



**STATE OF WASHINGTON**

**SEX OFFENDER POLICY BOARD**

***PO Box 40927 • Olympia, Washington 98504-0927  
(360) 407-1050 • FAX (360) 407-1043***

**MINUTES**

**MONDAY, OCTOBER 5, 2009  
DEPARTMENT OF CORRECTIONS  
7345 LINDERSON WAY  
ROOM 1028 ABC  
TUMWATER, WA 98504**

**MEMBERS PRESENT:**

Russ Hauge  
Maureen Saylor  
Kecia Rongen  
Sheriff Mark Brown  
Bev Emery  
Mary Ellen Stone  
Andrea Piper  
Brad Meryhew  
Dr. Carey Sturgeon  
Anmarie Aylward  
Betsy Hollingsworth in lieu of Tom Sahlberg

**MEMBERS NOT PRESENT:**

Judge Laura G. Middaugh  
Andrew E. Neiditz  
Ida Ballasiotes  
Lynda Ring Erickson  
Brooke Burbank

**STAFF PRESENT:**

Shoshana Kehoe-Ehlers  
Shannon Hinchcliffe  
Andi May

**OTHERS PRESENT:**

Dianne Ashlock, Department of Corrections; Joanna Arlow, Washington Association of Sheriffs and Police Chiefs; Charles Shelan, JRA, Community Youth Services; Carolyn Sanchez, Washington State Patrol; Dave Coleman, Snohomish Sheriffs Office; Gary Friedman, DOC Religious Services Advisory Committee; Lisa Johnson, King County Prosecutors Office; Rashad Morris, Senate Democratic Caucus; Shani Bauer, Senate and Human Services Committee; Nathan Johnson, Senate Republican Caucus; Becky Miner, Washington State Patrol; Amy Pearson, Office of Crime Victim Advocacy; Lindsay Palmer, King County Sexual Assault Resource Center; Terry Price, Washington House Democratic Caucus; Serena Dolly, Washington Association of Cities; Sheila Gall, Association of Cities

**1. Call to Order**

SOPB Chairman Russell Hauge called the meeting to order at 12:16 p.m.

**2. Introductions**

**3. Revise and Adopt Agenda**

**MOTION #26 MOTION TO APPROVE AGENDA**

MOVED: Maureen Saylor

SECONDED: Kecia Rongen

PASSED: Unanimously

**4. Discussion on Proposed Method for Voting on SHB 2714 Report Recommendations (taken out of original agenda order)**

The Board started discussing procedural details about the pending SHB 2714 Legislative Report. This discussion included a proposed timeline for the report, what has been already been accomplished on the report, and how to go about ensuring that Board members can return to their constituency groups before voting. This last matter will continue to be discussed when the Board revisits this agenda item later in the meeting as well as when the Board discusses the approach to the report at the Oct. 15, 2009 Full Board meeting.

Ms. Aylward suggested using the Dash-point process as a way to communicate the information to constituents. When the California Sex Offender Management Board comes together in open meetings, they have a dashboard of information so that every member can share the information with their constituent groups. The SOPB Benchmarks Committee will look at coming up with some data for a similar process.

**5. New Business (taken out of original agenda order)**

Ms. Rongen raised the issue of continuously absent board members and asked that the bylaw rules regarding absent members be considered by the Chair.

This was a concern shared by other members. Chair Hauge will reach out to the organizations of members not regularly attending. He will work to emphasize that the organizations' proposed member(s) understand the amount of work and meetings that will be required of the member(s).

**6. Report on Meeting with the U.S. Department of Justice's Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) Office's Policy Advisors**

Registration and Notification Committee Chair Ms. Rongen reported on the outcome of the Sept. 30, 2009 meeting with the representatives from the SMART

office regarding the implementation of the SORNA provisions of the Adam Walsh Act.

Many Board and Committee members were in attendance including Ms. Rongen, Ms. Emery, Ms. Pearson, Ms. Arlow, Ms. Ashlock, John Lane from the Governor's office, SGC Executive Director Jean Soliz-Conklin, and SOPB Program Director, Ms. Kehoe-Ehlers. Ohio and the United Tribes of Umatilla were recently found in substantial compliance with SORNA. Ms. Rongen summarized the concerns expressed by Washington State to the SMART representatives. These included:

- The difference between our risk assessment leveling system and SORNA's offense based leveling system. SORNA's leveling system would take Washington State's largest population of Level I's and make many of them Tier III's under SORNA's system.
- Other expressed concerns included: the numerous pending court challenges to SORNA across the country, dilution of community notification, re-education of the public and professionals; and including all the financial costs that would go along with implementing the SORNA provisions.
- There was discussion among members about Tribes' participation in SORNA and their potential loss of sovereignty (some sovereignty) if they do not comply.

There was a representative from the Byrne Grant Committee. This committee agrees with the position that SORNA is not good policy.

SMART was asked at this meeting to identify the evidence and research used to support the offense-based system.

Washington State already does some things that comply with SORNA, including use of a statewide web registry, an address verification program among others.

The SMART representatives talked about the free software that they have which would allow communication between the states. They also offered to work with Washington State to put our definitions of offenses into the tier system and see the impact SORNA's tier system would have on Washington's current registration system.

Finally, there is a national SMART symposium in Portland in May 2010.

After Ms. Rongen presented her summary, the Board held a brief discussion about the meeting with SMART.

**7. Approval of Minutes (agenda item taken out of order (12:40))**

**MOTION # 27 MOVED TO APPROVE JULY 16, 2009 MINUTES**

MOVED: Anna Aylward  
 SECONDED: Kecia Rongen or Maureen Saylor  
 PASSED: Unanimously

**MOTION# 28 MOVED TO APPROVE SEPTEMBER 17, 2009 MINUTES**

MOVED: Maureen Saylor  
 SECONDED: Carey Sturgeon  
 PASSED: Unanimously

**8. Discussion on Proposed Method for Voting SHB 2714 Report Recommendations (taken out of original agenda order)**

The Board revisited this agenda item before the Registration and Notification Committee's presentation on their recommendations. SOPB Members Bev Emery and Mary Ellen Stone completed a draft decision-making process for the Board to use when voting on the SHB 2714 recommendations. Ms. Stone explained the rationale behind the proposed method for voting on recommendations

After some discussion, a motion was made to adopt the proposal as amended.

**MOTION# 29 MOVED TO ADOPT PROPOSAL AS AMENDED. (SEE ATTACHED REVISED COPY)**

MOVED: Mary Ellen Stone  
 SECONDED: Andrea Piper  
 PASSED: Unanimous

**9. Registration and Community Notification Committee Presentation on Proposed Recommendations for the November 1, 2009 Legislative Report (taken at 1:05)**

During the last Full Board Meeting on September 17, 2009, the Registration and Notification Committee workgroups began presenting their recommendations for the report to the Washington State Legislature in response to SHB 2714. This Committee continued to present their recommendations at this meeting. The focus of today's meeting was the recommendations made by the FTR/Registration/Risk Assessment workgroup.

Mr. Meryhew, Chair of the FTR/Registration/Risk Assessment workgroup, opened the presentation with his paper, "Sex Offender and Notification Research". Mr. Meryhew cited several studies, including WSIPP's June 2009 Literature Review, "Does Sex Offender Registration and Notification Reduce

Crime? A Systematic Review of the Research Literature”, by Elizabeth Drake and Steve Aos, to support the group’s position. There was member discussion regarding the information presented in Mr. Meryhew’s paper.

**Break at 2:01 p.m.**

**Re-convene at 2:20 p.m.**

After the Board returned from the break, they started discussion on the recommendations from the Registration and Notification FTR/Registration/Risk Assessment workgroup

**Issue #1** Simplify and Standardize Deadlines: 72 Hour Registration Rule

**Committee’s Recommendation:** Standardize essentially all registration deadlines to three business days with just a few exceptions. Attached is a copy of the statute with the new deadlines interlined.

**MOTION# 30 MOVED TO ADOPT THE RECOMMENDATION**

MOVED: Maureen Saylor

SECONDED: Bev Emery

VOTE:

- In favor: Brad Meryhew, Bev Emery, Andrea Piper, Sheriff Mark Brown, Anmarie Aylward, Maureen Saylor, Carey Sturgeon, Betsy Hollingsworth, Russ Hauge.
- Oppositions: None
- Abstentions: WAPA may abstain

MOTION: PASSED

**Issue #2** Dual Registration for multiple residences

**Committee’s Recommendation:** Allow offenders to register at more than one residence.

**MOTION# 31 MOVED TO ADOPT THE RECOMMENDATION**

MOVED: Mary Ellen Stone

SECONDED: Bev Emery

DISCUSSION:

- Ms. Rongen had concerns about the fiscal impact and the significant impact this recommendation may have on juveniles. She suggested that the Board consider fixing the “residence” definition instead.
- Ms. Arlow stated that there are many technicalities to look at regarding this recommendation.

VOTE:

- In favor: Brad Meryhew
- Oppositions: Bev Emery, Andrea Piper, Anmarie Aylward, Kecia Rongen, Maureen Saylor, Sheriff Mark Brown
- Abstentions: Russ Hauge and Betsy Hollingsworth

**MOTION: FAILED**

Board wanted further discussion on the definition of “residence” to be further vetted. They sent it back to the committee for further work.

**Issue #3** Tier the Class of Felony for “Failure to Register as a Sex Offender”.

**Committee’s recommendation:** 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 on 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.

**MOTION# 32 MOVED TO ADOPT THE RECOMMENDATION**

MOVED: Bev Emery

SECONDED: Kecia Rongen

VOTE:

- In Favor: Brad Meryhew, Bev Emery, Andrea Piper, Sheriff Mark Brown, Anmarie Aylward, Kecia Rongen, Maureen Saylor, Carey Sturgeon, Betsy Hollingsworth, Russ Hauge
- Oppositions: None
- Abstentions: None

**MOTION: PASSED**

**Issue #4** Out of State Conviction Registration Duty Fix

**Committee’s recommendation:** 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. Make the time period for registration equivalent to what their court of conviction has imposed. 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.

**MOTION# 33 MOVED TO ADOPT THE RECOMMENDATION**

MOVED: Bev Emery  
 SECONDED: Maureen Saylor

**DISCUSSION:**

- Sheriff Brown and Ms. Arlow suggested that this may be a technical workload issue, and that there are practical considerations regarding those that might be released.
- Chair Hauge mentioned that this recommendation is similar to the Washington State Association of Prosecuting Attorneys' organization's proposed 2010 legislation on the issue of comparability.

**VOTE:**

- In favor: Brad Meryhew, Bev Emery, Andrea Piper, Sheriff Mark Brown, Anmarie Aylward, Kecia Rongen, Maureen Saylor, Carey Sturgeon, Betsy Hollingsworth, Russ Hauge
- Oppositions: None
- Abstentions: None

**MOTION: PASSED**

**Issue #5 Community Custody Range for First Offense FTR**

**Committee's Recommendation:** Reduce community supervision for the first Failure to Register as a Sex Offender conviction to 12 months. Second and subsequent offenses would continue to have 36 months of community supervision.

**MOTION# 34 MOVED TO ADOPT THE RECOMMENDATION**

MOVED: Bev Emery  
 SECONDED: Kecia Rongen

**VOTE:**

- In favor: Brad Meryhew, Bev Emery, Andra Piper, Anmarie Aylward, Kecia Rongen, Maureen Saylor, Carey Sturgeon, Betsy Hollingsworth, Russ Hauge
- Opposed: None
- Abstain: None

**MOTION: PASSED**

**Issue #6 Repeal the 90 day reporting requirement for Level II and III Offenders**

**Committee's Recommendation:** Remove the 90 day reporting requirement for Level II and III offenders. Continue with enhanced address verification for Level II and III offenders.

**MOTION# 35 MOVED TO ADOPT THE RECOMMENDATION**

MOVED: Bev Emery

SECONDED: Maureen Saylor

DISCUSSION: Sheriff Mark Brown discussed what the in person verification law enforcement does for Level I, II, and III Registered Sex Offenders and proposed to add Level I to the recommendation. Discussion regarding a change to the motion ensued.

**MOTION TO AMEND: Remove the 90 day reporting requirement for Level II and III offenders. Continue with enhanced in-person address verification.**

MOVED TO AMEND: Brad Meryhew

SECONDED: Andrea Piper

## VOTE TO AMEND:

- In favor: Brad Meryhew, Andrea Piper, Sheriff Mark Brown, Anmarie Aylward, Maureen Saylor, Carey Sturgeon, Betsy Hollingsworth, Russ Hauge
- Opposed: None
- Abstain: Bev Emery and Kecia Rongen  
Abstention statements– Ms. Emery unclear on address verification issue; Mr. Meryhew also has address verification concerns; Ms. Rongen, unclear on address verification processes that are already occurring and what the fiscal impact would be.

**MOTION TO AMEND: PASSED****Issue #7 Court Criteria for Relief from Registration**

**Committee's Recommendation:** It is proposed that the Court be given some specific guidance on what factors to consider when evaluating a petition to strike the requirement of sex offender registration. We are proposing that the statute incorporate a rather long list of criteria that are rooted in the static and dynamic risk factors that the research tells us affect risks to community safety. This list is intended to be illustrative and not exhaustive, in that the court can consider other criteria as well. 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(s) 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 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 (is not required to insure [sic] community safety)).

**MOTION# 36 MOVED TO ADOPT THE RECOMMENDATION**

MOVED: Bev Emery

SECONDED: Maureen Saylor

DISCUSSION: Many members commented that they thought the recommendation discussed in committee was one that clarified the statutory language at the end instead of referring to many statutes. After discussion, Mr. Meryhew moved to amend the original motion and replace the bottom paragraph of the recommendation/motion with the following:

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.

**MOTION # 37 MOVED TO ADOPT THE AMENDED RECOMMENDATION AS FOLLOWS:**

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.

MOVED TO AMEND: Brad Meryhew

SECONDED: Bev Emery

VOTE TO AMEND:

- In favor: Brad Meryhew, Bev Emery, Andrea Piper, Sheriff Mark Brown, Anmarie Aylward, Kecia Rongen, Maureen Saylor, Carey Sturgeon, Betsy Hollingsworth, Russ Hauge
- Opposed: None
- Abstain: None

**MOTION TO AMEND: PASSED**

**Issue #8:** Define Disqualifying Offenses for Relief from Registration based on actual risk to the community.

**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, a conviction for an offense with a domestic violence designation, a conviction for any Assault charge, or a conviction for Indecent Exposure."

**MOTION# 38 MOVED TO ADOPT THE RECOMMENDATION**

MOVED: Bev Emery  
SECONDED: Maureen Saylor

DISCUSSION: Lengthy discussion by members about what crimes were included and which crimes were left out of the recommendation. Concerns regarding certain crimes and misdemeanors such as stalking, crimes with firearms, custodial sexual misconduct 2<sup>nd</sup> degree, and patronizing a prostitute.

**MOTION # 39 MOVED TO TABLE #8 RETURN TO COMMITTEE AND COME BACK OCTOBER 15, 2009 SOPB MEETING**

MOVED: Maureen Saylor  
SECONDED: Bev Emery

VOTE:

- In favor: Bev Emery, Andrea Piper, Sheriff Mark Brown, Anmarie Aylward, Kecia Rongen, Russ Hauge, Maureen Saylor, Carey Sturgeon, Betsy Hollingsworth
- Opposed: Brad Meryhew
- Abstain: None

**MOTION TO TABLE: PASSED**

**Issue #9** Allow Juvenile Offenders with First FTR to petition for Relief

**Committee's Recommendation:** 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) regarding 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.

**MOTION# 40 MOVED TO ADOPT THE RECOMMENDATION**

MOVED: Mary Ellen Stone

SECONDED: Andrea Piper

DISCUSSION: WAPA agrees with this recommendation, especially for juveniles who committed sex offenses as a minor and may not have understood the registration laws.

VOTE:

- In favor: Brad Meryhew, Bev Emery, Andrea Piper, Sheriff Mark Brown, Anmarie Aylward, Kecia Rongen, Maureen Saylor, Carey Sturgeon, Betsy Hollingsworth, Russ Hauge
- Opposed: None
- Abstain: None

**MOTION: PASSED**

**Issue #10 Allow all Offenders an eventual right to petition [sic] for relief from registration.**

**Committee's Recommendation:** Allow offenders with lifetime registration requirements due to Class A sex offense convictions in Washington, or out of state registration requirements which exceed fifteen years, to petition the court to be relieved of that duty after spending fifteen consecutive years in the community with no new disqualifying offenses. Prior to 2001 the statute allowed Class A offenders to petition for relief after just ten years in the community. The research tells us that the longer the offender is in the community with out re-offense, the lower the risk of re-offense. Fifteen years is sufficient time to allow for the offender to demonstrate their pro-social nature, while still imposing a significant requirement that only a court can lift in a contested hearing. This would give all offenders a reason to continue to remain on a positive track while still requiring the offender to convince a judge to relieve them of the duty. Importantly, this provision would only provide the offender with a right to petition the Court, but would not guarantee eventual relief from registration. The Courts would still have to grant the petition, and the State would continue to have the right to contest those petitions. In conjunction with a more specific and detailed set of criteria for the Courts to apply in evaluating the petitions for relief from registration this

provision would insure that that relief was available only for those with truly and significantly reduced risk.

This eventual right to petition would not apply to anyone who had been deemed a Sexually Violent Predator or who had a federal conviction. The proposed scheme is:

Gross Misdemeanor	Expires in 10 years without disqualifying offenses.
Class C	Expires in 10 years without disqualifying offenses.
Class B	Expires in 15 years without disqualifying offenses. Eligible to petition the court to be relieved after 10 years without disqualifying offenses.
Class A	Eligible to petition the court to be relieved after 15 years without disqualifying offenses. (this is the only change to current law)

#### **MOTION# 41 MOVED TO ADOPT THE RECOMMENDATION**

MOVED: Bev Emery

SECONDED: Andrea Piper

DISCUSSION: Determinate-Plus Sentencing ensures that they are being supervised.

#### VOTE:

- In favor: Brad Meryhew, Bev Emery, Andrea Piper, Anmarie Aylward, Maureen Saylor, Kecia Rongen, Betsy Hollingsworth
- Opposed: Sheriff Mark Brown, Carey Sturgeon, Russ Hauge
- Abstain: None

#### **MOTION: PASSED**

#### Statements of opposition:

- Mr. Hauge ~ the prosecutor's practice is to notify the victim and tell them they have a chance to be heard; we need to focus on others besides offenders.
- Ms. Sturgeon ~ in applying the 15 year eligibility, believes it is a long time and should be further reduced.
- Sheriff Brown ~ wants to look at this issue from the victim's standpoint and believes it may be difficult.

#### **Issue #11 Improve Court Access for Juvenile's Petitioning for Relief from Registration**

This issue was withdrawn by Mr. Meryhew.

**Issue #12**      Create clear affirmative duty to register in Washington for those convicted here who then immediately leave the state.

Mr. Meryhew gave a brief history of this issue and said it may not be ready as a recommendation to go to forward to the Board without a little more work.

**MOTION# 42 MOVED TO TABLE THE RECOMMENDATION UNTIL OCTOBER 15, 2009 SOPB MEETING**

MOVED:      Mary Ellen Stone

SECONDED: Sheriff Mark Brown

DISCUSSION: There was some discussion about how this would impact registered sex offenders who were in detention on an Immigrations and Customs Enforcement (ICE) hold.

**VOTE:**

- In favor: Brad Meryhew, Bev Emery, Andrea Piper, Sheriff Mark Brown, Anmarie Aylward, Maureen Saylor, Kecia Rongen, Betsy Hollingsworth, Carey Sturgeon, Russ Hauge.
- Opposed: None
- Abstain: None

**MOTION TO TABLE:      PASSED**

**10. Public Comment**

There were no public comments made during the meeting.

**11. Adjournment**

Chair Russell Hauge adjourned the meeting at 4:14 p.m.

**APPROVED AND ADOPTED BY THE SEX OFFENDER POLICY BOARD**

\_\_\_\_\_  
Chair Russell Hauge

\_\_\_\_\_  
Date

\_\_\_\_\_  
Shoshana Kehoe-Ehlers

\_\_\_\_\_  
Date