



STATE OF WASHINGTON

SEX OFFENDER POLICY BOARD

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MINUTES

THURSDAY, OCTOBER 15, 2009

12:00 P.M. TO 4 P.M.

OFFICE OF THE ATTORNEY GENERAL

800- 5TH AVE. 20TH FL

SEATTLE, WA 98104

MEMBERS PRESENT:

Co-chair Andrea Piper
Amy Pearson
Sheriff Mark Brown
Tom Sahlberg
Lindsay Palmer
Bev Emery
Kecia Rongen
Sharon Harris in lieu of Maureen Saylor
Sally Neiland in lieu of Anmarie Aylward
Brooke Burbank
Andrew Neiditz
Mary Ellen Stone
Dr. Carey Sturgeon
Judge Laura Middaugh

MEMBERS NOT PRESENT:

Chair Russell Hauge
Lynda Ring-Erickson
Ida Ballasiotes

STAFF PRESENT:

Shoshana Kehoe-Ehlers
Shannon Hinchcliffe
Andi May

OTHERS PRESENT:

Dave Coleman, Snohomish County Sheriff's Office; Becky Miner, Washington State Patrol; Amy Pearson, Office of Crime Victims Advocacy; Lindsay Palmer, King County Sexual Assault Resource Ctr.; Serena Dolly, Association of Washington Cities; Joanna Arlow, Washington Association of Sheriffs and Police Chiefs; Nathan Johnson, Senate Republican Caucus; Rashad Morris, Senate Democratic Caucus

1. Call to Order

Co-Chair Andrea Piper was acting Chair of the meeting and called the meeting to order at 12:11 p.m. (8 voting members for quorum present at the call of order, two proxy voters recognized, Sharon Harris for Maureen Saylor and Sally Neiland for Anmarie Aylward.)

2. Introductions

Introductions were done at 12:12 p.m.

3. Approve Agenda

No additions, but changes were to the order of the agenda. Chair Piper asked that tabled motions within item number 4 come before the rest of the business.

MOTION # 43 MOVED TO ADOPT AGENDA

MOVED: Tom Sahlberg

SECONDED: Andrew Neiditz

PASSED: Unanimously

4. Approval of Minutes

Staff requested that approval of the Minutes for the October 5, 2009 be postponed until the next regularly scheduled meeting. A summary of the approved recommendations from the October 5, 2009 meeting were distributed for discussion purposes.

Chair Piper asked if there were any technical corrections to the list of approved recommendations; there were none.

Due to technical difficulties, audio recording started at 12:17 p.m.

5. Proposed Recommendations for the Legislative Report

The tabled motions will have to be postponed; Mr. Meryhew is not present at this time.

A request for clarification of the approved voting method was made.

Chair Piper turned the floor over to Ms. Palmer who spoke on behalf of the Registration and Notification Committee's Community Notification workgroup. She explained that in lieu of an actual recommendation, these recommendations would be stronger if they were "considerations of future recommendations:"

- 1) As another technique for managing sex offenders, we suggest four pilots across the state for multi-disciplinary community education on grooming and prevention strategies for home, school, work, recreation, etc that are above and beyond the community notification meetings provided by law enforcement when a sex offender transitions into the community.
 - Community members are provided with monthly educational sessions to learn how to use the statewide web-based sex offender registry system as a notification tool.
 - Interagency, multidisciplinary teams connect with media to assist in the education of the community on available notification resources.
 - Integrating universal precautions education into local, existing meetings and/or forums.
 - Available downloadable and reproducible materials are easily accessible for facilitators of the meetings/forums.
 - Community sexual assault programs in each of the four pilot counties would facilitate partnership with local law enforcement for these meetings/forums in each jurisdiction that exists in their county. Community Sexual Assault Programs would coordinate additional assistance and partnership with other local and state resources.
- 2) Change the Washington State Model Policy guidelines regarding community notification meetings from advisory to statutory for community notification meetings of sex offenders. A statute for a state-wide, consistent practice for community notification meetings of sex offenders will allow Washington State to lead the way in measuring the educational impact of these meetings on citizens.

MOTION # 44 MOVED TO GIVE SPACE IN THE REPORT FOR THE DISCUSSION THAT LAYS THE GROUNDWORK FOR THESE TWO FUTURE PROPOSALS AND REFERS TO THE RESEARCH REVIEWED.

MOVED: Bev Emery

SECONDED: Kecia Rongen

VOTE:

- In favor: Andrea Piper, Tom Sahlberg, Bev Emery, Kecia Rongen, Sharron Harris, Sally Neiland, Andrew Neiditz, Carey Sturgeon
- Opposed: None
- Abstain: Judge Laura Middaugh, Sheriff Mark Brown

MOTION: PASSED

Statements of Abstentions:

- Sheriff Brown explained that WASPC would object to making the Model Policy law, however, if the recommendation is to have future discussion about whether that is a viable approach, WASPC would support that discussion.
- Judge Middaugh abstained because she did not have enough background on this issue. She was recently appointed to the Board.

Chair Piper gave the floor to Ms. Rongen to discuss juvenile recommendations. Ms. Rongen asked to start with a separate recommendation "Risk Assessment and the Assignment of Risk Levels to Adult Sex Offenders." There was a discussion around leveling in our states and others along with best practices. She recapped some of the committee's research.

Committee's Recommendation: The future work of the committee 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. Risk Assessment Leveling will continued to be worked on by the Committee and Board in 2010.

MOTION# 45 MOVED TO ADOPT THE RECOMMENDATION

MOVED: Bev Emery

SECONDED: Mary Ellen Stone

DISCUSSION: Current Law section needs some updating; it should add the role of DSHS.

FRIENDLY AMENDMENT: Kecia Rongen requested that training go along with the risk assessment.

VOTE:

- In favor: Andrea Piper, Tom Sahlberg, Bev Emery, Kecia Rongen, Sharron Harris, Sally Neiland, Andrew Neiditz, Carey Sturgeon, Sheriff Mark Brown
- Opposed: None
- Abstain: Judge Laura Middaugh

MOTION: PASSED

Ms. Arlow described WASPC's concerns with the idea of "aligning" leveling.

Judge Middaugh entered the meeting after introductions and was asked to introduce herself.

Chairperson Piper requested that Ms. Rongen continue with the proposal of juvenile recommendations.

Ms. Rongen gave a brief history of the issues and referred to her handout “*SB 2714 Proposed Juvenile Recommendations Sex Offender Policy Board*” She also handed out some data which she explained was a snapshot of those juvenile sex offenders in residence. Discussion moved to the paper titled: “*Issues for Consideration Regarding Juvenile Registered Sex Offender and Community Notification Laws*”

Issue #1 Juvenile Re-registration

Committee’s Recommendation: Remove required 90 day check-ins for Level II and Level III Juvenile Sex Offenders.

MOTION# 46 MOVED TO ADOPT THE RECOMMENDATION

MOVED: Bev Emery

SECONDED: Mary Ellen Stone

VOTE:

- In favor: Andrea Piper, Tom Sahlberg, Bev Emery, Kecia Rongen, Sharron Harris, Sally Neiland, Carey Sturgeon
- Oppose: Sheriff Mark Brown on the grounds that the requirement of address verification is not in addition to the removal of the check-in requirement.
- Abstain: Judge Laura Middaugh, Andrew Neiditz

MOTION: PASSED

Post motion discussion occurred between members about whether or not the committee members would consider adding the requirement of in person address verification to the recommendation. Ms. Rongen explained that she was not familiar enough with the data discussing in person verifications to change the recommendation.

Ms. Arlow explained that the summary of information on the in person address verification was given to Chair Hauge earlier and she had thought that it was distributed among members. She advised members that she would circulate it to them as soon as possible.

Issue #2 Relief from Registration and Automatic Termination for Adjudicated Juveniles.

Committee's Recommendations:

Level I Juvenile Registered Sexual Offenders:

- Automatic termination from the juvenile sex offender 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 not been adjudicated of any additional sex offenses or of any other offense which involved unlawful sexual behavior during the twenty-four months post supervision for the offense giving rise to the duty to register,
 - 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 Sex Offender Treatment Providers (SOTPs) and courts.

Level II Juvenile Registered Sexual Offenders:

- 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 registrable 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
- 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
- There is no automatic termination provision.
- If the court determines the juvenile petitioner has not been significantly rehabilitated, the petitioner may re-petition after 12 months has elapsed.

After Ms. Rongen introduced this recommendation, she asked the members to make some changes to the document to reflect the intent of the committee. The first change was to add the language regarding the Prosecutor’s objection in Level I juvenile offenders to both Level II and Level III offenders.

MOTION# 47 MOVED TO ADOPT THE RECOMMENDATION AS OUTLINED WITH THE ABOVE ADJUSTMENTS

MOVED: Bev Emery

SECONDED: Mary Ellen Stone

DISCUSSION:

VOTE:

- In favor: Andrea Piper, Tom Sahlberg, Bev Emery, Kecia Rongen, Sharron Harris, Sally Neiland, Carey Sturgeon
- Opposed: Sheriff Mark Brown the concern is attaching additional penalties or conditions to the risk level assigned to an offender.
- Abstain: Judge Laura Middaugh, Andrew Neiditz

MOTION: PASSED

Issue #3 Validated Juvenile Risk Assessment Tool.

Ms. Rongen introduced this recommendation and informed the members that the Juvenile Rehabilitation Administration has been working on the issues surrounding use of a validated juvenile tool for sometime.

Committee's Recommendations:

- Request that the Legislature authorize funding for the training on a current standardized and accepted juvenile risk assessment tool.
- Request that the Legislature authorize funding for creation and/or validation of a risk assessment tool.

MOTION# 48 MOVED TO ADOPT THE RECOMMENDATION

MOVED: Andrew Neiditz

SECONDED: Mary Ellen Stone

VOTE:

- In favor: Andrea Piper, Tom Sahlberg, Bev Emery, Kecia Rongen, Sharron Harris, Sally Neiland, Andrew Neiditz, Carey Sturgeon, Judge Laura Middaugh, Sheriff Mark Brown
- Opposed: None
- Abstain: None

MOTION: PASSED

Issue #4 Assigning a Risk Level to Juvenile Sex Offenders.

Mr. Neiditz asked for more information regarding the End of Sentence Review Committee. Ms. Rongen answered some questions about ESRC. She explained that there are 11 people who sit on the committee and it is a multi-disciplinary committee although they are looking for treatment providers' representation at this time. Sheriff Brown asked about the numbers of juveniles that currently go through the ESRC, Ms. Rongen said 166 for JRA and the same for SSODA. Sheriff Brown commented that it would be approximately a 50% increase.

Committee's Recommendations:

- The ESRC will level all juvenile sex offenders. The ESRC will perform risk level classification for all juvenile sex offenders, including those about to be released from JRA; 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 to the ESRC in order to review developmental considerations.

MOTION# 49 MOVED TO ADOPT THE RECOMMENDATION

MOVED: Bev Emery
 SECONDED: Sharron Harris

DISCUSSION:

VOTE:

- In favor: Andrea Piper, Tom Sahlberg, Bev Emery, Kecia Rongen, Sharron Harris, Sally Neiland, Andrew Neiditz, Carey Sturgeon, Judge Laura Middaugh
- Opposed: Sheriff Mark Brown noted that the issue needs further discussion.
- Abstain: None

MOTION: PASSED

Additional Comments: Ms. Palmer asked questions regarding potential re-assessment for new aggravating circumstances. She also asked whether this recommendation permits other entities, such as law enforcement to request a re-assessment. Ms. Neil from DOC responded that there already is an ability to give a referral to the ESRC for a recent overt act if the sex offender is on supervision.

Members then discussed another concept to introduce as a companion to the last recommendation voted on.

Concept: Establish a mechanism which allows: 1) Law enforcement/probation or parole staff /CCO the ability to petition the ESRC for review and the ESRC can initiate a risk re-assessment; and 2) the ESRC to review risk level upon request from relevant parties such as, but not limited to, law enforcement, probation and parole staff.

MOTION# 50: MOVED TO ADOPT THE FOLLOWING RECOMMENDATION

~ Establish a mechanism which allows: 1) Law enforcement/probation or parole staff /CCO the ability to petition the ESRC for review and the ESRC can initiate a risk re-assessment; and 2) the ESRC to review risk level upon request from relevant parties such as, but not limited to, law enforcement, probation and parole staff.

MOVED: Bev Emery
 SECONDED: Sally Neiland

VOTE:

- In favor: Andrea Piper, Tom Sahlberg, Bev Emery, Kecia Rongen, Sharron Harris, Sally Neiland, Andrew Neiditz, Carey Sturgeon, Judge Laura Middaugh
- Opposed: Sheriff Mark Brown noted he would like more discussion on this recommendation.
- Abstain: None

MOTION: PASSED**Issue #5 Who in the Community Should be Notified of a Juvenile Registered Sex Offender?**

Ms. Rongen introduced this issue and there was some discussion among members about what the sentence “Information is given to law enforcement, schools and victims and witnesses upon request.” means. Whether the “upon request” was meant to apply to the entire sentence or just victims and witnesses. Ms. Rongen clarified that it was only meant to apply to the latter and asked that members note the grammatical change. With that clarification, the committee’s recommendation was:

Committee’s Recommendation:

- Level 1 and II Offenders: Information is given to law enforcement and schools; the same as current law. Information is given to victims and witnesses upon request. 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: No recommended changes to current law.

(Mr. Meryhew appeared for the meeting at 1:27 p.m.)

MOTION# 51: MOVED TO ADOPT THE RECOMMENDATION

MOVED: Bev Emery

SECONDED: Carey Sturgeon

VOTE:

- In favor: Piper, Sahlberg, Emery, Rongen, Harris, Neiland, Neiditz, Sturgeon; Meryhew
- Opposed: Sheriff Brown noted he would like more discussion on this issue.
- Abstain: Judge Middaugh needs more information.

MOTION: PASSED**Issue #6: Create a Separate Juvenile and Adult Registry and Community Notification.**

Ms. Rongen explained that originally, the committee was looking at the juvenile kidnapping provision, which is why it was not included in the title. Unfortunately, the committee did not have enough time to explore and make a recommendation on juvenile kidnapping offenders; therefore, she asked that the committee's recommendation be altered to reflect the addition of "Kidnapping" before Offender in the title.

Committee's Recommendation: Create a separate statute for adjudicated juveniles titled the "Juvenile Sexual and Kidnapping Offender Registration and Notification Laws."

MOTION# 52 MOVED TO ADOPT THE RECOMMENDATION

MOVED: Bev Emery

SECONDED: Brad Meryhew

VOTE:

- In favor: Andrea Piper, Tom Sahlberg, Bev Emery, Kecia Rongen, Sharron Harris, Sally Neiland, Andrew Neiditz, Carey Sturgeon, Judge Laura Middaugh
- Opposed: Sheriff Mark Brown
- Abstain: None

MOTION: PASSED

This concluded the Juvenile Workgroup's recommendations.

BREAK ~ Return from break at 1:53 p.m.

The Committee next addressed the two recommendations that were tabled at the SOPB meeting on October 5, 2009.

Issue #8: Define Disqualifying Offenses

Mr. Meryhew introduced the re-working of the language after taking the motion back to committee members.

Committee's Recommendation: It is proposed that the language be changed 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."

DISCUSSION: Members had some discussion regarding what the Static 99 uses. Mr. Meryhew explained that some offenses, like patronizing a prostitute, are not included in the index calculation, but instead the prior conviction category.

MOTION# 53 MOVED TO ADOPT THE RECOMMENDATION

MOVED: Bev Emery

SECONDED: Sheriff Mark Brown

VOTE:

- In favor: Andrea Piper, Tom Sahlberg, Bev Emery, Kecia Rongen, Sharron Harris, Sally Neiland, Andrew Neiditz, Carey Sturgeon, Sheriff Mark Brown
- Opposed: None
- Abstain: Judge Laura Middaugh

MOTION: PASSED**Issue #12 Create a Clear Affirmative Duty to Register in Washington for Those Convicted Here Who Then Immediately Leave the State**

This recommendation was tabled due to the inability to flesh out the fix. This is a practical recommendation for the committee in addition to the dual residence recommendation; at this point it will remain tabled.

Other Issues by the Registration and Notification Committee

Chair Piper then asked to address the remaining recommendation under “Other recommendations,” titled Online Identifiers, Recommendation for Report pursuant to ESHB 2035.

Ms. Rongen gave a brief history of the discussion of the issue. She explained that Ms. Hinchcliffe gave a presentation on Tuesday, October 13, 2009 at the Registration and Notification meeting and the summary of that data is located at the end of the issue.

Committee Recommendations:

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

Recommendation #2: The Committee encourages that education and prevention efforts be focused on those vulnerable populations who are subject to grooming and exploitation by the internet or other means.

Recommendation #3: There is value in continuing at looking 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).

MOTION# 54 MOVED TO ADOPT RECOMMENDATIONS #1, #2, and #3 with the following change to #3: “add the “Future Considerations as recommendation #3, with the change from there “may be” value to there “is” value.”

MOVED: Mary Ellen Stone

SECONDED: Bev Emery

DISCUSSION: Mr. Meryhew added that we do have enough information to make a decision, DOC does not have a standard procedure or funding, DOC, DSHS, and JRA should be authorized to collect this information explicitly and make it a supervision issue. This way, people who already have the ability to collect the information (such as judges) have a way to enforce the condition. This is a problem that is present now. Online identifiers should be a supervision issue. Members asked if this was a new motion or just discussion, Mr. Meryhew indicated that this should be part of an amended motion. A member suggested that it could be a companion motion or part of the Board's work on the recommendations in the future. There was a call for the question and a vote.

VOTE:

- In favor: Piper, Sahlberg, Emery, Rongen, Harris, Neiland, Neiditz, Sturgeon, Sheriff Brown, Meryhew
- Object: None
- Abstain: Judge Middaugh (because she does not have enough information or background on these recommendations.)

Judge Middaugh suggested that someone come up with a protocol for judges to impose this condition. It shouldn't be contingent on the crime charged. There should be education that isn't necessarily mandated by legislation.

MOTION: PASSED

There was further discussion on the subject matter that was discussed as an additional Motion. The concept is to statutorily authorize JRA, DSHS, and DOC any other relevant agency to collect online identifiers from offenders related to internet usage, particularly those that are only on supervision.

There was also discussion on the idea of looking at specific crimes in relation to online identifier enforcement such as the crime, Communication with a Minor by Electronic Means. There was a member question asking if judges and DOC is already imposing the conditions, and if they have the authority, why do they need a letter from the Board or Legislature to do a better job?

There was another member question asking if there a direct link or nexus to the crime and behavior.

The Board took a brief break before discussing agenda item #6.

6. Discussion of the 2009 Report(s) to the Washington State Legislature

Staff updated on the progress of the drafting of the SHB 2714 and the Annual SOPB report and proposed an approach. The following discussion points were made:

- There was a proposal that the Board include a summary of the literature on risk assessment, static and dynamic factors, review of other states on leveling, and where we are. Dr. Sturgeon was asked if she would be willing to draft the summary on these particular issues
- Members discussed how to prioritize the work over the year and concluded the following:
 1. The highest obligation is to answer the specific questions posed by the legislature;
 2. Then lay out the research for the issues that Board has reached 100% consensus for (excluding abstentions); and
 3. Then outline the items where there is a majority but not consensus. Describe the majority recommendation and the dissents and research but explain that the Board is not comfortable making them a priority recommendation.
- One of the members added that there is an underlying assumption to all the recommendations that the leveling issue will be fixed. It is important to inform the reader of this context the Board is saying that this is what you can do with the registration and notification in general but you have to fix leveling and you're not ready to do that yet.
- Board decided that oppositions and abstentions would be included in the record.
- Members also asked for the report to illustrate when some arose out of doing the research on the specific tasks asked. Members want the report to lay out the workplan for the next year. Mr. Neiditz suggested put in context what we are about, it's a fairly new board that grew out of some major incidents about safety throughout the community. Ms. Rongen talked about how some of the evidence does show the opposite of ensuring public safety which is against status quo.

7. New Business

The Board discussed putting together a legislative committee to be ready for the Dec. 3rd and 4th assembly days, along with being ready to answer questions or testify during the 2010 Legislative Session.

The following requested to be on the Committee :Kecia Rongen; Andrea Piper; Bev Emery; Brad Meryhew (need to ask Russ Hauge if he wants to do it); Anmarie Aylward or Sally Neiland, and Lindsay Palmer.

The above volunteers will select amongst each who will actually be the members to testify before the Legislature.

8. Public Comment

There was no public comment.

9. Meeting Schedule

This agenda item was tabled to the next full Board meeting.

10. Adjournment

Vice-Chair Piper adjourned the meeting at 4:00 p.m.

APPROVED AND ADOPTED BY THE SEX OFFENDER POLICY BOARD

Chair Russell Hauge

Date

Shoshana Kehoe-Ehlers

Date