, Vanessa. "Sex Offender Registries: Labelling Folk Devils," *55 Crim. L. Q.* 188 (2009-2010).

The article reviews the origin of sex offender laws in the United States and Canada and registry and notification requirements in federally and locally in Canada. The author explores the critiques of notification laws which include: a false sense of security for the community, fear of harassment and vigilantism, and their overall effectiveness. The article reviews different challenges to registry and notification provisions under Canadian law. Finally, the author reviews the political context in which these laws were passed by equating it to the theory of “moral panic” explored by

Stanley Cohen in 1972. A moral panic begins with a perceived threat to society, which is amplified by the media who create and circulate stereotypical “folk devils” as serious threats to society. These highly politicized crime issues create a political environment which often exaggerates the threat and makes policy that does not allow governments to tailor their responses to the issue. The article explores alternatives to sex offender registries which include changing the one-size-fits-all approach, restorative justice approach focusing on offender reintegration, and public education.

***Prescott, J.J. “Do Sex Offender Registries Make Us Less Safe?” 35 *Regulation* 48 (2012-2013).**

The author describes how “SORN” laws, which include sex offender registration and notification became the norm without any systematic study of their consequences. He posits that an “avalanche of evidence” suggests that notification may be criminogenic. He also suggests that the logic offered by most SORN advocates ignores the potentially significant, yet unintended, consequences which can have an impact on facets of an offender’s behavior.”

Yung, Corey Rayburn. “The Ticking Sex-Offender Bomb,” 15 *J. Gender Race & Just.* 81 (2012).

The article compares the War on Sex Offender rhetoric to the War on Terrorism and laws based on the notion that the offender is a ticking time bomb poised to re-offend. The author explores the stranger danger myth, sex-offender recidivism myths, lumping of all types of offenders together (Sex-Offender Homogeneity), and the power of rhetoric in framing the issue within the media and even in court decisions. The author briefly reviews the framework related to state and federal sex-offender laws and their general restrictions, along with exceptions carved out through case law (See *Smith v. Doe*, *United States v. Husted*, *United States v. Pitts*, *United States v. Comstock*, *Lambert v. California*). The author concludes that what is needed is a reorientation of genuine concern society has about certain forms of sexual violence. Instead of focusing on strangers who commit a small percentage of child molestations, people can learn to turn toward family members and friends who are alone with their children.

VII. Political Climate and Trends

***Carpenter, Catherine L, and Beverlin, Amy E. “The Evolution of Unconstitutionality in Sex Offender Registration Laws,” 63 *Hastings, L.J.* 1071 (2011-2012).**

This is a comprehensive 65 page article on registration and notification and their effects on offenders. It reviews the trend for the demand for more personal information to be submitted to registries and expanding notification requirements. “Today, however, these controlling principles have been replaced by a new paradigm: Residents of any community are entitled to great amounts of information about all sex offenders without regard to their likelihood of re-offense.” (See Indiana’s Registration Scheme which makes information on all sex offenders available to the general public without restriction regardless of risk). The author reviews how the trend of accessibility of offender information, while attempting to start cautiously, has ended in disclosure of detailed information by website. Along with a review of residency restrictions, GPS monitoring, the article reviews the subsequent challenges to the laws with commentary on potential future outcomes. The Article concludes by offering that “...ramped-up registration schemes, designed to appease a fearful public,

are no longer rationally connected to their regulatory purpose, thus transforming the legislation into criminal penalties cloaked in civil rhetoric.” (p.63).

Haskins, Shelly. *Is Alabama’s Sex Offender Registry Necessary or Pointless?* April 7, 2015. Retrieved at: http://www.al.com/opinion/index.ssf/2015/04/are_sex_offender_registries_ef.html

The author consults three different opinions about the usefulness of registries in light of the California opinion on unconstitutional residency restrictions. The Executive Director of the National Children’s Advocacy Center said that he agrees that registries haven’t proven to be effective in fighting child sex abuse; the Madison County Chief Deputy said the registry is a useful law-enforcement tool and for peace-of-mind of citizens, and an advocate for sex offender reform says that the registry doesn’t work because it promotes stranger-danger while a child is more likely to be abused by a family member or friend.

Logan, Wayne. “Megan’s Law as a Case Study in Political Stasis,” *61 Syracuse L. Rev.* 371 (2011).

The author opened the article with an examination of Washington’s Community Protection Act of 1990, citing the law as “hugely significant.” It noted the community notification provision which had an intent section that discussed a sex offender’s reduced expectation of privacy because of the public’s interest in public safety and in the effective operation of government. It speaks to the national laws and comments on the state of Adam Walsh Act (AWA) state compliance at the time. The article also reviews the political attractiveness and catalysts that make sex-offender legislation possible. The politics of dehumanizing the offender and personalizing the effects of sex offender crimes feed the political backdrop of decision making. The author concludes that the above-factors, along with some other considerations lead to political stasis when it comes to these laws. The political cost associated with change is too great, and the lack of desire to question the status quo with empirical data proves to reinforce the stasis.

Mather, Kate and Kim, Victoria. “California eases Jessica’s Law Restrictions on Some Sex Offenders,” *Los Angeles Times*, March 26, 2015. Retrieved at: <http://www.latimes.com/local/crime/la-me-jessica-law-20150327-story.html>

The article recounted the decision by the California Supreme Court which ruled the sex offender residency restrictions as applied in San Diego County unconstitutional. It recounted some of the outraged responses by advocates of Jessica’s Law and criticized what was characterized as a unilateral move by the Department of Public Safety (DPS) to apply the ruling statewide as “puzzling.” DPS would review approximately 6,000 cases to determine whether their cases should be modified and whether the residency restrictions had a nexus to the parolee’s offense, criminal history, and/or future criminality.

Neyfackh, Leon. *California’s Sane New Approach to Sex Offenders And Why No Other State is Following Its Example*, www.slate.com (April 2, 2015). Retrieved at: http://www.slate.com/articles/news_and_politics/crime/2015/04/california_s_sane_new_approach_to_sex_offenders_and_why_no_one_is_following.html

This article interviews an author in response to the actions that California's Department of Public Safety took to allow some sex offenders to live within 2,000 feet of schools and parks, pursuant to a California Supreme Court decision which found the residency restrictions unconstitutional as applied in San Diego. The subject of the article discusses that discussion related to changing these laws has mostly remained in academia and the legal community vs. legislative bodies, that stranger danger is an insignificant problem related to sexual offending, and that this is the first time she can remember that states have been more lenient vs. more punitive toward sex offenders.

Rodriguez, Rachel. "The Sex Offender Under the Bridge Has Megan's Law Run Amok?" 62 *Rutgers L. Rev.* 1023 (Summer 2010).

This note focuses on reforming Megan's Laws to achieve sex effective sex offender management and deterrence, while simultaneously minimizing the potential for constitutional challenges. The article generally looks at the history of Megan's laws, growing trends towards stricter sex offender restrictions, collateral consequences and some constitutional related to the provisions. The article looks at some effectiveness studies and ultimately argues that laws should be more tailored to target only truly predatory offenders. The article did not focus on internet notification or public disclosure of records so the review is not detailed.

Schwartz, Robert G. "Time to Revisit Sex Offender Registration Laws," 29 *Crim. Just.* 43 (2014-2015).

The article is a review of unintended consequences and constitutional challenges to sweeping registration laws with a specific focus on the disparate impacts on juveniles. The author explores the opinions of several courts which have found provisions of their sex offender laws unconstitutional including a trial court ruling which found Pennsylvania's SORNA implementation retrospectively and prospectively as applied to juveniles (*In the Interest of J.et al.*, CP-67—JV—0000726-2010, York Court of Common Pleas, filed Nov. 4, 2013) and Ohio's Supreme Court ruling that struck the state's automatic, lifetime registration notification requirements for public registry of juveniles as violative of due process and cruel and unusual punishment. (*In re C.P. 967 N.E. 2d 729 (Ohio 2012)*). The author concludes that the current state of SORNA, which includes lifetime registration for juveniles, contradicts the also current research which establishes that 'juveniles are different.'

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APPENDIX B

SEX OFFENDER POLICY BOARD

Analysis on Relationship Between Chapter 42.56 RCW and RCW 4.24.550

October 16, 2015

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Introduction

In 2015, the legislature passed SSB 5154 Sec. 16, which tasked the Sex Offender Policy Board (SOPB) with reviewing the public disclosure of information compiled and maintained for sex offender and kidnapping offender registries. Because this information is currently held by public agencies, it necessarily requires an analysis of the relationship between chapter 42.56 RCW and RCW 4.24.550.

This paper accomplishes several tasks: it identifies certain offender information held by agencies that is either considered “public” or is specifically addressed by RCW 4.24.550; it briefly reviews the legal principles governing public disclosure of offender information, including Chapter 42.56 RCW and RCW 4.24.550, and it presents some of the legal arguments from *Doe v. Washington State Patrol*¹, currently pending in the Washington State Supreme Court, which involves the Public Records Act as it applies to sex offender information held by specific public agencies. Finally, it contextualizes the Board’s legislative assignment within this legal and policy framework.

Sex and Kidnapping Offender Registration Information Held by “Public Agencies”

There are various forms of sex offender information, which reside in multiple locations. This information is required by different statutes, most notably RCW 9A.44.130, which pertains to registration of sex offenders and kidnapping offenders.

An offender who is required to register pursuant to RCW 9A.44.130 must, in some format, provide to the county sheriff: name, any aliases used, accurate residential residence or if lacking a fixed residence, where he or she plans to stay, date and place of birth, place of employment, crime for which he or she has been convicted, date and place of conviction, social security number, photograph, and fingerprints.² The registrant must also provide the sheriff with an accurate accounting of where he or she stayed during the week during if he or she lacks a fixed residence.³ If a person subject to registration requirements applies to change his or her name pursuant to RCW 4.24.130, he or she must provide the sheriff with a copy of the application.⁴

The county sheriff is required to send this registration information, photographs, fingerprints, risk level notification, and any change of address to the Washington State Patrol (WSP).⁵ The WSP is required to maintain a central registry of sex offenders and kidnapping offenders who are required to register pursuant to RCW 9A.44.130.⁶ WSP acts as a repository for the sex offender registration forms submitted by the county sheriffs for retention and enters the registration data from these “source documents” into the database.⁷ These documents also include the offender’s current risk level classification; it is unknown whether the WSP maintains any

¹ Laws of 2015, ch. 261 § 16.

² RCW 9A.44.130(2)(a).

³ RCW 9A.44.130(5)(b).

⁴ RCW 9A.44.130(6).

⁵ RCW 43.43.540(1).

⁶ RCW 43.43.540(2).

⁷ Brief of Appellant Washington State Patrol at 1, John Doe A, et al v. Washington State Patrol et al, No. 90413-8.

documents in support of the classification decision such as the completed classification tool or records related to discretionary leveling decisions. WSP asserts that the State Patrol Database only includes the offender's name, residential address, date of birth, crime for which he or she was convicted, date of conviction, and county of registry.⁸ The amount of information available to law enforcement is not simply what is shown on the website, it includes all related information and documentation maintained by law enforcement and it is unclear what is encompassed in the "source documents" referenced by WSP.

In addition to this legislative mandate, RCW 4.24.550 requires the Washington Association of Sheriffs and Police Chiefs (WASPC) to, subject to funding, maintain a statewide registered kidnapping and sex offender web site that is available to the public.⁹ The website is required to post information regarding: all Level II and Level III offenders, Level I offenders who are out of registration compliance, and all kidnapping offenders.¹⁰ Although WASPC stresses that they are not generally a state agency subject to the Public Records Act, they agree that pursuant to specific legislative mandate, they maintain a defined public database with the information in the database constituting a public record.¹¹

Although law enforcement agencies are primarily responsible for maintaining registration information, many other public agencies are responsible for initial risk classification and notifications. Other agencies that may maintain sex offender registration information include, but are not limited to, the Department of Social and Health Services, the Juvenile Rehabilitation Administration, the Department of Corrections, the Special Commitment Center, as well as other agencies that may provide services to offenders, which require the use of sex offender information. As governmental entities, these agencies are subject to the provisions of the Public Records Act.

Washington's Public Records Act (Chap. 42.56 RCW)

The Public Records Act began as "The Public Disclosure Act" in 1972 when voters adopted Initiative 276, which required documents that were maintained by city, county, and state government, and all special purpose districts, to be made available to the public. In 2006, the statutes were recodified from Ch. 42.17 RCW to Ch. 42.56 RCW and are now referred to as the Public Records Act (PRA). Construction of the chapter shall be as follows:

...This chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy and to insure the public interest will be fully protected. In the event of conflict between the provisions of this chapter and any other act, the provisions of this chapter shall govern.

⁸ Washington State Patrol's Answer to Amicus Brief at 1-2, John Doe A, et al v. Washington State Patrol et al, No. 90413-8.

⁹ RCW 4.24.550(5)(a).

¹⁰ *Id.*

¹¹ Brief in Response Washington Association of Sheriffs & Police Chiefs ("WASPC") at 8, John Doe A, et al v. Washington State Patrol et al, No. 90413-8.

RCW 42.56.030. Primary exemptions to the statute are found in RCW 42.56.230-42.56.480. RCW 42.56.070(1) provides, in part,

Each agency, in accordance with published rules, shall make available for public inspection and copying all public records, unless the record falls within the specific exemptions of *subsection(6) of this section, this chapter, or other statute which exempts or prohibits disclosure of specific information or records.

Washington state courts continue to liberally construe Chap. 42.56 RCW, having decided several cases that reinforce the broad application of disclosure of records and limit the exemptions. In *Cowles Publishing Co. v. Spokane*,¹² the court held that the “investigative records” exception to the PDA does not provide a categorical exemption from disclosure to police investigative records where the suspect is arrested and referred to the prosecutor. The court has also found that documents related to an investigation of allegations made against school employees did not fall within the investigative records exemption of the PRA¹³ and the identifying details of a port employee who was under an investigation was unlawfully redacted from the investigative report.¹⁴ The court in *Koenig v. Thurston County*¹⁵ held that certain documents held by the prosecutor’s office, specifically Special Sex Offender Sentencing Alternative (SSOSA) evaluations and victim impact statements are not exempt from disclosure under the investigative records exemption under the PRA.

By contrast, the Supreme Court has ruled that a juvenile’s Special Sex Offender Disposition Alternative (SSODA) evaluation did not belong in the official juvenile court file and was therefore not subject to disclosure.¹⁶ This case did not address any issues directly related to the Public Records Act; however, the court based its opinion on an examination of RCW 13.50.050(3), which requires that all records of a juvenile offender must be kept confidential unless they are a part of the official court file or meet another statutory exemption. This spirit of open disclosure contained in the Public Records Act is not always compatible with the need for certain information to be confidential. For this reason, the PRA provides that the disclosure of information may be limited by “other statutes.”¹⁷

Release of Offender Information to the Public under RCW 4.24.550

RCW 4.24.550, pertaining to the release of information regarding sex and kidnapping offenders, authorizes public agencies to release offender information under certain circumstances. The statute does not specifically prohibit disclosure of offender information and in fact asserts that information under the section should not be considered confidential except otherwise provided for

¹² 139 Wn.2d 472 (1999),

¹³ *Predisik v. Spokane School District No. 81*, 182 Wn.2d 896 (2015).

¹⁴ *West v. Port of Olympia*, 183 Wn. App. 306 (2014).

¹⁵ 175 Wn.2d 837 (2012).

¹⁶ *State v. A.G.S.*, 182 Wn.2d 275 (2014).

¹⁷ See RCW 2.64.111, RCW 2.64.11, RCW 5.60.060, RCW 5.60.070, RCW 7.68.140, RCW 9A.82.170, RCW 10.77.210, among others.

by law.¹⁸ However, it also sets forth narrowly tailored criteria for the release of offender information based on who is releasing it and what information is to be released. The plain language of RCW 4.24.550, as well as case law, suggests that it was intended to provide disclosure guidelines to those who create, receive and maintain sex and kidnapping registration information.

Web site disclosure of sex and kidnapping offender information

The criteria to disclose information on the publicly accessible web site maintained by WASPC is statutorily defined by RCW 4.24.550(5)(a). It requires information related to level III, level II, level I non-compliant offenders, and kidnapping offenders who are required to register pursuant to RCW 9A.44.130 to be available to the public via the web site. The published information includes name, relevant criminal convictions, address by hundred block, physical description and photo.

Public agency disclosure of sex and kidnapping offender information

Pursuant to RCW 4.24.550(1): public agencies are authorized to release information to the public regarding sex and kidnapping offenders only when the agency determines that disclosure is relevant and necessary to protect the public and counteract the danger created by the particular offender in addition to the information which is released via the web site. The plain language of this provision indicates that a public agency is authorized to release information, other than what is available on the web site, only after this individualized assessment is made.

RCW 4.24.550(2) further limits the extent of the public disclosure of the “relevant and necessary” information, providing that such disclosure shall be rationally related to risk level, locations where the offender resides or is regularly found, and the needs of affected community members to enhance safety.

Local law enforcement disclosure of offender information

The extent of disclosure of offender information made by local law enforcement, aside from the information available via the public web site, is predicated on the agencies’ consideration of risk level of the offender. The statute provides guidelines for dissemination of information based on risk level and other considerations.¹⁹ The county sheriff with whom a level III offender is registered is required to publish a legal notice, advertising or a news release that conforms to the guidelines specified in RCW 4.24.5501.

Judicial Interpretation of RCW 4.24.550

In *State v. Ward*,²⁰ the court extensively discussed the limited public disclosure provisions related to sex offender information. The court was asked to review whether retroactively applying the Community Protection Act to felony sex offenses was an ex post facto violation.²¹ The court

¹⁸ RCW 4.24.550(9).

¹⁹ RCW 4.24.550(3).

²⁰ *State v. Ward*, 123 Wn.2d 488, (1994).

²¹ *Id.* at 495.

concluded that retroactive application of the statute did not violate either the appellants' equal protection or due process rights under the federal and state constitutions.

A review of the court's analysis in this decision indicates that they considered the statutory framework to be one of "limited disclosure".²² Their holding concluded:

“We hold, however, that because the Legislature had limited the disclosure of registration to the public, the statutory registration scheme does not impose additional punishment on registrants.”

In the decision, the court analyzes the detailed process laid out in RCW 4.24.500, which involves individualized determinations for release of data. To illustrate the importance of an individualized determination, the court uses the example of releasing a social security number of an offender, which may be unnecessary in many cases, but critical where a potential employer must discover the offender's identity and criminal background.²³ The court also discusses determinations of disclosure based on geography as an example of how limited disclosure furthers the Legislature's primary goal of protecting the public while not rising to the level of being an affirmative disability or restraint to the offender.²⁴ The court's contemplation of these individualized determinations of disclosure in *Ward*, and its reliance on them for the holding in the case, suggests that disclosure of such information has been limited by the legislature the court's active contemplation of limiting disclosure under RCW 4.24.550.²⁵

Legal Issues and Arguments Presented in *Doe v. Washington State Patrol et al*

Another case that addresses the disclosure of offender information, *Doe v. Washington State Patrol et al*,²⁶ is pending before the Washington State Supreme Court. Although it would be inappropriate to speculate as to the outcome of a pending case, the case requires discussion, as the legislature has required the Board to make findings and recommendations based on the current state of the law.

The factual basis of *Doe* is a public records request, directed to WSP and WASPC, for electronic copies of sex offender registration forms for level I sex offenders whose last names begin with “A” and sex offender registration “files” for offenders whose last names begin with “B”.²⁷ The requestor later changed her request, asking for a copy of WSP's database.²⁸ WSP and WASPC were willing to release the information, as they have routinely released downloads of the database in

²² *Id.* at 499.

²³ *Id.* at 503.

²⁴ *Id.* at 500.

²⁵ A discussion of *State v. Ward*, appears in both the Appellant and Amicus Briefs submitted in *John Doe A, et al v. Washington State Patrol et al*, No. 90413-8.

²⁶ No 90413-8.

²⁷ Brief for The Washington Association of Criminal Defense Lawyers as Amici Curiae Supporting Plaintiffs/Respondents at 2, *John Doe A, et al v. Washington State Patrol et al*, No. 90413-8. *See also* Brief of Appellant Washington State Patrol at 6, *John Doe A, et al v. Washington State Patrol et al*, No. 90413-8.

²⁸ Brief of Appellant Washington State Patrol at 6, *John Doe A, et al v. Washington State Patrol et al*, No. 90413-8.

response to public response requests.²⁹ After being informed of the pending requests, the subjects of the records filed a request for certification as a class and moved for a blanket, permanent injunction against the release. The injunction was granted by the Superior Court, and is the basis for the appeal.

WSP argues that the requested information is subject to disclosure under the PRA and that the more narrow release provisions contained in RCW 4.24.550 do not apply. Of relevance to this question is whether RCW 4.24.550 is considered an “other” statute under the Public Records Act. The PRA provides that the operation of “other statutes” can prevent release of information otherwise available through the PRA.³⁰ WSP and WASPC both assert that RCW 4.24.550 should not be considered an “other statute,” which would prevent disclosure of the requested information.³¹

The WSP specifically argues that the affirmative community notification provisions outlined in RCW 4.24.550 do not alleviate its duty to provide public records under Chap. 42.56 RCW. WSP also argues that if the legislature intended to prohibit disclosure, it would have affirmatively prohibited public disclosure as it did for gang databases and the felony firearms database.³² WSP also asserts that RCW 4.24.550 is an immunity statute for community notification, not an exemption to the Public Records Act.³³

Alternatively, the Washington Association of Criminal Defense Lawyers (WACDL) argued in its amicus brief that RCW 4.24.550 is an “other statute,” such that an agency must follow the standards it sets forth before releasing offender information.³⁴ WACDL also argues that if RCW 4.24.550 is not the authority regarding the release of sex and kidnapping offender registration information but rather the PRA, the practical effect would contravene the policy underlying the Community Notification Act.³⁵ Allowing release of all registration records allows any person to distribute and disseminate the information freely and makes superfluous the narrowly tailored criteria for release.

Whereas the pending case of Doe focuses on the case information related to level I offenders and database information maintained by WSP, it is unclear in other instances which records are maintained and disclosed. The amount of information available to law enforcement is not simply what is shown on the website, it includes all related information and documentation maintained by law enforcement and it is unclear what is encompassed in the “source documents” referenced by WSP.

²⁹*Id.*

³⁰ RCW 42.56.070(1).

³¹ Brief of Appellant at p. 8-9.

³² *Id.* at p.11.

³³ *Id.* at pps. 13-17.

³⁴ Brief for The Washington Association of Criminal Defense Lawyers as Amici Curiae Supporting Plaintiffs/Respondents at 8, John Doe A, et al v. Washington State Patrol et al, No. 90413-8.

³⁵ *Id.* at 3.

The Relationship Between Ch. 42.56 RCW and RCW 4.24.550

It is important to note that the policy behind the Public Records Act is to allow citizens to maintain control over their government, while the public policy related to release of sex and kidnapping offender information is to further public safety. The actual legal relationship between Ch. 42.56 RCW and RCW 4.24.550 may be decided by the Supreme Court when they issue their decision on Doe. Until then, observations can be made based on examination of these statutes together and how other states treat disclosure of registration of information.

Liability and Immunity for Disclosure of Offender Information

The Public Records Act requires a government agency to respond to a request for information within five days. Within that timeframe, an office or agency must either provide the record, an internet link to the information, or an acknowledgement of the request with a predicted time frame of when the agency can respond or deny the request³⁶. Although RCW 42.56.060 protects agencies, officials, public employees or custodians from a cause of action related to loss or damage based upon the release of a record if they acted in good faith in an attempt to comply with the chapter,³⁷ the act has strict penalties for delay or non-disclosure of records.

By contrast, RCW 4.24.550(7) provides immunity from civil liability to public officials, public employees, a public agency as defined in RCW 4.24.470 or units of local government and its employees as provided in RCW 36.28A.010 unless they act with gross negligence or in bad faith. It also includes a statement of non-liability for failure to release information under the section.³⁸

The contrast between the approaches of the two statutes becomes apparent when an agency receives a request for offender records. If an agency is asked to comply with the disclosure requirements of both Ch. 42.56 RCW and RCW 4.24.550, it is clear that the most prudent route for an agency to take is to liberally disclose records because there is a strict monetary penalty for non-disclosure under the Public Records Act, and immunity of disclosure or non-disclosure of a record is provided for under RCW 4.24.550. There is little incentive to adhere to the guidelines of RCW 4.24.550, as the agency is liable for potentially large financial penalties under Ch. 42.56 RCW if it withholds a document that is considered public.

³⁶ RCW 42.56.520.

³⁷ RCW 42.56.060.

³⁸ RCW 4.24.550(8).

located in contiguous counties are not expected to provide services to tribal lands and will be ineligible to complete the survey. For these entities the burden will be less than 5 minutes. Of the remaining 204 prosecutor offices, we expect a 95% response rate, or 194 offices. It will take the average respondent an estimated 60 minutes to respond and 15 minutes for any response verification.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 243 total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: April 5, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016-08194 Filed 4-8-16; 8:45 am]

BILLING CODE 4410-18-P

DEPARTMENT OF JUSTICE

Office of the Attorney General

[Docket No. OAG 151; AG Order No. 3659-2016]

RIN 1121-AA87

Supplemental Guidelines for Juvenile Registration Under the Sex Offender Registration and Notification Act

AGENCY: Department of Justice.

ACTION: Notice; proposed guidelines.

SUMMARY: The Sex Offender Registration and Notification Act (SORNA) requires registration of individuals convicted of sex offenses as adults and, in addition, registration of juveniles adjudicated delinquent for certain serious sex offenses. SORNA also provides for a reduction of justice assistance funding to eligible jurisdictions that fail to "substantially implement" SORNA's requirements, including the juvenile registration requirement, in their sex offender registration programs. These proposed guidelines provide guidance regarding the substantial implementation of the juvenile registration requirement by eligible jurisdictions. The Justice Department's Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking will examine the following factors when assessing

whether a jurisdiction has substantially implemented SORNA's juvenile registration provisions: Policies and practices to prosecute as adults juveniles who commit serious sex offenses; policies and practices to register juveniles adjudicated delinquent for serious sex offenses; and other policies and practices to identify, track, monitor, or manage juveniles adjudicated delinquent for serious sex offenses who are in the community and to ensure that the records of their identities and sex offenses are available as needed for public safety purposes. By affording jurisdictions greater flexibility in their efforts to substantially implement SORNA's juvenile registration requirement, the proposed guidelines will further SORNA's public safety objectives in relation to serious juvenile sex offenders and facilitate jurisdictions' substantial implementation of all aspects of SORNA. The proposed guidelines concern only substantial implementation of SORNA's juvenile registration requirement and do not affect substantial implementation of SORNA's registration requirements for individuals convicted of sex offenses as adults.

DATES: Written comments must be postmarked and electronic comments must be submitted on or before June 10, 2016. Comments received by mail will be considered timely if they are postmarked on or before that date. The electronic Federal Docket Management System (FDMS) will accept comments until midnight Eastern Time at the end of that day.

ADDRESSES: To ensure proper handling of comments, please reference OAG Docket No. 151 in all electronic and written correspondence. The Department encourages the electronic submission of all comments through <http://www.regulations.gov> using the electronic comment form provided on that site. An electronic copy of this document is also available at the <http://www.regulations.gov> Web site for easy reference. Paper comments that duplicate the electronic submission are not necessary as all comments submitted to <http://www.regulations.gov> will be posted for public review and are part of the official docket record. Should you, however, wish to submit written comments by mail, they should be sent to Luis C.deBaca, Director, SMART Office, Office of Justice Programs, United States Department of Justice, 810 7th St. NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Luis C.deBaca, Director, Office of Sex Offender Sentencing, Monitoring,

Apprehending, Registering, and Tracking; Office of Justice Programs, United States Department of Justice, Washington, DC, (202) 514-4689.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at <http://www.regulations.gov>. Such information includes personal identifying information (such as your name and address) voluntarily submitted by the commenter.

You are not required to submit personal identifying information in order to comment on these proposed guidelines. Nevertheless, if you want to submit personal identifying information (such as your name and address) as part of your comment, but do not want it to be posted online, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You also must locate all of the personal identifying information that you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You also must prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on <http://www.regulations.gov>.

Personal identifying information and confidential business information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. If you wish to inspect the agency's public docket file in person by appointment, please see the paragraph above entitled **FOR FURTHER INFORMATION CONTACT**.

Background

The Sex Offender Registration and Notification Act ("SORNA"), title I of the Adam Walsh Child Protection and Safety Act of 2006, Public Law 109-248, was enacted on July 27, 2006. SORNA (42 U.S.C. 16901 *et seq.*) establishes minimum national standards for sex offender registration and notification in the jurisdictions to which it applies. "Jurisdictions" in the relevant sense are the 50 states, the District of Columbia,

the five principal U.S. territories, and federally recognized Indian tribes that satisfy certain criteria. 42 U.S.C. 16911(10).

SORNA provides a financial incentive for eligible jurisdictions to adopt its standards, by requiring a 10 percent reduction of federal justice assistance funding to an eligible jurisdiction if the Attorney General determines that the jurisdiction has failed to “substantially implement” SORNA. 42 U.S.C. 16925(a). SORNA also directs the Attorney General to issue guidelines and regulations to interpret and implement SORNA. *See id.* 16912(b). To this end, the Attorney General issued the *National Guidelines for Sex Offender Registration and Notification* (“SORNA Guidelines”), 73 FR 38030, on July 2, 2008, and the *Supplemental Guidelines for Sex Offender Registration and Notification* (“Supplemental Guidelines”), 76 FR 1630, on January 11, 2011. The Justice Department’s Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (“SMART Office”) assists all jurisdictions in their SORNA implementation efforts and determines whether they have substantially implemented SORNA’s requirements in their registration and notification programs. *See* 42 U.S.C. 16945; 73 FR at 38044, 38047–48; 76 FR at 1638–39.

In addition to requiring registration based on adult convictions for sex offenses, SORNA includes as covered “sex offender[s]” juveniles at least 14 years old who have been adjudicated delinquent for particularly serious sex offenses. 42 U.S.C. 16911(1), (8); *see id.* 16913 (setting forth registration requirements). In relation to the juvenile registration requirement, as in other contexts, the SMART Office “consider[s] on a case-by-case basis whether jurisdictions’ rules or procedures that do not exactly follow the provisions of SORNA . . . ‘substantially’ implement SORNA, assessing whether the departure from a SORNA requirement will or will not substantially dissuade the objectives of the requirement.” 73 FR at 38048.

The SORNA Guidelines explained, in particular, that substantial implementation of SORNA need not include registration of juveniles adjudicated delinquent for certain lesser offenses within the scope of SORNA’s juvenile registration provisions. The Guidelines stated that jurisdictions can achieve substantial implementation if they cover offenses by juveniles at least 14 years old that consist of engaging (or attempting or conspiring to engage) in a sexual act with another by force or the threat of serious violence or by

rendering unconscious or involuntarily drugging the victim. *Id.* at 38050. This interpretation of substantial implementation addressed concerns about the potential registration of juveniles in some circumstances based on consensual sexual activity with other juveniles, which is outside the scope of the coverage required by the Guidelines. *See id.* at 38040–41.

The Supplemental Guidelines included a subsequent change affecting the treatment of all persons required to register on the basis of juvenile delinquency adjudications. SORNA authorizes the Attorney General to create exemptions from SORNA’s requirement that information about registered sex offenders be made available to the public through Web site postings and other means. *See* 42 U.S.C. 16918(c)(4), 16921(b). The Supplemental Guidelines noted that the SORNA Guidelines had endeavored to facilitate jurisdictions’ compliance with SORNA’s registration requirement for “juveniles at least 14 years old who are adjudicated delinquent for particularly serious sex offenses,” but that “resistance by some jurisdictions to public disclosure of information about sex offenders in this class has continued to be one of the largest impediments to SORNA implementation.” 76 FR at 1636. The Attorney General accordingly exercised his exemption authority “to allow jurisdictions to exempt from public . . . disclosure information concerning sex offenders required to register on the basis of juvenile delinquency adjudications.” *Id.* This exemption did not change the requirement that such juveniles be registered and that information about them be transmitted or made available “to the national (non-public) databases of sex offender information, to law enforcement and supervision agencies, and to registration authorities in other jurisdictions.” *Id.* at 1637.

Based on additional experience with SORNA implementation, and further reflection on the practicalities and effects of juvenile registration, these proposed guidelines modify the approach the SMART Office will take in assessing whether a jurisdiction has substantially implemented SORNA’s juvenile registration requirement. As explained below, the modification will enhance public safety by incentivizing a broader range of measures that may protect the public from serious juvenile sex offenders.

While most states provide for registration of some sex offenders based on juvenile delinquency adjudications, many do not or do so only on a discretionary basis. *See* SMART Office,

SMART Summary: Prosecution, Transfer, and Registration of Serious Juvenile Sex Offenders 10–11, 24–29 (Mar. 2015) (“SMART Juvenile Summary”), www.smart.gov/pdfs/smartjuvenilesum.pdf. Too rigid an approach to implementation of the juvenile registration aspect of SORNA, which affects a limited subclass of sex offenders, may conflict at a practical level with the objective of implementing SORNA’s more broadly applicable reforms, which affect the whole universe of convicted sex offenders. This occurs when a jurisdiction’s unwillingness or inability to implement the juvenile registration requirement discourages or stymies further efforts to implement SORNA generally, because the deficit regarding juvenile registration alone precludes approval of the jurisdiction as having substantially implemented SORNA. Moreover, the juvenile registration requirement is in some respects unique in terms of its scope and rationale and the potential for furthering its objectives by other means.

First, juveniles may be subject to prosecution in either of two distinct justice systems—the juvenile justice system or the adult criminal justice system. The SORNA Guidelines provide that registration jurisdictions may substantially implement SORNA’s juvenile registration requirement by registering persons at least 14 years old at the time of the offense who are adjudicated delinquent for an offense amounting to rape or its equivalent, or an attempt or conspiracy to commit such an offense. *See* 73 FR at 38041, 38050. Practically all states authorize or require adult prosecution for many or all such juveniles. *See* SMART Juvenile Summary 5–9, 16, 19–23. Where juveniles are prosecuted as adults, the resulting convictions are treated as adult convictions under SORNA, and SORNA’s general provisions require the sex offender to register. *See* 73 FR at 38050.

Consequently, a jurisdiction may advance SORNA’s public safety goals in relation to serious juvenile sex offenders not only by prescribing mandatory registration for those offenders adjudicated delinquent, but also by prosecuting such offenders in the adult criminal justice system. Consider a jurisdiction that normally subjects sex offenders in SORNA’s juvenile registration category to adult prosecution and conviction, with resulting registration, but that does not have mandatory registration for the relatively few offenders in this category who are proceeded against in the juvenile justice system. With respect to most sex offenders, the jurisdiction

protects the public through registration at least as effectively as a jurisdiction that proceeds against more offenders as juveniles and has mandatory registration based on delinquency adjudications, because all individuals convicted of qualifying sex offenses as adults are required to register. In some respects, a jurisdiction oriented towards adult prosecution of the most serious juvenile sex offenders may more effectively advance SORNA's public safety objectives, because prosecution as an adult also makes available the more substantial incarceration and supervision sanctions of the adult criminal justice system. But if mandatory juvenile registration is treated as a *sine qua non* of substantial SORNA implementation, that jurisdiction could not be approved as having substantially implemented SORNA.

A second feature unique to juvenile sex offenders is that SORNA requires registration only for certain juveniles who are adjudicated delinquent for particularly serious sex offenses—that is, sex offenses that are “comparable to or more serious than aggravated sexual abuse” (or attempt or conspiracy to commit such offenses). 42 U.S.C. 16911(8). Jurisdictions that allow for discretionary registration of juveniles adjudicated delinquent for sex offenses may in practice capture many of the juveniles in SORNA's juvenile registration category—especially those who pose the most danger to others—in their registration schemes. Rather than simply rejecting a jurisdiction's approach to juvenile registration for having a discretionary aspect, examination of these registration programs as applied would allow the SMART Office to determine whether, when considered as part of a jurisdiction's overall registration scheme, this variance does or does not substantially disserve SORNA's purposes.

Considering discretionary juvenile registration might appear to be inconsistent with the response to public comments accompanying the issuance of the SORNA Guidelines, which stated that registration as “a matter of judicial discretion” is insufficient to substantially implement SORNA's juvenile registration requirement. 73 FR at 38038. However, that response addressed comments urging that discretionary registration should in itself be considered sufficient implementation of SORNA's requirements, “ignor[ing] what SORNA provides on this issue, and instead do[ing] something different that the commenters believe to be better policy.”

Id. That is not the approach of these proposed guidelines, which contemplate that the SMART Office will consider the full range of pertinent measures a jurisdiction may adopt, and do not assume that simply replacing a mandatory registration requirement with a discretionary one achieves in substance what SORNA requires. For example, consider a jurisdiction that (i) largely requires registration by sex offenders in SORNA's juvenile registration class because those offenders are likely to be prosecuted and convicted in the adult criminal justice system, (ii) allows registration on a discretionary basis for sex offenders who remain in the juvenile justice system, and (iii) provides other effective post-release monitoring and identification measures for juvenile sex offenders as discussed below. In assessing whether such a jurisdiction has substantially implemented SORNA's juvenile registration requirement, it is appropriate to take into account the jurisdiction's discretionary registration of adjudicated delinquents along with other factors, and doing so does not conflict with the prior rejection of approaches that “ignore[] what SORNA provides.” *Id.*

A third feature specific to the juvenile context is the prevalence of juvenile confidentiality provisions, which can limit the availability of information about the identities, locations, and criminal histories of juvenile sex offenders. Potential consequences of these confidentiality provisions include that (i) law enforcement agencies may lack information about certain sex offenders in their areas that could, if known, assist in solving new sex crimes and apprehending the perpetrators; (ii) sex offenders may be less effectively discouraged from engaging in further criminal conduct, because the authorities do not know their identities, locations, and criminal histories; and (iii) offenders' histories of sexual violence or child molestation, which might disqualify them from positions giving them control over or access to potential victims (such as childcare positions), may not be disclosed through background check systems or affirmative notice to appropriate authorities. These confidentiality provisions accordingly may negatively affect the achievement of SORNA's public safety objectives. See 73 FR at 38044–45, 38060–61. Congress's decision to subject certain juvenile sex offenders to SORNA's registration requirements was an effort to overcome risks to the public posed by juvenile confidentiality requirements that

Congress considered too broad. See H.R. Rep. No. 109–218, pt. 1, at 25 (2005).

A jurisdiction that does not implement juvenile registration in the exact manner specified in SORNA's juvenile registration provisions may nevertheless adopt other measures that address the underlying concerns as part of its substantial implementation of SORNA. For example, a jurisdiction may have means of monitoring or tracking juvenile sex offenders following release, such as extended post-release supervision regimes or address-reporting requirements, that may not incorporate all aspects of SORNA's registration system, but that may nevertheless help law enforcement agencies to identify the sex offenders in their areas and the perpetrators of new sex offenses. Confidentiality requirements for juvenile records may be appropriately defined and limited so as not to conceal risks to potential victims from persons who committed serious sex offenses as juveniles.

In sum, a number of factors are reasonably considered in ascertaining whether a jurisdiction has substantially implemented SORNA's juvenile registration provisions, which have not been articulated or given weight to the same extent under previous guidelines. Accordingly, in these proposed guidelines, the Attorney General expands the matters that the SMART Office will consider in determining substantial implementation of this SORNA requirement. This expansion recognizes that jurisdictions may adopt myriad robust measures to protect the public from serious juvenile sex offenders, and will help to promote and facilitate jurisdictions' substantial implementation of all aspects of SORNA.

Proposed Supplemental Guidelines for Juvenile Registration Under the Sex Offender Registration and Notification Act

If a jurisdiction does not register juveniles at least 14 years old who are adjudicated delinquent for particularly serious sex offenses in exact conformity with SORNA's provisions—for example, because the jurisdiction uses a discretionary process for determining such registration—the SMART Office will examine the following factors when assessing whether the jurisdiction has nevertheless substantially implemented SORNA's juvenile registration requirements: (i) Policies and practices to prosecute as adults juveniles who commit serious sex offenses; (ii) policies and practices to register juveniles adjudicated delinquent for serious sex offenses; and (iii) other policies and

practices to identify, track, monitor, or manage juveniles adjudicated delinquent for serious sex offenses who are in the community and to ensure that the records of their identities and sex offenses are available as needed for public safety purposes. Consistent with the requirements for other aspects of a jurisdiction's program that do not exactly follow SORNA's provisions, a jurisdiction that seeks to rely on these factors in establishing substantial implementation must identify any departure from SORNA's requirements in its submission to the SMART Office and "explain why the departure from the SORNA requirements should not be considered a failure to substantially implement SORNA." 73 FR at 38048. The SMART Office will determine that a jurisdiction relying on these factors has substantially implemented SORNA's juvenile registration requirement only if it concludes that these factors, in conjunction with that jurisdiction's other policies and practices, have resulted or will result in the registration, identification, tracking, monitoring, or management of juveniles who commit serious sex offenses, and in the availability of the identities and sex offenses of such juveniles as needed for public safety purposes, in a manner that does not substantially disserve SORNA's objectives.

Dated: March 14, 2016.

Loretta E. Lynch,
Attorney General.

[FR Doc. 2016-08249 Filed 4-8-16; 8:45 am]

BILLING CODE 4410-18-P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting

DATE AND TIME: The Legal Services Corporation's Board of Directors and its six committees will meet April 17-19, 2016. On Sunday, April 17, the first meeting will commence at 2:00 p.m., Eastern Standard Time (EST), with the meeting thereafter commencing promptly upon adjournment of the immediately preceding meeting. On Monday, April 18, the first meeting will commence at 9:00 a.m., EST, with the next meeting commencing promptly upon adjournment of the immediately preceding meeting. On Tuesday, April 19, the first meeting will commence at 8:45 a.m., EST, it will be followed by the closed session meeting of the Board of Directors which will commence promptly upon adjournment of the prior meeting.

LOCATION: 3333 K Street NW., 3rd Floor, F. McCalpin Conference Center Washington, DC 20007.

PUBLIC OBSERVATION: Unless otherwise noted herein, the Board and all committee meetings will be open to public observation. Members of the public who are unable to attend in person but wish to listen to the public proceedings may do so by following the telephone call-in directions provided below.

CALL-IN DIRECTIONS FOR OPEN SESSIONS:

- Call toll-free number: 1-866-451-4981;
- When prompted, enter the following numeric pass code: 5907707348
- When connected to the call, please immediately "MUTE" your telephone.

Members of the public are asked to keep their telephones muted to eliminate background noises. To avoid disrupting the meeting, please refrain from placing the call on hold if doing so will trigger recorded music or other sound. From time to time, the presiding Chair may solicit comments from the public.

MEETING SCHEDULE

	Time *
<i>Sunday, April 17, 2016:</i>	
1. Institutional Advancement Committee	2:00 p.m.
2. Communications Subcommittee of the Institutional Advancement Committee	
3. Governance and Performance Review Committee	
<i>Monday, April 18, 2016:</i>	
1. Operations & Regulations Committee	9:00 a.m.
2. Delivery of Legal Services Committee.	
3. Audit Committee.	
4. Finance Committee.	
5. Board of Directors.	
<i>Tuesday, April 19, 2016:</i>	
1. Board of Directors	8:45 a.m.

STATUS OF MEETING: Open, except as noted below.

Board of Directors—Open, except that, upon a vote of the Board of Directors, a portion of the meeting may be closed to the public to hear briefings by management and LSC's Inspector General, and to consider and act on the General Counsel's report on potential and pending litigation involving LSC, and on a list of prospective funders.**

* Please note that all times in this notice are in *Eastern Standard Time*.

** Any portion of the closed session consisting solely of briefings does not fall within the Sunshine

Institutional Advancement

Committee—Open, except that the meeting may be closed to the public to receive a briefing on the donor report.**

Audit Committee—Open, except that the meeting may be closed to the public to hear a briefing on the Office of Compliance and Enforcement's active enforcement matters, and a report on the integrity of electronic data.**

A verbatim written transcript will be made of the closed sessions of the Board, Institutional Advancement Committee, and Audit Committee. The transcript of any portions of the closed sessions falling within the relevant provisions of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6) and (10), will not be available for public inspection. A copy of the General Counsel's Certification that, in his opinion, the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

April 17, 2016

Institutional Advancement Committee

1. Approval of agenda
2. Approval of minutes of the Committee's meeting on January 29, 2016
3. Approval of minutes of the Committee's telephonic meeting on March 22, 2016
4. Development Report
5. Update on Leaders Council
6. Public Comment
7. Consider and act on other business
8. Consider and act on motion to adjourn open session meeting and proceed to a closed session

Closed Session

1. Approval of the minutes of the Committee's Closed Session meeting on January 29, 2016
2. Donor Report
3. Consider and act on motion to adjourn the meeting

April 17, 2016

Communications Subcommittee of the Institutional Advancement Committee

Open Session

1. Approval of agenda
2. Approval of minutes of the Subcommittee's meeting on January 29, 2016
3. Communications analytics update
4. Update on youth pamphlet
5. Public comment
6. Consider and act on other business
7. Consider and act on motion to adjourn the meeting

Act's definition of the term "meeting" and, therefore, the requirements of the Sunshine Act do not apply to such portion of the closed session. 5 U.S.C. 552b(a)(2) and (b). See also 45 CFR § 1622.1622.3.



STATE OF WASHINGTON
Office of the Governor

October 1, 2015

Ms. Kecia Rongen, Chair
Sex Offender Policy Board
PO Box 43113
Olympia, WA 98504-3113

Dear Ms. Rongen:

Pursuant to RCW 9.94A.8673, the Sex Offender Policy Board (SOPB) serves to advise the Governor and the Legislature as necessary on issues relating to sex offender management. The Governor or a legislative committee of jurisdiction may request that the SOPB convene to undertake projects to assist policymakers in making informed judgments about issues relating to sex offender policy.

The Governor wishes to review the state's sex offender registration and notification statutes and practices to ensure that this system comports with the most recent research and best practices to reduce sexual victimization. To that end, our office requests that the SOPB undertake the following projects:

1. Provide summaries of Washington State's current sex offender registration and notification statutes and practices to assist policymakers in evaluating proposed legislative changes;
2. Evaluate Washington State's sex offender registration and notification statutes and the Sex Offender Registration and Notification Act (SORNA) established under Title 1 of the Adam Walsh Child Protection and Safety Act of 2006 to determine which requirements the state has yet to adopt;
3. Survey other states to determine how they have aligned their systems to meet the requirements of SORNA;
4. Offer recommendations as to how the state should proceed in moving further into compliance with SORNA or, if the SOPB determines that it is not in the best interest of the state to adopt a requirement of SORNA, offer an analysis as to why;
5. Offer recommendations as to other changes in sex offender registration and notification statutes that further advance the safety of the public; and
6. Offer recommendations as to other issues related to sexual offending that the SOPB determines could advance the safety of the public through further study.

Ms. Kecia Rongen, Chair
Sex Offender Policy Board
October 1, 2015
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Please submit this work product by March 31, 2016, or as close as possible to this date as resources allow. We appreciate the time and expertise of the members of the SOPB and their contribution to helping policymakers make informed decisions for the good of Washingtonians.

Sincerely,

A handwritten signature in dark ink, appearing to read "N. W. Brown", followed by a horizontal line extending to the right.

Nicholas W. Brown
General Counsel