1. **RNR Approach, Prioritizing Treatment, and Lifetime Supervision Recommendation:**

Jeff Landon and Jeff Patnode

More than a decade's worth of research and practice have consistently demonstrated the efficacy and best practice of applying a risk, needs, responsivity (RNR) model to prioritize correctional resources. The Principles of Effective Intervention prescribe the allocation of resources towards higher risk offenders produces the greatest impact on recidivism reduction. Some studies suggest the targeting of lower risk offenders for high intensity treatment may actually increase risk to re-offend. The Washington State Department of Corrections has utilized an RNR system for assigning programming and community supervision for several years, however, the RNR model has not been systematically applied to sexual offenders. There is consensus in the field of sex offender research and management that sexual offenders present among the lowest rates of crime specific recidivism. In Washington State, a large percentage of finite resources are allocated to the treatment and management of lower risk sexual offenders, sometimes for the offender's entire life in the case of lifetime supervision. This practice spreads the system's limited resources across a much larger continuum rather than applying the most intensive treatment and management strategies to those who pose the most risk.

Examples of this include lifetime supervision in many cases regardless of 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 static offense is a very poor predictor of future sexual offense. The policy board recommends changes in policy to reflect and consistently apply RNR principles across the criminal justice continuum, particularly as it applies to sexual offenders. The board recommends that DOC develop a scheme for conducting validated risk based method for assigning correctional programming and sex offender treatment resources during incarceration as well as for assigning and assessing the total length of community supervision and ultimately provide long-term supervision (more than 15 years) to only those assessed with the highest risk and needs.

2. **Public Disclosure Recommendation:**

James McMahan

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 has proven to be in the best interests of the public, 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.

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.

The SOPB again unanimously recommends that legislation be enacted to exempt sex offender registration information from public disclosure, and urges Governor Inslee to lead such an effort in partnership with the SOPB and the respective organizations that comprise the SOPB's membership.

3. Review of RCW Chapter 71.09- Sexually Violent Predators

Dan Yanisch and Keri Waterland

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 LRA placement. The number of such cases that the Department of Corrections must investigate and supervise is steadily increasing. For example, in 2002 there were nine 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 knowledgeable in this area (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. At a cost of well over $150,000 per inpatient resident per year, this has been a very expensive and cumbersome law to maintain. Once the person begins a transition process and requires escort staff, DOC investigations and supervision, etc., the cost increases even more.

Areas to look at would include:

- Location. Having the facility and treatment program located on McNeil Island provides a significant sense of security to the public, but it is very expensive. Costs increase by 33% or more due just to this factor. In looking to the future, does this appear to be the most viable option to house the SCC?

- Legal expenses. Due to the significant civil rights issues related to indefinitely committing someone, this area of litigation has been hotly contested and compared as second only to death penalty cases in complexity and cost. Legal expenses are incurred as the person is being considered for commitment, annually once they have been committed, and as they approach transition back into the community. If a system could be developed that streamlines this process (such as creation of an Administrative Law panel of judges and experts who specialize in the area), it potentially could reduce the contentiousness and costs involved.

- Specialty areas for adolescents, females, the elderly, and the mentally ill / intellectually disabled. The system has now had decades of experience with each of these populations being referred to the Special Commitment Center. What has been learned about the particular needs and risks for these populations, and how best to cope with them in WA state? Can ways be developed to adequately treat and transition these individuals elsewhere?

- Transition needs. Currently the law requires an approved escort or chaperone (which may or may not be supplemented with DOC supervision) to monitor the person in transition each time he or she is in the community. This impacts each outing, whether it is for treatment, supervision, employment, or shopping. Often two escorts are required to allow for staff breaks, etc. This type of supervision could safely be tapered off as the person demonstrates compliance and adequate adjustment, but the law does not allow for reductions. Can ways be found to adequately supervise those who have progressed through treatment and provide them additional space to demonstrate their cooperation and improvement?

- Tolling of supervision. Often a resident will have a court ordered period of DOC supervision they are required to complete once they attain release to the community. As the law is currently written, this begins to toll once they achieve LRA status. Therefore it usually occurs when they are at a SCTF, and already under strict scrutiny. Then by the time they achieve unconditional release they may have no mandated supervision at all. It makes more sense for this period of supervision to be delayed until after the resident is out of the SCTF. Can such a change be facilitated?

- Investigation of proposed addresses. The number of LRA cases DOC must investigate and supervise continues to increase. Without a sound process and structure clarified in statute 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.

4. Liability Concerns Limit Effective Case Management

Michael O'Connell and Dan Yanisch

While it is widely understood that state agencies and employees are reasonably concerned about fulfilling their duties without causing harm or incurring civil liability, the State of Washington's exposure to civil litigation is unusual. This has a significant effect on how state agencies and employees approach the supervision and management of sex offenders.

Sovereign immunity is the common law doctrine that holds governments free from suits or liability. This was well-settled when Washington became a state and remained so well into the twentieth century. Until this was changed by statute, the Washington Supreme Court required clear evidence that the legislature intended to waive sovereign immunity.

In 1961 the Washington State Legislature waived this doctrine by enacting RCW 4.92.090 which states, "The State of Washington, whether acting in its governmental or proprietary capacity, shall be liable for damages arising out of its tortious conduct to the same extent as if it were a private person or corporation."

There have been some subsequent, additional provisions to authorize limited indemnification for some individuals, such as RCW 72.09.320, which became effective in 1988. This applied to employees of the Department of Corrections and states, "The State of Washington, the department and its employees, community corrections officers, their staff, and volunteers who assist community corrections officers in the community placement program are not liable for civil damages resulting from any act or omission in the rendering of community placement activities unless the act or omission constitutes gross negligence."

However, in subsequent years, court rulings have led to high damage awards and the elimination of state agencies from the limited indemnification provisions. These changes were described in a 2005 law review article by then-Washington Attorney General Rob McKenna (Michael Tardif & Rob McKenna, 2005. Washington State's 45-Year Experiment in Government Liability, 29 Seattle University Law Review. 1, 50-52.)

Members of the Sex Offender Policy Board have experienced and heard of many instances where, because of liability concerns, the Department of Corrections (DOC), the Department of Social and Health Services (DSHS) and other agencies with responsibilities to supervise and manage sex offenders refuse to make decisions or exercise discretion in ways that interfere with effective case management and ultimately undermine community safety.

Sex offenders under DOC supervision typically have court-ordered conditions that assume community corrections officers will exercise professional judgment and adjust restrictions based on the client's demonstrated cooperation with supervision and progress in treatment. For example, a high-risk offender may begin community placement with a requirement to be escorted whenever outside their residence. Another client may initially be restricted from ever accessing the Internet. After the offender demonstrates rule adherence and treatment progress, alternative, less-restrictive controls should usually be employed which lead to more social support, increased personal stability or reinforce other risk-reducing elements.

We have heard from individual Departmental employees that while the official policy of the Department may be otherwise, the implicit practice is 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. The quest to reduce perceived liability pushes the agencies into the default response of "NO" to any suggestion or request for changes that carries with it the possibility of increased exposure to liability.

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 absolves the state department of potential liability. But this solution is often not available and, at the very least, is an inefficient procedure for case management. And this requires the court to interpret whether the department's stated objections to changes in conditions are honestly and objectively offered or are a reflexive response based on the department's need to reduce its exposure to liability.

It has become apparent that this problem is more than typical bureaucratic inertia or occasional risk-aversion by certain individuals.

The Sex Offender Policy Board recommends a review of this issue, to include an examination of how Washington compares to other states in this regard and to consider policy and statutory approaches to address this barrier to effective case management.

5. Juvenile Sex Offender Management

Jedd Pelander and Brad Meryhew

In 2009 the Sex Offender Policy Board (SOPB) made several recommendations related to sex offender registration and community notification for juvenile sex offenders based on our review of the relevant social science research at that time. Some of those recommendations were enacted into law and several were not enacted. The SOPB continues to identify research which 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 state does not separate the two populations for registration and community notification purposes though Washington 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 Boards 2009 full 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 community safety for juveniles who commit sexual offenses.