



STATE OF WASHINGTON

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**Sex Offender Policy Board**

**General Recommendations for  
Sex Offender Management by the  
Sex Offender Policy Board**

**September 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 the 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.

### Restore Permanent Funding for the SOPB

- In 2011, budget cuts eliminated full-time staffing to the Board. Prior to this elimination, the Board was able to evaluate the state's sex offender statutes, educate and advise lawmakers on any issues, and conduct original research to aid in the development and evaluation of relevant sex offender policies. While grant funding is currently being used to staff the Board, this is a temporary fix.
- **RECOMMENDATION:**
  - The SOPB recommends that Washington state consider providing permanent funding to the Board. Allowing them to retain their staff member, thereby increasing productivity, and visibility.
- A dissenting report for this recommendation is included in the body of the document.

## 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. 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 general 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.

### **Recommendation: Restore Permanent Funding for the SOPB**

In 2011, budget cuts eliminated full-time staffing to the Board. Prior to this elimination, the Board was able to evaluate the state's sex offender statutes, educate and advise lawmakers on any issues, and conduct original research to aid in the development and evaluation of relevant sex offender policies. In 2016 the Office of Financial Management was able to use the SORNA Reallocation Funding to hire a full-time staff member for the Board. Since then, the Board has been able to provide an in-depth response to the Governor's request from October 2015 and write several reports relevant to sex offender policy. The Board believes that this funding is crucial, as it not only can reimburse members for their travel and time, but provides funding for a full-time staff member.

While the SORNA Reallocation Grant has been able to fund the SOPB Coordinator for 2016, and possibly through 2017, this is not a feasible option as it greatly limits the scope of the Board's work. Currently, the SOPB Coordinator is limited to work that can further increase compliance with SORNA, and other funding from the grant can only be used for studies, etc. which further Washington's SORNA compliance.

Should Washington state provide funding to the Board, to include a full-time staff member, the SOPB Coordinator would be able to conduct numerous research studies on behalf of the Board. When created, the Board was envisioned to be a body of experts in the field, who were not only up to date on the latest research but also contributed to the existing body of research. A budget for the Board that allows full-time staffing would allow the Board to increase their productivity while simultaneously escalating the Board's ability to engage with lawmakers and contribute relevant information on sex offender management.

The SOPB recommends that Washington state consider providing permanent funding to the Board. Allowing them to retain their staff member, thereby increasing productivity, and visibility.

### **Dissenting Report: Restoration of SOPB Funding**

The undersigned members of the Sex Offender Policy Board (SOPB) respectfully wish to convey our dissent of the recommendation to restore permanent funding for the SOPB.

Our objection is based on the fact that the SOPB only conducts work at the request of the Governor or the Legislature. By its very nature, that means that the SOPB was not intended to be a full-time body. We would agree that when the Governor or Legislature task the Board with a project, then adequate funding should be provided to support any work requested.

During this time when the legislature continues to struggle to meet all of its existing budget obligations, the organizations that we represent tend to minimize and prioritize our budget requests out of respect for the limited funding available. If our organizations were to support this funding request, it could potentially impact other funding priorities that our organizations have requested. We cannot be in a position of competing against our own funding requests.

We also respectfully dissent with the way that this item was brought forward. There was no previous Board discussion and the hastily scheduled conference call limited discussion and participation. There is also no information about the amount of a budget request or from what source. Any recommendation made by the Board deserves more thorough vetting.

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## 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
- Restore Permanent Funding for the SOPB

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## Appendices

2009 Full Report

2015 Public Disclosure Recommendation

SORNA's Juvenile Registration Guidelines

Governor's Request (letter)

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