

Fall 2022

# Recommendations for SSOSA reforms; treatment alternatives for certain sex offenses; lifetime supervision; failure to register; washouts; and system improvements.

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## Sex Offender Policy Board

Report submitted to the House Public Safety Committee



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# Sex Offender Policy Board membership

**Brad Meryhew, SOPB Chair**

Attorney | Washington Association of Criminal Defense Lawyers

**Jedd Pelander, SOPB Vice-chair**

Youth who have Sexually Offended program administrator | Department of Children, Youth, and Families, Juvenile Rehabilitation

**Blanche Barajas\***

Executive director | Washington Coalition of Sexual Assault Programs

**Keith Devos\***

Chief executive officer | Special Commitment Center, Washington State Department of Social and Health Services

**Linda Farmer**

Lakewood City Council councilmember | Association of Washington Cities

**Jimmy Hung**

Chief deputy prosecutor | Washington Association of Prosecuting Attorneys

**Nelson Lee**

Judge | Superior Court Judges Association

**Michael O'Connell, Ph.D.**

Board member | Washington Association for the Treatment of Sexual Abusers

**Christine Minney**

San Juan County councilmember | Association of Washington Counties

**Terrina Peterson**

Program coordinator | Washington Association of Sheriffs and Police Chiefs

**Mac Pevey\***

Assistant secretary | Department of Corrections

**Lori Ramsdell-Gilkey**

Board member | Indeterminate Sentence Review Board

**Shawn Sant**

Franklin County prosecutor | Washington Association of Prosecuting Attorneys

**Richard Torrance**

Managing director | Office of Crime Victims Advocacy

**Jamie Weimer**

Projects and programs manager | Washington Association of Sheriffs and Police Chiefs

## \*Members with Proxy Voters

### **Proxy for Blanche Barajas**

**Amber Rodriguez**, advocacy coordinator | Washington Coalition of Sexual Assault Programs

### **Proxy for Keith Devos:**

**Candice Yi**, chief of transition and program accountability | Special Commitment Center,  
Behavioral Health Administration

### **Proxy for Mac Pevey:**

**Donta Harper, Ed.D.**, regional administrator | Department of Corrections

## Executive summary

Washington has a robust sex offender management system that values and implements best practices and treatment for sexual offending. At the Legislature's request, the Sex Offender Policy Board (SOPB) created subcommittees made up of experts and stakeholders to review and make recommendations related to the following topics: the Special Sex Offender Sentencing Alternative (SSOSA), treatment alternatives for certain sex offenses, lifetime supervision, failure to register, washouts, and system improvements. This report outlines the 26 recommendations made by the SOPB in these areas.

Research shows that SSOSA is an effective treatment alternative in reducing risk of recidivism and providing essential treatment while still holding the individual who caused harm accountable. SSOSA has support across all stakeholder groups, including the victims' community who has championed it throughout the years, and **we strongly encourage the SSOSA statute be protected and preserved.** We conducted a review of research and academic literature related to non-contact sexual offending (such as depictions of sexual exploitation, sting cases, and other non-contact, internet-based sexual offenses). Based on the review of research and the effectiveness of treatment alternatives for individuals who commit sexual offenses, as well as the lowered costs associated with diverting individuals from prison while still holding them accountable for their actions, we recommend that a new treatment alternative should be created to expand treatment services to low-risk individuals who have committed certain sexual offenses. We recommend modeling the new treatment alternative based on the SSOSA statute as reference. Additionally, we have found that **there are not enough treatment resources available in Washington for individuals who have committed sexual offenses.** Current funding streams for treatment services have been substantially limited over the years. Additionally, Washington has a shortage of certified Sex Offense Treatment Providers (SOTPs) who can deliver treatment services to this population. Addressing this provider shortage is essential to expanding treatment alternatives and community safety. We recommend ways to expand treatment access in this report along with other system improvements.

The SOPB examined Washington's current practices and procedures related to lifetime supervision. We reviewed nationwide research and practices and the monetary and collateral costs associated. We recommend that a pathway off of lifetime supervision be created for individuals who are eligible and have met all of the necessary requirements. Eligibility and timeframes for discharge from supervision should be based upon risk level and compliance while under supervision. A proposed pathway off lifetime supervision is provided based on up-to-date research.

We reviewed the current practices related to Failure to Register (FTR) and recommend that FTRs be reduced from a Seriousness Level II to an Unranked Felony for the purposes of sentencing. We further recommend that FTRs no longer be defined as a "sex offense" under RCW 9A.44.128 and 9.94A.030. A review of "washouts" was conducted, however, we were unable to reach consensus on this topic. We offer 3 possible solutions, and the corresponding votes and supporting statements of each board member, on this topic.

# Subcommittee membership

## SSOSA & Sentencing Alternatives Subcommittee

### Subcommittee Chairs

- **Megan Allen**, manager of legal advocacy programs | King County Sexual Assault Resource Center
- **Michael O'Connell, Ph.D.**, board member | Washington Association for the Treatment of Sexual Abusers

### Members:

- **Heidi Brodt**, member | Citizens Against Government Entrapment
- **Brian Drake**, community member
- **Bruce Glant**, founder | Citizens Against Government Entrapment
- **Kathleen Hambrick**, founder | Citizens Against Government Entrapment
- **Sonja Hardenbrook**, attorney | Snohomish County Public Defenders Association
- **Katherine Hurley**, special counsel for criminal policy and practice | King County Department of Public Defense
- **Chris Johnson**, director of prevention | King County Sexual Assault Resource Center
- **Jenny Johnson-Riley Ph.D.**, sexual violence researcher and therapist | Kahn and Hansen and Associates
- **Catherine Johnston**, community member
- **Shoshana Kehoe-Ehlers**, program managing attorney, 71.09 RCW Civil Commitment and Trial Level Programs | Washington State Office of Public Defense
- **Nelson Lee**, judge | Superior Court Judges Association
- **Corey McNally**, clinical quality assurance training manager | Department of Corrections
- **Brad Meryhew**, attorney | Washington Association of Criminal Defense Lawyers
- **Bryce Nelson**, deputy prosecuting attorney, special assault unit | Prosecuting Attorney of Pierce County
- **Terrina Peterson**, program coordinator | Washington Association of Sheriffs and Police Chiefs
- **Shawn Sant**, Franklin County prosecutor | Washington Association of Prosecuting Attorneys
- **Lydia Schoen**, community member
- **Joanne Smieja**, board member | Washington Voices
- **Jamie Weimer**, projects and programs manager | Washington Association of Sheriffs and Police Chiefs

## Lifetime Supervision Subcommittee

### Subcommittee chair

- **Jamie Weimer**, projects and programs manager | Washington Association of Sheriffs and Police Chiefs

### Members

- **Megan Allen**, manager of legal advocacy programs | King County Sexual Assault Resource Center
- **Heidi Brodt**, member | Citizens Against Government Entrapment
- **Bruce Glant**, founder | Citizens Against Government Entrapment
- **Sonja Hardenbrook**, attorney | Snohomish County Public Defenders Association
- **Katherine Hurley**, special counsel for criminal policy and practice | King County Department of Public Defense
- **Chris Johnson**, director of prevention | King County Sexual Assault Resource Center
- **Shoshana Kehoe-Ehlers**, program managing attorney, 71.09 RCW Civil Commitment and Trial Level Programs | Washington State Office of Public Defense
- **Pamela Madill**, community corrections officer | Department of Corrections
- **Alex Mayo**, executive director | Washington Voices
- **Corey McNally**, clinical quality assurance training manager | Department of Corrections
- **Brad Meryhew**, attorney | Washington Association of Criminal Defense Lawyers
- **Terrina Peterson**, program coordinator | Washington Association of Sheriffs and Police Chiefs
- **Mac Pevey**, assistant secretary | Department of Corrections
- **Joanne Smieja**, board member | Washington Voices
- **Dominic Winter**, education services manager | Department of Corrections

## Failure to Register (FTR) & Washouts Subcommittee

### Subcommittee chair

- **Terrina Peterson**, program coordinator | Washington Association of Sheriffs and Police Chiefs

### Members

- **Megan Allen**, manager of legal advocacy programs | King County Sexual Assault Resource Center
- **Carolyn Gray**, legal advocacy supervisor | King County Sexual Assault Resource Center
- **Bruce Glant**, founder | Citizens Against Government Entrapment
- **Sonja Hardenbrook**, attorney | Snohomish County Public Defenders Association
- **Jimmy Hung**, chief deputy prosecutor | Washington Association of Prosecuting Attorneys
- **Katherine Hurley**, special counsel for criminal policy and practice | King County Department of Public Defense
- **Lorraine Lynch**, clinical manager | King County Sexual Assault Resource Center
- **Alex Mayo**, executive director | Washington Voices
- **Jedd Pelander**, Youth who have Sexually Offended program administrator | Department of Children, Youth, and Families, Juvenile Rehabilitation
- **Joanne Smieja**, board member | Washington Voices
- **Jamie Weimer**, projects and programs manager | Washington Association of Sheriffs and Police Chiefs
- **Jennifer Williams**, corrections specialist | Department of Corrections

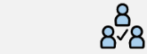


## What we recommend

This is the Sex Offender Policy Board’s final report in response to the Legislature’s March 2022 request. We list our 26 recommendations below. This report also explores our subcommittee process, SOPB process, and applicable historical context. Twelve members of the board voted on these recommendations, though all 13 board members participated in the process.<sup>1</sup>

### Icon key

Next to each recommendation, you will see an icon that indicates:



We had unanimous support



We need additional funds from Legislature



We need action from Legislature



This is a repeat recommendation



### No. 1 (SSOSA)



The SOPB recommends that the SSOSA statute be protected and preserved. We believe the evidence is strong that this sentencing alternative is an effective tool to resolve many cases and has proven itself over the decades.



### No. 2 (SSOSA)



The SOPB recommends that cost barriers to SSOSA be reduced by the implementation of sliding scale fee schedules for evaluations and treatment and the creation of low-cost treatment options.



### No. 3 (SSOSA)



The SOPB recommends that, where possible, work release programs be established and expanded to allow those who otherwise lack the resources to take advantage of SSOSA and other treatment alternatives.



### No. 4 (SSOSA)




The SOPB recommends that RCW 9.94A.670 be clarified to include language that requires an individual to enter a plea of guilty prior to trial in order to be eligible for this sentencing alternative.

<sup>1</sup> Statement by SCJA regarding voting: “The SCJA does not take a formal position at this time until such time as the Legislature drafts a bill. The SCJA does appreciate the increased judicial oversight and discretion being considered in these recommendations.” Additionally, Judge Lee was an active participant at the subcommittee and full board level. As SCJA is not formally weighing in on the recommendations with a vote, 12 votes in favor is a unanimous vote.

  
We had unanimous support

  
We need additional funds from Legislature

  
We need action from Legislature

  
This is a repeat recommendation



### No. 5 (treatment alternative)

The SOPB recommends that a sentencing alternative similar to SSOSA be enacted for those convicted of violations of RCW 9.68A. related to Depictions of Minors Engaged in Sexually Explicit Conduct so long as the person did not create the images in question.

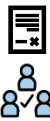


### No. 6 (treatment alternative)

The SOPB recommends that a sentencing alternative similar to SSOSA be enacted for those convicted of an internet sting or other sex offense not involving an identifiable victim.

#### Voting results

Yes: 8 votes — DCYF, WAPA, WACDL, ISRB, AWC, WSAC, WATSA, WCSAP  
No: 2 votes – WASPC, OCVA  
Abstain: 2 votes – SCC, DOC



### No. 7 (treatment alternative)

The SOPB recommends that this treatment alternative only be available to those who are willing to take responsibility for some sexual misbehavior/a strong willingness to address behaviors that led them to their offense.



### No. 8 (treatment alternative)

The SOPB recommends the following criteria for this treatment alternative, similar to the current criteria for SSOSA eligibility, which we endorse:

- No prior sex offense convictions or adjudications, and no adult convictions for a violent offense committed within five years of the instant offense; and
- A standard sentencing range includes a sentence of eleven years or less.



### No. 9 (treatment alternative)


The SOPB recommends that the Court impose standard conditions similar to SSOSA:

- Annual review hearings, including treatment termination hearings; and
- Up to five years of community-based SOTP treatment.




### No. 10 (treatment alternative)

The SOPB recommends that the Court hold a supervision termination hearing at the end of the suspended sentence for the Court to agree with the termination of community custody.

  
We had unanimous support

  
We need additional funds from Legislature

  
We need action from Legislature

  
This is a repeat recommendation



## No. 11 (lifetime supervision)

The SOPB recommends that a pathway off of lifetime supervision should be created for individuals who have committed sexual offenses and meet eligibility criteria, including all of those currently subject to lifetime community custody. Specifically, the SOPB recommends the following time frames and criteria for eligibility for discharge from lifetime community custody:


**Level I.** Individuals who are recommended as a Level 1 upon their release from prison by the End of Sentence Review Committee shall be discharged from community custody five (5) years after their return to the community so long as they meet the eligibility requirements of not committing a “disqualifying event.” The Department of Corrections shall review the relevant records to determine if the individual meets the eligibility criteria and process them off of community custody if they meet that criterion.


If the Department determines that a Level I individual does not meet the criteria for discharge from lifetime community custody, or can identify a specific safety concern, then that case file shall be sent by DOC to the Indeterminate Sentence Review Board (ISRB) for review. DOC may make a referral to the ISRB for review of a Level 1 at least 90 days prior to discharge from community custody if DOC has reasonable grounds to believe the person poses a significant risk of sexual recidivism.

**Level II.** Individuals who are recommended as a Level II by the End of Sentence Review Committee upon their release from prison should be eligible for discharge from supervision ten (10) years after their return to the community so long as they meet the eligibility requirements of not committing a “disqualifying event.” For Level II offenders the ISRB shall review their file, submitted by DOC to the ISRB, to determine if the individual qualifies for discharge from community custody and may extend the period of supervision for good cause shown. A review hearing shall be held at least 120 days before the end of the supervision period.


If a disqualifying event occurs within the first 10 years from release for a Level II individual, the individual will not be eligible for discharge from supervision for at least 5 years from the disqualifying event date. A review hearing by the ISRB should be held at least 120-days prior to the discharge from supervision date.

**Level III.** Individuals who are recommended as a Level III by the End of Sentence Review Committee upon their release from prison should be eligible for discharge from supervision fifteen (15) years after their return to the community so long as they meet the eligibility requirements of not committing a “disqualifying event.” For Level III offenders the ISRB shall review their file, submitted by DOC to the ISRB, to determine if they qualify for discharge from community custody and may extend the period of

  
We had unanimous support

  
We need additional funds from Legislature

  
We need action from Legislature

  
This is a repeat recommendation

supervision for good cause shown. A review hearing shall be held at least 120 days before the end of the supervision period.

If a disqualifying event occurs within the first 10 years from release for a Level III individual, the individual will not be eligible for discharge from supervision for at least 5 years from the disqualifying event date. If a disqualifying event occurs within the last 5 years of supervision for a Level III, then the individual would not be eligible for discharge from supervision for at least 3 years from the disqualifying event date. A review hearing by the ISRB should be held at least 120-days prior to the discharge from supervision date.

We recommend the following as “Disqualifying Events” for discharge from Lifetime Community Custody:

An individual would not be eligible for discharge from community custody if they have had disqualifying events. A disqualifying event is defined as:

- The individual has been found guilty of any serious and risk-relevant violation of the conditions of community custody, as determined by the ISRB at an on-site hearing. “Serious violation” is to be further defined in a future WAC, to include violations such as contact or attempted contact with prohibited person(s) or classes of individuals; use of prohibited drugs/alcohol if these substances were involved in the individual's offense; willful failure to complete required treatment; absconding from supervision, and other violations deemed high-risk by the WAC.
- The individual has been convicted of any new felony offense or any misdemeanor sex offense as defined in RCW 9A.44.128 or 9.94A.030;
- The individual has not completed all recommended treatment as required in the Judgement & Sentence and ISRB Conditions; The SOPB recommends that the ISRB be able to waive this condition if there is a finding that this resulted from the individual's indigence.
- The individual has been found to be non-compliant with conditions of supervision on a repeated basis as documented by DOC and referred to the ISRB. These violations would be addressed on a formal basis by the ISRB prior to release from community custody; and
- The individual has been assessed to be at significant risk for sexual recidivism on an empirically validated DOC approved dynamic risk assessment completed within 120 days of eligibility for discharge.

**Voting results**

Yes: 8 votes — DCYF, WASPC, WAPA, WACDL, ISRB, AWC, DOC, WSAC, WATSA, ISRB


No: 2 votes – OCVA, WCSAP

Abstain: 2 votes – SCC, WAPA

  
We had unanimous support

  
We need additional funds from Legislature

  
We need action from Legislature

  
This is a repeat recommendation



### No. 12 (lifetime supervision for SSOSA cases)

The SOPB recommends that individuals who are granted a SSOSA sentence should be supervised by the Department of Corrections for the length of their suspended sentence or 36 months, whichever is longer.



### No. 13 (lifetime supervision for SSOSA cases)

The SOPB recommends for SSOSA cases that the sentencing Judge in the Superior Court hold a supervision termination hearing at the end of the presumed community custody period to determine if the person should be released from community custody.



### No. 14 (lifetime supervision)

The SOPB recommends that the DOC and ISRB submit an annual report to the governor and appropriate committees of the legislature detailing the number of individuals eligible for discharge from lifetime supervision; the number of individuals granted discharge from lifetime supervision; and the number of individuals who, subsequent to discharge from lifetime supervision, are investigated for a recent overt act as defined by RCW 71.09.020 or new sex offense as defined by RCW 9A.44.128 or 9.94A.030.



### No. 15 (failure to register)

The SOPB recommends that the offense of Failure to Register, pursuant to RCW 9A.44.132, be reduced from a Seriousness Level II offense to an Unranked Felony for the purposes of sentencing. This would result in a presumed sentencing range of 0 – 12 months.



### No. 16 (failure to register)

The SOPB recommends that for the crime of Failure to Register, defendants shall be given one year of community custody regardless of risk level for a first offense and two years of community custody for subsequent offenses.



### No. 17 (failure to register)

The SOPB recommends that Failure to Register offenses should not be defined as a “sex offense” under RCW 9A.44.128 or 9.94A.030. Under current law the second offense of Failure to Register and thereafter are defined as “sex offenses.”



We had unanimous support



We need additional funds from Legislature



We need action from Legislature



This is a repeat recommendation



### No. 18 (failure to register)

The SOPB recommends that Failure to Register should be classified as a “disqualifying offense” as defined in RCW 9A.44.128, which would restart the waiting periods for relief from registration for a conviction.



### No. 19 (failure to register)

The SOPB recommends that individuals under the jurisdiction of the Department of Corrections for a Failure to Register offense, whether they are in the community or still in prison, be assessed to identify the individual’s barrier(s) to registration compliance and provided with resources and tools to support compliance and improve functioning in the community, including housing, vocational rehabilitation, treatment as necessary, and community supports. The SOPB specifically endorses the use of navigators or other specialized corrections approaches in meeting the needs of this population.




### No. 20 (failure to register)

The SOPB recommends that the Washington Association of Sheriffs and Police Chiefs (WASPC) review the Model Policy for Washington Law Enforcement regarding Adult and Juvenile Sex Offender Registration and Community Notification (4.24.5501) to identify opportunities to utilize technology to streamline initial and ongoing registration processes.

  
We had unanimous support

  
We need additional funds from Legislature

  
We need action from Legislature

  
This is a repeat recommendation

## No. 21 (washouts)

The SOPB has been unable to achieve any consensus on this difficult issue. We offer three possible solutions and the vote of our Board for those positions.

- **Option 1:** The SOPB recommends no washouts for subsequent offenses. The current state of the law.

**Voting results**

Yes: 2 votes — WAPA, WASPC

No: 9 votes — DCYF, WACDL, WCSAP, WSAC, WATSA, DOC, ISRB, OCVA, AWC

Abstain: 1 vote — SCC

- **Option 2:** The SOPB recommends the law allow washouts for subsequent offense only if those are non-violent offenses that are not sex offenses as defined in RCW 9.94A.030.

**Voting results**

Yes: 4 votes — WACDL, DCYF, AWC, WSAC

No: 7 votes — WCSAP, WATSA, WASPC, DOC, ISRB, OCVA, WAPA

Abstain: 1 vote — SCC

- **Option 3:** The SOPB recommends that the portion of this assignment related to washouts be completed after the Criminal Sentencing Task Force has completed their work on this subject.

**Voting results**

Yes: 10 votes — WACDL, ISRB, OCVA, AWC, DOC, SCC, WATSA, WCSAP, WAPA, WSAC

No: 1 vote — DCYF

Abstain: 1 vote — SCC



## No. 22 (system improvements)


The SOPB recommends that the Department of Health Sex Offense Treatment Provider requirements outlined in RCW 18.155.020 be amended to expand the definition of providers who are eligible to be Affiliate SOTP providers by allowing Licensed Mental Health Counselor Associates (LMHCAs), Licensed Independent Clinical Social Worker Associates (LICSWA), Licensed Advanced Social Worker Associates (LASWA), and Licensed Marriage and Family Therapist Associates (LMFTAs) to increase provider availability to ensure a sufficient supply of appropriate providers.



  
We had unanimous support

  
We need additional funds from Legislature

  
We need action from Legislature

  
This is a repeat recommendation



### No. 23 (system improvements)



The SOPB recommends that the Department of Health Sex Offense Treatment provider requirement in [RCW 18.155.020](#) be modified to allow SOTPs to supervise up to 4 Affiliates, regardless of full-time or part-time status.



### No. 24 (system improvements)



The SOPB recommends that an agency be directed to administer a funding program to assist in reducing the costs associated with the licensure for Sex Offender Treatment Providers (SOTPs).



### No. 25 (system improvements)



The SOPB recommends that, subject to judicial approval by the sentencing court, the ISRB may recommend, via letter to the sentencing court, modification to conditions of supervision imposed by the court under ISRB jurisdiction. The ISRB may not address restitution or other legal financial obligations and the sentencing court retains the authority to delete or modify conditions.



### No. 26 (system improvements)



The SOPB recommends the following in order to correct the current contrast between RCW 4.24.550 and Washington's Public Records Act:



- The SOPB recommends that RCW 4.24.550 be amended to add a new section: (12) Sex offender and kidnapping offender registration information is exempt from public disclosure under chapter 42.56 RCW, except as otherwise provided in 4.24.550.
- The SOPB recommends that RCW 42.56.240 be amended to add a new section: 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.



## Introduction

In March 2022, the House Public Safety Committee convened the Sex Offender Policy Board (SOPB) to review several topics related to individuals who have committed sexual offenses.

The SOPB met virtually once a month beginning March 31, 2022. At that meeting, the board determined the need to organize subcommittees to properly address all assignments within the project's letter (Appendix A). Each subcommittee responded to different aspects of the request.

## Request items from the March 2022 letter

We pulled the following directly from the letter:

1. Conduct a current review of the Special Sex Offender Sentencing Alternative (SSOSA) and make recommendations for improvements to the SSOSA process, including the current eligibility criteria, judicial discretion and barriers to accessibility. These recommendations should address any shortages in sex offender treatment or other services employed by this alternative sentence.
2. Review research and make recommendations regarding best practices related to sentencing alternatives for individuals with sexual offenses, including “non-contact” sex offenses.
3. Review research and make recommendations regarding best practices and procedures related to lifetime supervision of adults convicted of sexual offenses to include: the monetary and collateral costs of lifetime supervision; the impact on community safety of lifetime supervision; and any recommendations regarding procedures to end lifetime supervision in individual cases or in its entirety.
4. Review research and current practices and procedures for Failure to Register (FTR) cases and make recommendations regarding how to ensure community safety most effectively while wisely using scarce public resources.
5. Review research and make recommendations regarding best practices for felony “washout” periods for sex offenses, as provided in RCW 9.94A.525(2).
6. Make recommendations regarding sex offender policies and practices related to the above referenced policies, and make recommendations as appropriate regarding improvements to treatment, housing, community re-entry and other relevant policies.

## How we created subcommittees

We invited each SOPB member to serve on at least one subcommittee and informed them they could serve on multiple committees if they chose. Membership limitations included no more than six SOPB members on a subcommittee, otherwise it would create a quorum. For the Washington Association of Prosecuting Attorneys (WAPA) and the Washington Association of Sheriffs and Police Chiefs (WASPC) who have co-representatives, we allowed both members to serve on a subcommittee. We also invited community members and other stakeholders to serve on one or multiple subcommittees if they wished.

In instances where multiple representatives from one agency or organization were on a subcommittee, each person could speak and discuss with the group and vote in the subcommittees but for full board votes they could vote only once on behalf of their agency/organization. Each subcommittee worked to address their specific assignments over the course of six months.

## Subcommittees

### **SSOSA & Sentencing Alternatives Subcommittee**

We asked this subcommittee to review the current policies and practices for the following item:

- Item No. 1: Conduct a current review of the Special Sex Offender Sentencing Alternative (SSOSA) and make recommendations for improvements to the SSOSA process, including the current eligibility criteria, judicial discretion and barriers to accessibility. These recommendations should address any shortages in sex offender treatment or other services employed by this alternative sentence.
- Item No. 2: Review research and make recommendations regarding best practices related to sentencing alternatives for individuals with sexual offenses, including “non-contact” sex offenses.
- Item No. 6: Make recommendations regarding sex offender policies and practices related to the above referenced policies, and make recommendations as appropriate regarding improvements to treatment, housing, community re-entry and other relevant policies.

### **Lifetime Supervision Subcommittee**

We asked this subcommittee to review the current policies and practices for the following items:

- Item 3: Review research and make recommendations regarding best practices and procedures related to lifetime supervision of adults convicted of sexual offenses to include: the monetary and collateral costs of lifetime supervision; the impact on community safety of lifetime supervision; and any recommendations regarding procedures to end lifetime supervision in individual cases or in its entirety.
- Item 6: Make recommendations regarding sex offender policies and practices related to the above referenced policies, and make recommendations as appropriate regarding improvements to treatment, housing, community re-entry and other relevant policies.

### **Failure to Register (FTR) & Washouts Subcommittee**

We asked this subcommittee to review the current policies and practices for the following items:

- Item 4: Review research and current practices and procedures for Failure to Register (FTR) cases and make recommendations regarding how to ensure community safety most effectively while wisely using scarce public resources.
- Item 5: Review research and make recommendations regarding best practices for felony “washout” periods for sex offenses, as provided in RCW 9.94A.525(2).

- Item 6: Make recommendations regarding sex offender policies and practices related to the above referenced policies, and make recommendations as appropriate regarding improvements to treatment, housing, community re-entry and other relevant policies.

We initially reviewed the research and the current practices and processes of each component of the request and then proposed recommendations. Each subcommittee met regularly between March and September to hear from guest speakers, review relevant research and data (as available) and facilitate discussions to brainstorm potential recommendations. Once reviews were complete, subcommittee members developed, voted upon and then submitted their final recommendations to the full SOPB for consideration. The three subcommittees provided their recommendations to the full board by September 30, 2022, so that board members had time to review recommendations before voting on their adoption at the October 13<sup>th</sup> and 27<sup>th</sup> full SOPB meetings.

# Chapter I: Treatment Alternatives

# Special Sex Offender Sentencing Alternative (SSOSA)

*Our response to: “Conduct a current review of the Special Sex Offender Sentencing Alternative (SSOSA) and make recommendations for improvements to the SSOSA process including the current eligibility criteria, judicial discretion, and barriers to accessibility. These recommendations should address any shortages in sex offender treatment or other services employed by this alternative sentence.”*

## Brief history of SSOSA statute

The Sentencing Reform Act was adopted in 1984 and authorized the Special Sex Offender Sentencing Alternative (SSOSA) as an alternative sentence. The original purpose of SSOSA was to encourage victims to engage in the criminal justice system, knowing there was opportunity for the offender to receive treatment without a lengthy term of incarceration.

The SSOSA decision is made by the court. A SSOSA sentence consists of a suspended sentence, incarceration up to 12 months, treatment for up to 5 years, and a term of community custody. Prior to 2004, an individual was eligible for SSOSA if<sup>2</sup>:

- The individual was convicted of a sex offense other than Rape 1 or Rape 2
- The individual had no prior convictions for felony sex offenses in this or any other state; and
- The standard sentence range for the offense includes the possibility of confinement for less than 11 years.

After 2004, in accordance with ESHB 2400, in order for an individual to be eligible for SSOSA, the following criteria also apply:

- The individual has no prior violent offenses within five years of the current offense;
- The current offense did not cause substantial bodily harm to the victim; and
- The individual has an **established relationship** or connection to the victim.<sup>3</sup>

The 2004 Legislature also expanded what the judge is to consider in the SSOSA decision<sup>4</sup>:

- An examination report provided by a treatment provider.
- The victim’s opinion must be given great weight in considering whether to grant a SSOSA.
- Whether the individual and the community will benefit from the SSOSA
- Whether the individual had multiple victims
- Whether the individual is amenable to treatment
- The risk the individual poses.<sup>5</sup> To be eligible for a SSOSA, a defendant must be **assessed as low-risk**.
- Whether the SSOSA is too lenient in light of the circumstances.

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<sup>2</sup> ESHB 2400 (2003-2004)

<sup>3</sup> A state Court of Appeals later determined that internet-based crimes (such as depictions offenses and individuals convicted of sex offense through sting operations) were excluded from eligibility for SSOSA due to the requirement of having an established relationship with the victim.

<sup>4</sup> ESHB 2400

<sup>5</sup> Washington State uses locally validated risk assessment tools to determine the defendant’s risk of re-offense. These risk assessment tools have also been empirically validated and normed on state and national populations.

One of the most successful and valuable components of this legislation is the involvement and support from the victims in the criminal process, which is unique. SSOSA is intended to allow for accountability and to encourage victims to disclose without fear that the individual known to them who caused them harm (ex: their parents, guardians, grandparents, etc.) would be subject to a lengthy term of incarceration

### Review of research on SSOSA statute:

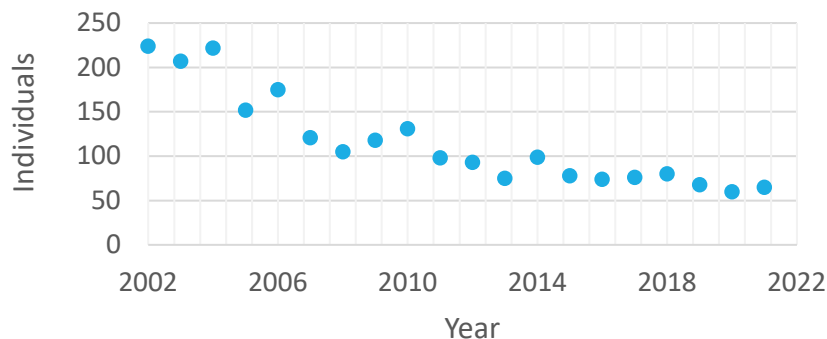
The Washington Institute for Public Policy (WSIPP) published its findings on SSOSA in 2004.<sup>6</sup> The study found that individuals who meet eligibility criteria and are granted a SSOSA have lower rates of recidivism than those meeting the criteria but sentenced to prison.

The SOPB reviewed the SSOSA program in 2013<sup>7</sup> and noted that the number of defendants receiving a SSOSA was declining even though the data showed SSOSA is an effective sentencing alternative for individuals assessed as low risk.

### Current status of SSOSA sentences:

The number of SSOSA sentences granted each year continues to decline, Figure 1.<sup>8</sup> In the early 2000's, **more than 200** individuals benefitted from a SSOSA per year (approximately 25% of eligible individuals). In the last five years, the average number of individuals benefitting from a SSOSA has decreased to **less than 70** individuals per year (less than 15% of eligible individuals)

**Figure 1: Number of people who received a SSOSA in last 20 years**



Multiple factors contribute to the observed decrease in SSOSA sentences. The most significant barrier for many eligible individuals is cost. Individuals granted a SSOSA sentence are expected to pay for their own treatment. Treatment includes group and/or individual therapy sessions and polygraph testing on a regular basis.

Other defendants choose to take a plea for a lesser charge (a Class B or Class C offense) with a prison term rather than pursue a SSOSA if it would result in a Class A conviction with lifetime supervision. As discussed later in this report, prior to 2001, SSOSA cases involving a Class A offense were supervised for the period of the suspended sentence or 36 months, whichever was longer. After 2001, SSOSA sentences for a Class A sex offense resulted in lifetime supervision with no pathway off. (This topic will be discussed further in *Chapter II: Lifetime Supervision* of this report.

<sup>6</sup> [https://www.wsipp.wa.gov/ReportFile/928/WSipp\\_Special-Sex-Offender-Sentencing-Alternative-Trends\\_Report.pdf](https://www.wsipp.wa.gov/ReportFile/928/WSipp_Special-Sex-Offender-Sentencing-Alternative-Trends_Report.pdf)

<sup>7</sup> [https://sgc.wa.gov/sites/default/files/public/sopb/documents/SSOSA\\_review\\_201401.pdf](https://sgc.wa.gov/sites/default/files/public/sopb/documents/SSOSA_review_201401.pdf)

<sup>8</sup> Data obtained from Caseload Forecast Council annual Statistical Summary of Adult Felony Sentencing reports.

Appendix 1 provides information on the number and type of convictions granted a SSOSA sentence in the last 10 years. We recommend changes to lifetime supervision in recommendations #11-14 of this report.)

## Recommendations: SSOSA

### No. 1 (Unanimous)

#### Recommendation

The SOPB recommends that the SSOSA statute be protected and preserved. The evidence is strong that this sentencing alternative is an effective tool to resolve many cases and has proven itself over the decades.

#### Background

SSOSA is a successful alternative that works in reducing risk and has widespread support, including the victims' services community. We are concerned that making further changes, other than those referenced in this report, could negatively impact SSOSA. We are unanimous in strongly urging that this alternative remain. The worst outcome would be SSOSA being removed as an alternative.

### No. 2 (Unanimous)

#### Recommendation

The SOPB recommends that cost barriers to SSOSA be reduced by the implementation of sliding scale fee schedules for evaluations and treatment and the creation of low-cost treatment options.

#### Background

SSOSA is a successful treatment alternative for those who qualify and participate, with a very low re-offense rate. However, there are disparities in accessing this alternative due to the cost associated with paying for treatment. The statute requires that an individual must pay for treatment. We recognize that this requirement can have a disproportionate impact on access to this alternative due to financial barriers. Finances shouldn't be a disqualifier from receiving the necessary treatment if an individual meets all of the other SSOSA criteria. To decrease the known disparities to access of treatment, and to not negatively impact the limited amount of SOTPs that Washington has, we recommend that the Legislature allocate funding to support the creation of a sliding scale. The sliding scale should be subsidized by funding from the Legislature and not be the burden of the SOTP.

### No. 3 (Unanimous)

#### Recommendation

The SOPB recommends that, where possible, work release programs be established and expanded to allow those who otherwise lack the resources to take advantage of SSOSA and other treatment alternatives.

## **Background**

There has been a steady decrease in county jail work release programs being available and accessible. As of the time of the writing of this report, few work release programs remain available across the state. Work release is a helpful program for individuals on SSOSA. Individuals on SSOSA are required to pay for their treatment in order to be eligible for the alternative. Employment is a protective factor and known to reduce risk of future criminogenic behavior. Also, in many situations, family members are dependent on the individual's income. Any amount of jail time without work release jeopardizes the individual's ability to pay for treatment and support his or her family. Having funding designated for work release for individual's on SSOSA would help address the disparities that currently exist. Individuals who are incarcerated and who cannot continue their employment and therefore cannot afford to pay for treatment are not eligible for the alternative.

## **No. 4 (Unanimous)**

### **Recommendation**

The SOPB recommends that RCW 9.94A.670 be clarified to include language that requires an individual to enter a plea of guilty prior to trial in order to be eligible for this sentencing alternative.

### **Background**

The SSOSA statute prohibits an *Alford* plea but allows for the possibility for a SSOSA to be granted post-trial. This recommendation's goal is to close the current loophole that exists that could potentially allow for an individual to request a SSOSA post-trial. We recommend that an individual pursuing this alternative should only be eligible for this alternative if it is sought and agreed to in advance of trial. The legal system and trial process can be a very lengthy, taxing, and distressing process for victims. Allowing for a SSOSA to potentially be granted post-trial can be very damaging to the victim(s) who was harmed, especially after the trial process has concluded.



# New Treatment Alternatives for Certain Sex Offenses

*Our response to: “review research and make recommendations regarding best practices related to sentencing alternatives for individuals with sexual offenses, including non-contact sex offenses.”*

The SSOSA program is an effective community-based intervention for people identified as low-risk for a sexual re-offense. However, since 2004 the SSOSA program has been restricted to individuals whose sexual offense involved a victim with whom they had an established relationship. For individuals convicted of other sexual offenses, there is no alternative available.

We began our work on this topic by looking at other groups of individuals who have committed a sexual offense, including those who may have been identified as low risk, and with non-contact offenses. Two groups were identified and explored in detail: individuals whose offense is limited to downloading, copying, or viewing illegal depictions of minors unknown to them obtained from the internet, and defendants convicted of a sexual offense as a result of a law enforcement sting conducted online. These two groups of individuals are not eligible for the SSOSA program under current law since they do not have an established relationship with the victim.<sup>9</sup>

## History of depiction laws in Washington

In 1984, Washington state enacted the Sexual Exploitation of Children Act, Chapter 9.68A, with the intent of preventing sexual exploitation and abuse of children. The Act created multiple new offenses, including the following involving depictions of minors engaged in sexually explicit conduct:

- *Dealing* in depictions of a minor engaged in sexually explicit conduct, a class C felony, for people duplicating, disseminating, exchanging, or buying the illegal photographs or copies of the photographs.
- *Sending or bringing into the state* depictions of a minor engaged in sexually explicit conduct, a class C felony, for people who bring illegal photographs or copies into the State for sale or distribution.
- *Possession* of depictions of a minor engaged in sexually explicit conduct, a gross misdemeanor, for people who knowingly possess illegal photographs or copies

Multiple changes have been made to Chapter 9.68A since 1984. In 1990, the seriousness of the possession offense was increased from a gross misdemeanor to an unranked class C felony. In 2006<sup>10</sup>, the possession offense was reclassified from a non-sex offense to a sex offense requiring individuals with this offense to register as a sex offender and the seriousness level for offense was increased from unranked class C felony to a seriousness level 6 class B felony. With this change the average length of incarceration greatly increased, Figure 2.<sup>11</sup>

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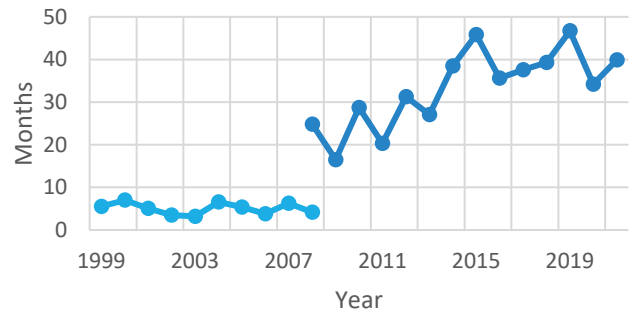
<sup>9</sup> In the field, the term “non-contact” offenses also includes exhibitionism and voyeurism, both of which tend to have higher recidivism rates and are intentionally excluded from the sentencing alternative recommendation.

<sup>10</sup> SSB 6172.

<sup>11</sup> All data for Washington state was obtained from the American Equity & Justice Group Dashboard, <https://www.americanequity.org/>

Prior to ESSB 6172 becoming law, the average length of incarceration for people whose most serious offense was a possession offense was 5.1 months. Post the enactment of the 2006 bill, the length of incarceration increased more than 9-fold. In 2019, the average length of incarceration for a person whose most serious offense was a possession offense was 46.7 months. (Due to the COVID-19 pandemic, 2020 and 2021 were not used to illustrate the trend.)

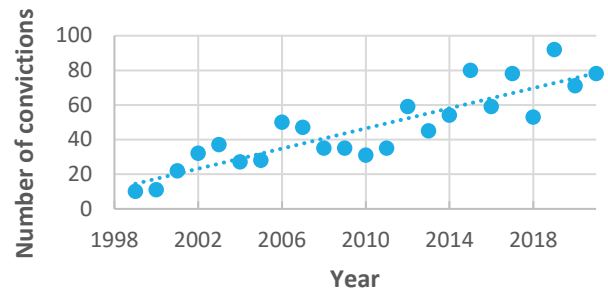
**Figure 2: Average length of incarceration (months) for Possession 1 convictions**



In 2010, ESHB 2424 was enacted in response to the changing nature of technology. The depiction offenses were modified to include first- and second-degree offenses and two new viewing offenses were created. The first-degree offenses were classified as class B felonies and the second-degree offenses were classified as class C offenses. All were classified as sex offenses.

With the addition of the new second-degree possession offense and the two new viewing offenses, the number of convictions with the most serious offense being possession or viewing of illegal depictions increased, Figure 3.

**Figure 3: Total convictions with possession or viewing depictions as most serious offense**



Prior to the enactment of ESHB 2424, 32 individuals per year on average were convicted of a possession offense. In 2019, 92 individuals were convicted with a possession or viewing of an illegal, internet depiction as their most serious offense.

With advancement in technology and the creation of the worldwide internet, the increase in convictions observed in Figure 3 is not surprising. Accessing and collecting illegal images is much easier now that they are available from a home computer or smart phone. The exact number of illegal depictions on the internet is unknown. Estimates are in the millions.<sup>12</sup> A recent report describes the exponential growth of available child sexual abuse depictions on the internet.<sup>13</sup> A surprising fact is the rate of child sexual abuse in the U. S. has decreased 64% since 1990.<sup>14</sup> This decrease has occurred simultaneously as the number of available illegal, internet depictions has increased dramatically.

<sup>12</sup> Government of Canada (2009). Every image, every child backgrounder: Fast facts and statistics. Retrieved from <https://www.victimfirst.gc.ca/media/news-nouv/bg-di/20090507b.html>.

<sup>13</sup> Bursztein et al (2019). Rethinking the Detection of Child Sexual Abuse Imagery on the Internet. WWW '19: The World Wide Web Conference. 2601-2607. doi: 10.1145/3308558.3313482

<sup>14</sup> Finkelhor, D., Saito, K., & Jones, L. (2020). Updated trends in child maltreatment, 2020. Crimes Against Children Research Center. Retrieved from <https://www.unh.edu/ccrc/sites/default/files/media/2022-03/updated-trends-2020-final.pdf>. (Note: This study included CPS data and not cases referred to law enforcement. Other studies have found similar reductions in incidents reported by the National Crime Victims Survey and reports to law enforcement.)

## Review of research: depiction-only offenses

Numerous studies have gathered information concerning individuals convicted of depiction-only offenses (viewing, possessing, duplicating, disseminating, or exchanging illegal, internet depictions) and have compared these individuals to individuals who commit contact sexual offenses and to individuals who commit both depiction offenses and contact sexual offenses. The latter group of individuals will be referred to as mixed offenders.

### Depiction-only individuals compared to contact sexual offenders

Multiple studies have compared individuals convicted of a depiction-only offense to individuals convicted of a contact sexual offense against a child. In a study involving 638 individuals released from federal custody, individuals convicted of a depiction-only offense were found to be significantly different than individuals convicted of a contact sexual offense.<sup>15</sup> Depiction-only offenders were more likely than contact offenders to be better educated and employed at the time of their arrest. In addition, depiction-only offenders were less likely to have a history of criminal behavior or substance abuse than contact sexual offenders. During a follow-up period of 4.8 years, 3% of the 428 depiction-only offenders and 5.7% of the 210 contact sexual offenders were arrested for a contact sexual offense.

Other studies show a very low rate of sexual recidivism for depiction-only offenders. In a meta-analysis of nine studies involving 2,630 depiction-only offenders, 2.0% had a subsequent contact sexual offense conviction and 3.4% had a subsequent depiction offense conviction in follow-up periods ranging from 18 months to six years.<sup>16</sup> Of the 1,093 people released from federal prison in 2015 for a conviction limited to possession or viewing of illegal, internet depictions, 1.3% were rearrested within three years for a subsequent contact sex offense and 3.3% were rearrested for a subsequent non-contact sex offense.<sup>17</sup>

Desistance from crime has no official definition in the literature, however a generally agreed upon definition is desistance is achieved when someone whose rate of sexual re-offense is reduced to or has become less than the rate of sexual offense by an individual whom has never been arrested for a sexual offense. A recent review found a rate of sexual offense among nonsexual offenders to be in the range of 1% to 2% in five years.<sup>18</sup> Consequently, most individuals convicted of depiction-only offenses are below, or close to, the desistance level of committing a contact sexual offense at the time of their conviction. We discuss this further in *Chapter 2: Lifetime Supervision*.

A comprehensive literature review summarizing studies done prior to 2017 comparing depiction-only offenders to contact sexual offenders also concludes individuals convicted of a depiction-only

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<sup>15</sup> Faust, E., Bickart, W., Renaud, C., & Camp, S. (2015). Child pornography possessors and child contact sex offenders: a multilevel comparison of demographic characteristics and rates of recidivism. *Sex Abuse, 27*(5), 460-478. doi: 0.1177/1079063214521469

<sup>16</sup> Seto, M. C., Hanson, R. K., & Babchishin, K. M. (2011). Contact sexual offending by men with online sexual offences. *Sexual Abuse: A Journal of Research and Treatment, 23*, 124–145. doi: 10.1177/1079063210369013

<sup>17</sup> U.S. Sentencing Commission. (2021). *Federal Sentencing of Child Pornography Non-Production Offenses*. Retrieved from [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2021/20210629\\_Non-Production-CP.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2021/20210629_Non-Production-CP.pdf)

<sup>18</sup> Hanson, R. K., Letourneau, E., Harris, A. J. R., Helmus, L. M., & Thornton, D. (2018). Reductions in risk based on time offense-free in the community: Once a sexual offender, not always a sexual offender. *Psychology, Public Policy, and Law, 24*(1): page 2. doi:10.1037/law0000135

offense display more factors associated with a pro-social orientation (employment, education) and less factors associated with a criminal orientation (substance abuse, criminal history, childhood abuse).<sup>19</sup> The authors suggest depiction-only offenders are a special group of offenders whose criminal behavior is limited to accessing and collecting illegal, internet depictions, and aside from this criminal behavior, these individuals are similar to the average member of the community.

The reasons for accessing and collecting illegal, internet depictions are many and varies for each individual.<sup>20</sup> Studies have shown that individuals convicted of depiction-only offenses have higher Internet preoccupation, higher proneness to fantasy, higher levels of sexual pre-occupation, and more deviant sexual interests.<sup>21</sup> In addition, depiction-only offenders are less likely to be married than contact sexual offenders suggesting deficits in forming interpersonal relationships.

### **Depiction-only individuals compared to mixed offenders**

Other studies include mixed offenders; individuals who are convicted of a depiction offense after being convicted of a contact sex offense. A meta-analysis of 30 distinct studies examined the demographic and clinical characteristics that differentiate depiction-only offenders (online offenders) from contact sexual offenders and mixed offenders.<sup>22</sup> Depiction-only offenders display lower levels of antisocial traits and greater victim empathy than either contact or mixed offenders. (Antisocial traits include a disregard for societal norms and the safety of others, a lack of remorse, impulsivity, and persistent rule breaking.)

Two recent literature reviews summarize the differences between depiction-only offenders and contact offenders including mixed offenders.<sup>23, 24</sup> To date, all of the literature reviewed during this assignment indicates individuals who restrict their offending behavior to depiction-only offenses are a distinct subgroup of offenders who pose a lower risk of committing a sexual offense in the future. Therefore, individuals who commit depiction-only offenses may be good candidates for a sentencing alternative. However, mixed offenders pose a higher risk and need different treatment. Therefore, individuals who have a previous sex offense conviction should not be eligible for the proposed alternative.

In addition, candidates for the proposed alternative must be carefully screened using a psychosexual analysis and a polygraph test. Many cases of sexual abuse are not reported to law enforcement. In a study involving 1,145 enlisted male navy personnel, 13% reported engaging in prior criminal sexual

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<sup>19</sup> Henshaw, M., Ogloff, J., & Clough, J. (2017). Looking beyond the screen: A critical review of the literature on the online child pornography offender. *Sexual Abuse: A Journal of Research and Treatment*, 29(5), 416–445. doi: 10.1177/1079063215603690

<sup>20</sup> Seto, M. C., Reeves, L. & Jung, S. (2010). Explanations given by child pornography offenders for their crimes. *Journal of Sexual Aggression*, 16(2), 169-180. doi: 10.1080/13552600903572396

<sup>21</sup> Henshaw, M., Ogloff, J., & Clough, J. (2017). Looking beyond the screen: A critical review of the literature on the online child pornography offender. *Sexual Abuse: A Journal of Research and Treatment*, 29(5), 416–445. doi: 10.1177/1079063215603690

<sup>22</sup> Babchishin, K., Hanson, R., and VanZuylen, H. (2015). Online child pornography offenders are different: A meta-analysis of the characteristics of online and offline sex offenders against children. *Archives of Sexual Behavior*, 44, 45-66. doi: 10.1007/s10508-014-0270-x

<sup>23</sup> Babchishin, K., Merdian, H., Bartels, R., & Perkins, D. (2018). Child sexual exploitation materials offender: A review. *European Psychologist*, 23(2), 130-143. doi: 10.1027/1016-9040/a000326

<sup>24</sup> Ly, T., Dwyer, R., & Fedoroff, J. (2018). Characteristics and treatment of internet child pornography offenders. *Behavioral Sciences & Law*, 36, 216-234. doi: 10.1002/bsl.2340

behavior.<sup>25</sup> These behaviors had not been reported and consequently did not result in a sexual offense conviction. Similarly, individuals convicted of a sex offense have self-reported prior illegal behavior that had not been reported to law enforcement.<sup>26, 27</sup> The new alternative must include a robust evaluation to determine if an individual is a good candidate to be treated in the community and to determine treatment needs.

In conclusion, the available evidence indicates individuals whose behavior is limited to viewing, possessing, duplicating, disseminating, or exchanging illegal, internet depictions are at low-risk of reoffending. Consequently, treatment in the community can be done at a low risk to the community, a risk similar or lower than individuals convicted of a qualifying SSOSA-related offense.

## **Review of research: other internet-facilitated offenses**

Research regarding internet sting cases is a growing field as technology continues to evolve. There is currently not a lot of available research on this topic, though we know there are efforts being made to expand and address this shortage.<sup>28</sup> For this project, we reviewed the currently available research and consulted with experts in this field.

A limited study (n=48) found that internet sex offenders were diagnosed as having lower levels of deviance and less impulsivity than contact offenders.<sup>29</sup> The Association for the Treatment of Sexual Abusers (ATSA) released a statement on internet-facilitated sexual offending in April 2021. They note that “studies suggest internet-facilitated cases are less antisocial and therefore at less of a risk to commit a new offense or a probation violation than contact offending cases.”<sup>30</sup>

We consulted with Dr. David Thornton<sup>31</sup>, an expert in the field, regarding risk for reoffense of internet sting cases. Dr. Thornton stated that, “though there is no data that speaks directly to the risk presented by this group... there is no obvious reason why sting cases where someone believes they are interacting with a child via the internet would be different from cases where someone was actually interacting with a child via the internet”. He further stated “this offense in part resembles

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<sup>25</sup> McWhorter, S., Stander, V., Merrill, L., Thomsen, S., & Milner, J. (2009). Reports of rape perpetration by newly enlisted male navy personnel. *Violence and Victims*, 24 (2), 209-224. doi: 10.1891/0886-6708.24.2.204

<sup>26</sup> Dietz (2020). Denial and minimization among sex offenders. *Behavior Sciences & the Law*, 38, 571-585. doi: 10.1002/bsl.2493

<sup>27</sup> Hernandez (2000). Self-reported contact sexual offenses by participants in the Federal Bureau of Prisons' Sex Offender Treatment Program: Implications for internet sex offenses. *Bureau of Prisons*, <https://ccoso.org/sites/default/files/import/Hernandez-et-al-ATSA-2000.pdf>

<sup>28</sup> We are aware that the 2021 Legislature directed WSIPP to examine Washington State's Operation Net Nanny and similar fictitious victim sting operations. A report is due to the Legislature on this issue on June 30, 2022, and we look forward to the results.

<sup>29</sup> Tomak et al. (2009). An empirical study of the personality characteristics of internet sex offenders. *Journal of Sexual Aggression*, 15(2), 139-148. doi: 10.1080/13552600902823063

<sup>30</sup> ATSA (2021). ATSA position statement on internet-facilitated sexual offending. <https://www.atsa.com/pdfs/InternetFacilitatedOffending2021.pdf>

<sup>31</sup> Dr. David Thornton is the co-developer of the Static-99R, Static-2002R, and SAPROF-SO (empirically validated risk tools that we currently use in Washington State) and has published over 90 papers in peer-reviewed, scientific journals.

typical contact offenses and in part resembles CSEM [child sexual exploitation materials] internet offenses” and “to the extent that it resembles contact offenses then regular static actuarial results should apply while to the extent that it resembles internet CSEM offenses then it should signal a lower risk”. Essentially, there is no data showing that these individuals are at a higher risk than those who commit hands-on offenses, the tools used to assess risk can be used to assess this population, and there isn’t any evidence that indicates these individuals would not be amenable to treatment (assuming they were assessed to be amenable).<sup>32</sup>

Although the research is limited and developing, there is reason to believe individuals caught in law enforcement stings may benefit from treatment in the community without posing undue risk to the community.

### **Individuals convicted of an internet-facilitated sex offense and assessed as low-risk to reoffend should be considered for treatment alternatives**

Based on the success of the SSOSA program, we believe other individuals convicted of a sex offense who are assessed as low-risk to reoffend are good candidates to be considered for a sentencing alternative that minimizes the use of incarceration and focuses on treatment in the community.

Washington uses the Risk-Needs-Responsivity (RNR) model as a framework for determining the best intervention to use for an incarcerated individual. Research has shown that interventions are most effective when the following occurs:

- The intensity of the intervention matches the individual’s risk of re-offense.
- Programming targets the individual’s assessed criminogenic needs.
- Programming is delivered in a way the individual is most likely to learn.

Risk of re-offense is determined by static factors and dynamic factors. The currently used risk assessment tools (Static-99R and STABLE 2007) are not recommended for an individual convicted of a depiction-only offense. The tools overestimate the risk of re-offense for this type of individual.<sup>33</sup>

There is a risk assessment tool specific for individual convicted of a depictions-related offense, however, the information necessary to score the assessment accurately is not easily available in Washington State. Based on the research studies discussed above, there is general agreement that individuals convicted of depiction-only offenses tend to be similar to those assessed to be a low risk of re-offense. For most individuals, their conviction for a depiction-only offense is their first encounter with law enforcement. For example, of the 202 individuals in Washington who were convicted of possession of depictions in the first degree in 2015-2019, 165 (82%) were first-time offenders. Washington does have a sentencing alternative for first-time offenders but currently individuals convicted of a sex offense are ineligible. The RNR principle recommends the intensity of the intervention be related to the risk to reoffend. Interventions include incarceration, supervision, and treatment.

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<sup>32</sup> Please see Appendix E for the full correspondence.

<sup>33</sup> Babchishin, K., Merdian, H., Bartels, R., & Perkins, D. (2018). Child sexual exploitation materials offender: A review. *European Psychologist, 23*(2), 130-143. doi: 10.1027/1016-9040/a000326

### **Incarceration of individuals assessed as low-risk to reoffend**

The use of incarceration for individuals assessed as low-risk to reoffend is known to be problematic.<sup>34</sup> As discussed above, individuals convicted of depiction-only offenses display more factors associated with a pro-social orientation (employment, education) and less factors associated with a criminal orientation (substance abuse, criminal history, childhood abuse).<sup>35</sup> If low-risk individuals are incarcerated even for a short time, they may lose some of the factors that make them low-risk such as their job, housing and prosocial support. In addition, their relationships with prosocial contacts will be replaced with interactions with high-risk, antisocial peers.<sup>36</sup> A recent literature review concludes that incarceration without programming, as is currently done for low-risk offenders in Washington, can be criminogenic.<sup>37</sup> Canada and many European countries use probation, not incarceration, to treat people whose conviction is limited to possession or viewing of illegal, internet depictions.

### **Supervision of individuals assessed as low-risk to reoffend**

Intense supervision of individuals assessed as low-risk to reoffend has also been shown to produce adverse effects, including the potential of increasing re-offense rates.<sup>38</sup> To maximize the benefit of the intervention and to minimize negative outcomes, supervision levels must correspond to risk level. In addition, the length of supervision needs to be appropriate for individuals deemed as low-risk to reoffend. As discussed further in *Chapter II: Lifetime Supervision* of this report, requiring individuals to remain under supervision after they have reached the desistance level of risk results is unnecessary and often results in both monetary and collateral costs.

### **Treatment of individuals assessed as low-risk to reoffend**

Similarly, high-intensity treatment for individuals assessed as low-risk to reoffend may inadvertently increase the risk for re-offense:

*“Low-risk sex offenders who were released to the community without intensive interventions fared 27% better than low-risk offenders who were exposed to halfway house sex offender treatment.”<sup>39</sup>*

According to a recent review of research results published prior to 2018, individuals assessed as low-risk convicted of a depictions-related offense who are required to undergo treatment programs designed for individuals assessed as high risk have a higher rate of re-offense than individuals

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<sup>34</sup> Lowenkamp, C., & Latessa, E. (2004). Understanding the risk principle: How and why correctional interventions can harm low-risk offenders. *Topics in Community Corrections*, 3-8. <https://correctiveservices.dcj.nsw.gov.au/documents/Risk-principal--accessible-442577.pdf>

<sup>35</sup> Henshaw, M., Ogloff, J., & Clough, J. (2017). Looking beyond the screen: A critical review of the literature on the online child pornography offender. *Sexual Abuse: A Journal of Research and Treatment*, 29(5), 416–445. doi: 10.1177/1079063215603690

<sup>36</sup> Lowenkamp, C. T., & Latessa, E. J. (2004). Understanding the risk principle: How and why correctional interventions can harm low-risk offenders. *Topics in Community Corrections*, 3-8. <https://correctiveservices.dcj.nsw.gov.au/documents/Risk-principal--accessible-442577.pdf>

<sup>37</sup> Loeffler, C. E. & Nagin, D. S., (2022). The Impact of Incarceration on Recidivism. *Annual Review of Criminology*, 5, 133-152. doi: 10.1146/annurev-criminol-030920-112506

<sup>38</sup> Pederson, K., & Miller, H. (2022). Application of the risk principle in the supervision and treatment of individuals who have sexually offended: Does “oversupervision” matter? *Criminal Justice and Behavior*, 49(3), 350-370. doi: 10.1177/00938548211040852

<sup>39</sup> Lovins, B., Lowenkamp, C., & Latessa, E. (2009). Applying the risk principle to sex offenders: Can treatment make some sex offenders worse? *The Prison Journal*, 89(3), 344–357. doi: 10.1177/0032885509339509

assessed as low risk that have had no or little treatment.<sup>40</sup> The author of the review concludes lower treatment dosage should be considered for individuals assessed as low-risk to reoffend.

As noted above, depiction-only offenders have a range of motivations and behaviors associated with their offending.<sup>41</sup> To be effective, treatment must address an individual's needs. One common need for depiction-only offenders is the development of healthy internet usage.

*“Regulation of access to the Internet and, ultimately, the development of healthy internet usage would be expected to be a central consideration in treatment and supervision. This treatment target is largely unique to this population.”<sup>42</sup>*

Preliminary results are promising for the use of cognitive-behavioral therapy that includes appreciating the impact of online offending on its victims, practicing interpersonal skills, differentiating between emotional and physical intimacy, and improving self-esteem of the offenders.<sup>43</sup> Others have noted that loneliness and boredom are particularly important predictors of internet pornography use<sup>44</sup> so treatment plans that encourage prosocial use of leisure time should be considered.<sup>45</sup> Still others have noted that some depiction-only offenders may require little or no treatment.<sup>46</sup> For example, an individual who viewed illegal, internet depictions out of curiosity and is a low risk to re-offend may need minimum treatment. There are a number of community-based programs available that focus on the unique needs of depiction-only offenders but they currently are only available outside of the U.S.<sup>47</sup> A recent review describes these programs.<sup>48</sup> These programs focus on some potential risk factors such as sexual preoccupation and intimacy difficulties. They are relatively new so there is little data available on their effectiveness. However, the needs of this population that are identified in the available research suggests their profiles are similar to others in treatment for a sexual offense. Therefore, treatment modalities could be adapted to meet the needs of the individual on a treatment alternative for a depictions-related offense.

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<sup>40</sup> Babchishin, K., Merdian, H., Bartels, R., & Perkins, D. (2018). Child sexual exploitation materials offender: A review. *European Psychologist, 23*(2), 130-143. doi: 10.1027/1016-9040/a000326

<sup>41</sup> Henshaw, M., Ogloff, J. R., & Clough, J. A. (2017). Looking beyond the screen: A critical review of the literature on the online child pornography offender. *Sexual Abuse: A Journal of Research and Treatment, 29*(5), 416–445. doi: 10.1177/1079063215603690

<sup>42</sup> Association for the Treatment and Prevention of Sexual Abuse (2021). *ATSA position statement on internet-facilitated sexual offending*. Retrieved from <https://www.atsa.com/pdfs/InternetFacilitatedOffending2021.pdf>

<sup>43</sup> Hirschtritt, M. E., Tucker, D., & Binder, R. L. (2019). Risk assessment of online child sexual exploitation offenders. *Journal of American Academy of Psychiatry and the Law, 47*(2), 1-10. doi: 10.29158/JAAPL.003830-19

<sup>44</sup> Babchishin, K., Hanson, R. & VanZuylen, H. (2015). Online child pornography offenders are different: A meta-analysis of the characteristics of online and offline sex offenders against children. *Archives of Sexual Behavior, 44*, 45-66. doi: 10.1007/s10508-014-0270-x

<sup>45</sup> Babchishin, K., Merdian, H., Bartels, R., & Perkins, D. (2018). Child sexual exploitation materials offender: A review. *European Psychologist, 23*(2), 130-143. doi: 10.1027/1016-9040/a000326

<sup>46</sup> Association for the Treatment and Prevention of Sexual Abuse (2021). *ATSA position statement on internet-facilitated sexual offending*. Retrieved from <https://www.atsa.com/pdfs/InternetFacilitatedOffending2021.pdf>

<sup>47</sup> Hirschtritt, M., Tucker, D., & Binder, R. (2019). Risk assessment of online child sexual exploitation offenders. *Journal of American Academy of Psychiatry and the Law, 47*(2), 1-10. doi: 10.29158/JAAPL.003830-19

<sup>48</sup> Babchishin, K., Merdian, H., Bartels, R., & Perkins, D. (2018). Child sexual exploitation materials offender: A review. *European Psychologist, 23*(2), 130-143. doi: 10.1027/1016-9040/a000326



## Recommendations: New Treatment Alternative

### No. 5 (Unanimous)

#### Recommendation

The SOPB recommends that a sentencing alternative similar to SSOSA be enacted for those convicted of violations of RCW 9.68A. related to Depictions of Minors Engaged in Sexually Explicit Conduct so long as the person did not create the images in question.

#### Background

We have significant support for this recommendation and believe that an additional treatment alternative should be created for individuals who have committed certain sexual offenses. Research shows that individuals who possess depictions, but who did not create the material, tend to recidivate at low rates and may be good candidates for a treatment alternative. Incarceration is very costly and public resources are scarce. Though treatment for sexual offending is offered through DOC while an individual is incarcerated, these resources are very limited and focus on the highest-risk individuals. This means that lower-risk individuals are often screened out of treatment eligibility and likely will not receive any treatment while they are incarcerated. The recommendation of the creation of a new treatment alternative does not diminish the behavior or harm caused by the individual. By diverting eligible individuals who are deemed appropriate from prison to the new sentencing alternative, the individual will receive critical treatment services and still be held accountable for their choices. SSOSA is a successful, known statute and we recommend modeling this new alternative off of the SSOSA statute.

### No. 6 (Voting results – Yes: 8, No: 2, Abstain: 2)

#### Recommendation offenders

The SOPB recommends that a sentencing alternative similar to SSOSA be enacted for those convicted of an internet sting or other sex offense not involving an identifiable victim.

#### Background

In addition to including individuals who possess depictions, we recommend expanding the new treatment alternative to include individuals who have been convicted of an internet sting or other sex offenses not involving an identifiable victim. As there was not a consensus on this topic, we present supporting statements for each voting response:

**Support for Inclusion.** We reviewed the currently available research and believe the new treatment alternative should be expanded to include individuals who have been convicted of an internet sting or other sex offenses not involving an identifiable victim. In 2019, the most recent, pre- COVID-19 pandemic year, 112 individuals were convicted of a depiction-only offense.<sup>49</sup> By expanding the

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<sup>49</sup> All data for Washington state was obtained from the American Equity & Justice Group Dashboard, <https://www.americanequity.org/>

alternative to include these two groups in addition to individuals convicted of depiction-only offenses, the new treatment alternative will have greater impact.

Based on the available research and consultation with a leading expert in the field of assessments<sup>50</sup> and risk, and taking into account the limited treatment resources as well as community safety, we believe there is sufficient evidence indicating that some of this population may be low enough risk and amenable to treatment to be included in the new treatment alternative (as determined on an individual basis). Additionally, SSOSA allows an alternative for hands-on offenses, which are associated with higher risk, and these cases are not hands-on offenses. We recommend that this population be included to be considered for eligibility for the new treatment alternative and that this treatment alternative be modeled off of the SSOSA statute. SSOSA is a successful, known statute that has been shown to be effective in reducing risk and recidivism and ensuring the individual receives necessary treatment. Diverting individuals who meet the eligibility criteria from prison to this new treatment alternative will ensure that the individual is still held accountable and receives the necessary treatment while saving the fiscal costs and impacts of incarceration. Additionally, expanding eligibility to the treatment alternative for this population will allow for increased judicial discretion and options for accountability and treatment.

**Support for Exclusion.** We do not believe there is enough evidence to support the inclusion of sting and other internet-based crimes not involving an identifiable victim in this new treatment alternative. One study we found noted that minimizations and denial of offenses are common and that polygraph examinations have revealed “striking numbers of undisclosed offenses and victims”.<sup>51</sup> Bourke et al (2015) reviewed the use of tactical polygraphs in understanding an individual’s offense history. The authors recommend that researchers “should avoid placing offenders into groups labeled as ‘hands-off’ based on the absence of such crimes in their history” and noted that tactical polygraphs are able to obtain real, measurable results.<sup>52</sup> A 2011 Seto et al study recommended that individuals soliciting minors on the internet “are more similar to contact offenders than to depiction offenders in the child-related activities, suggesting more interest in having contact with children”.<sup>53</sup> This population cannot be compared to individuals eligible for SSOSA because an individual that is caught communicating or using the internet to groom an identifiable child would never be eligible for a SSOSA, even if it was their first intervention. We are concerned that expanding the alternative to include this population is premature and may not be truly reflective of risk.

**Support for Abstention.** This is a growing field with limited literature to review. We would like to see the results of additional studies before making a determination about the appropriateness of this population being included in the new treatment alternative.

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<sup>50</sup> Please see Appendix E for further detail.

<sup>51</sup> Dietz (2020). Denial and minimization among sex offenders. *Behavior Sciences & the Law*, 38, 571-585. doi: 10.1002/bsl.2493

<sup>52</sup> Bourke et al (2015). The use of tactical polygraph with sex offenders. *Journal of Sexual Aggression*, 21(3), 354-367. <http://dx.doi.org/10.1080/13552600.2014.886729>

<sup>53</sup> Seto et al (2012). Online solicitation offenders are different from child pornography offenders and lower risk contact sexual offenders. *Law and Human Behavior*, 36(4), 320-330. doi: 10.1037/h0093925

## No. 7 (Unanimous)

### **Recommendation**

The SOPB recommends that this treatment alternative only be available to those who are willing to take responsibility for some sexual misbehavior/a strong willingness to address behaviors that led them to their offense.

### **Background**

It is important that an individual pursuing this alternative accept responsibility for the behavior that led them to their situation. This is important for the community, the victims, and for assessing amenability to treatment and participation in the alternative.

## No. 8 (Unanimous)

### **Recommendation**

The SOPB recommends the following criteria for this treatment alternative, similar to the current criteria for SSOSA eligibility, which we endorse:

- No prior sex offense convictions or adjudications, and no adult convictions for a violent offense committed within five years of the instant offense; and
- A standard sentencing range includes a sentence of eleven years or less.

### **Background**

Prior sex offense convictions or adjudications and a history of violent offenses are known risk factors. We recommend modeling this criteria off of SSOSA.

## No. 9 (Unanimous)

### **Recommendation**

The SOPB recommends that the Court impose standard conditions similar to SSOSA:

- Annual review hearings, including treatment termination hearings; and
- Up to five years of community-based SOTP treatment.

### **Background**

Judicial oversight is critical in SSOSA and we recommend that it be a critical component of the new sentencing alternative.

## No. 10 (Unanimous)

### **Recommendation**

The SOPB recommends that the Court hold a supervision termination hearing at the end of the suspended sentence for the Court to agree with the termination of community custody.

### **Background**

Judicial oversight is critical in SSOSA and we recommend that it be a critical component of the new sentencing alternative. Requiring a termination of community custody hearing allows for increased judicial oversight and serves as a safety valve to ensure that an individual is ready to be released from community custody.

# Chapter II: Lifetime Supervision

# Lifetime Supervision

*Our response to: “Review research and make recommendations regarding best practices and procedures related to lifetime supervision of adults convicted of sexual offenses to include: the monetary and collateral costs of lifetime supervision, the impact on community safety of lifetime supervision, and any recommendations regarding procedures to end lifetime supervision in individual cases or in general.”*

## Definition of lifetime supervision v. community custody

Throughout the remainder of this section of the report, we use “supervision” and “community custody” interchangeably. “Community custody” is defined in RCW 9.94A.030(5) as that portion of an offender’s sentence of confinement in lieu of earned release time or imposed as part of a sentence under this chapter and served in the community subject to controls placed on the offender’s movement and activities by the department. We refer to an individual being “discharged” from supervision so as not to confuse the process with relief from registration (which is not discussed in this report).

## Research related to supervision

Post-release supervision serves multiple purposes. According to the American Law Institute Sentencing Model Penal Code,<sup>54</sup> those purposes include promoting the rehabilitation and reintegration of individuals transitioning from prison to the community. This is achieved by setting supervision conditions that reduce the risk of committing a new offense and addressing the individual’s needs for housing, employment, family support, medical care, and mental-health care. The Sentencing Model Penal Code recommends using reliable risk-needs assessment instruments when deciding the length of the supervision term and what conditions of supervision to impose.

In general, individuals released from incarceration are at the highest risk for re-offense immediately after release and individuals convicted of a sex offense follow this same pattern. A substantial body of research exists demonstrating (1) a wide range in risk for recidivism among individuals convicted of a sexual offense; (2) risk for recidivism predictably declines over time and; (3) risk can become so low that it becomes indistinguishable from the risk of someone with a criminal history but no history of sexual offending spontaneously committing a sexual offense.<sup>55</sup> The policy of supervision of individuals who have been convicted of a sexual offense is to provide oversight and guidance to further mitigate the risk of committing another sexual offense. Policies should in turn change as the risk presented to the community changes.

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<sup>54</sup> American Law Institute. (2022). Model penal code: Sexual assault and related offenses: Tentative draft No. 6: Submitted by the Council to the membership of The American Law Institute for consideration at the 2022 Annual Meeting on May 16–18, 2022. Philadelphia, PA: *The Institute*.

<sup>55</sup> Hanson, R., Letourneau, E., Harris, A., Helmus, L., & Thornton, D. (2018). Reductions in risk based on time offense-free in the community: Once a sexual offender, not always a sexual offender. *Psychology, Public Policy, and Law*, 24(1): 48-63. doi:10.1037/law0000135

Desistance from crime has no official definition in the literature, however a generally agreed upon definition is someone who has a criminal history's risk to commit a new offense is reduced to become equal to or less than the rate of an individual who has never been arrested spontaneously committing a crime. Hanson and colleagues<sup>56</sup> propose their rationale and the definition of desistance for individual convicted of a sexual offense as:

*“... a plausible threshold for desistance is when their risk of a new offense is no different than the risk of spontaneous sexual offense among individuals who have no prior sexual offense history but who have a history of nonsexual crime. If we are going to manage the risk of an individual with a history of sexual crime differently from an individual with a history of nonsexual crime, then their risk of sexual offending should be perceptibly different. A recent review of 11 studies from diverse jurisdictions (n= 543,024) found a rate of spontaneous sexual offense among nonsexual offenders to be in the 1% to 2% range after 5 years. This is meaningfully lower than the sexual recidivism rate of adults who have already been convicted of a sexual offense. However, it is not zero. A sexual recidivism rate of less than 2% after 5 years is a defensible threshold below which individuals with a history of sexual crime should be released from conditions associated with the sexual offender label.”*

The process of desistance is sped up with the presence of factors that lead the individual toward lifestyle stability to include but not limited to, meaningful social connections, housing and employment. While under supervision, the individual is held accountable to build the foundation of a prosocial lifestyle long enough for it to become routine, habitual and reinforcing, furthering the desistance process. Longitudinal studies of risk of recidivism demonstrates a reliable pattern of desistance the longer the individual is offense free in the community. Of a sample of greater than 7,000 individuals convicted of a sexual offense, few individuals presented much risk after 15 years and none after 20 years.<sup>57</sup>

These findings were replicated in a study by the Washington State Statistical Analysis Center in 2020 with a sample of over 7,600 individuals convicted of a sexual offense released in Washington State between 2000 and 2003 and followed their re-arrest data for 15 years.<sup>58</sup> The report found individuals were at the highest risk in the first 5 years after release and the rate of rearrest tapered as time went on. The report found that less than 25% of the sample were responsible for approximately 80% of the arrests for the entire group, indicating that a small group of higher risk individuals committed the majority of the crimes following the initial release. Finally, findings indicated the relative risk of rearrest for the sample dropped below the public average (2.68%) by the 9<sup>th</sup> year post release and “...additional risks to public safety appears to vanish around the 10<sup>th</sup>” (pg. 3).

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<sup>56</sup> Hanson, R., Letourneau, E., Harris, A., Helmus, L., & Thornton, D. (2018). Reductions in risk based on time offense-free in the community: Once a sexual offender, not always a sexual offender. *Psychology, Public Policy, and Law*, 24(1): page 2. doi:10.1037/law0000135

<sup>57</sup> Hanson, R., Letourneau, E., Harris, A., Helmus, L., & Thornton, D. (2018). Reductions in risk based on time offense-free in the community: Once a sexual offender, not always a sexual offender. *Psychology, Public Policy, and Law*, 24(1): 48-63. doi:10.1037/law0000135

<sup>58</sup> Washington State Statistical Analysis Center, (2020). Long-term recidivism of Washington sex offenders. [https://sac.ofm.wa.gov/sites/default/files/public/pdf/long-term\\_recidivism\\_of\\_washington\\_sex\\_offenders.pdf](https://sac.ofm.wa.gov/sites/default/files/public/pdf/long-term_recidivism_of_washington_sex_offenders.pdf)

In an examination of recidivism data of over 7,000 individuals determined that an individual's risk to reoffend is approximately cut in half every 5 years they are sexual offense free in the community regardless of risk level.<sup>59</sup> Moreover, in a more detailed analysis over 80% of higher risk individuals are never convicted of another sexual offense, supporting the notion that individuals convicted of a sexual offense present a perceptibly low risk for recidivism in general.<sup>60</sup> In both studies, there was no meaningful rate of recidivism after 15 years offense free in the community even for those assessed as being of higher risk. It was determined that individuals assessed at a higher risk level tended to reoffend quickly upon release and those who did not reoffend had a higher chance of being successful and remaining in the community offense free.

Moreover, the detailed analyses in 2018 by Hanson and colleagues examined non-sexual recidivism and how it impacted the overall risk to reoffend. It was determined non-sexual recidivism did increase the risk of sexual recidivism, however didn't override the effects of time sexual offense free. The research indicates that our current system of lifetime supervision is not necessary for public safety. An expert in the field, R. Karl Hanson, and colleagues recently concluded:

*"The vast majority of individuals with a history of sexual crime desist from further sexual crime. Although sexual crime has serious consequences, and invokes considerable public concern, there is no evidence that individuals who have committed such offenses inevitably present a lifelong enduring risk of sexual recidivism. Critics may argue that the near zero recidivism rates observed in the current study should not be trusted because most sexual crimes remain undetected. This type of argument, however, distances policy decisions from evidence. If the goal is increased public protection (not retribution or punishment), then efficient policies would be proportional to the risk presented. Risk in most individuals with a history of sexual crime will eventually decline to levels that are difficult to distinguish from the risk presented by the general population. Instead of depleting resources on such low risk individuals, sexual victimization would be better addressed by increased focus on truly high risk individuals, primary prevention, and victim services."<sup>61</sup>*

## History of Washington community custody laws

In 1981, the legislature passed the Sentencing Reform Act (SRA) which established determinate sentencing for individuals who committed a crime on or after July 1, 1984, including those convicted of sexual offenses. Under determinate sentencing, the court must sentence an individual to a specific number of years with a standard range.<sup>62</sup> The SRA also authorized SSOSA as an alternative sentence. However, the SRA system was found to be problematic, specifically for sex offense cases, because individuals were automatically released to the community after completion of their sentence and/or after release from relatively short terms of community custody. After a series of high-profile sex

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<sup>59</sup> Hanson, R. K. Harris, A., Helmus, L., & Thornton, (2014). High risk sex offenders may not be high risk forever. *Journal of Interpersonal Violence*, 29, 2792–2813. <http://dx.doi.org/10.1177/0886260514526062>

<sup>60</sup> Hanson, R., Letourneau, E., Harris, A., Helmus, L. & Thornton, D. (2018). Reductions in risk based on time offense-free in the community: Once a sexual offender, not always a sexual offender. *Psychology, Public Policy, and Law*, 24(1): 48-63. doi:10.1037/law0000135

<sup>61</sup> Hanson, R., Letourneau, E., Harris, A., Helmus, L. M., & Thornton, D. (2018). Reductions in risk based on time offense-free in the community: Once a sexual offender, not always a sexual offender. *Psychology, Public Policy, and Law*, 24(1): pages 59-60. doi:10.1037/law0000135

<sup>62</sup> The standard range is determined by referencing a sentencing grid using the individual's criminal history score and a rank based on the seriousness level of the crime.



crimes, the Community Protection Act of 1990 was enacted in Washington State. This Act established the civil commitment as a Sexually Violent Predator process, increased statutory maximum prison sentences for sex offenses, increased penalties for crimes committed with sexual motivation, and reduced the amount of early release time that could be earned. In 2001, the Legislature added determinate-plus sentencing for certain sex offenders. Individuals with determinate-plus sentences are sentenced to both a minimum and maximum sentence where the maximum term is the statutory maximum sentence for the crime.<sup>63</sup> A determinate-plus offender is subject to the jurisdiction of the Indeterminate Sentence Review Board (ISRB).

## **The Indeterminate Sentence Review Board (ISRB)**

The Indeterminate Sentence Review Board (ISRB) was first established in 1935 as the Board of Prison Terms and Paroles. There are four main functions of the board: 1) To make decisions about whether an individual is appropriate for release from prison for individuals under ISRB jurisdiction, in which the ISRB must follow relevant RCW, WAC, and court decisions in decision making; 2) to approve/deny offender release plans for individuals under ISRB jurisdiction; 3) to impose conditions of parole/community custody for individuals that are appropriate for that individual under ISRB jurisdiction;<sup>64</sup> and 4) to address violations of parole/community custody that occur in the community for individuals under ISRB jurisdiction. ISRB jurisdiction includes:

- Pre-1984 (PAR) cases<sup>65</sup>: Individuals who committed felony level offenses prior to July 1, 1984, and were sentenced to prison. These individuals serve 3 years of parole supervision upon their release from confinement.
- Community Custody Board (CCB) cases<sup>66</sup>: Individuals who have committed certain sex offenses after September 1, 2001. Nearly all of these cases have lifetime community custody requirements upon their release from confinement.
- Juvenile Board (JUVBRD) cases<sup>67</sup>: Juveniles who have been convicted of Aggravated Murder in the 1<sup>st</sup> Degree or who have been sentenced to confinement terms of over 20 years. These individuals serve 3 years of community custody upon their release.

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<sup>63</sup> [ESSB 6151 \(2001-2002\)](#)

<sup>64</sup> Community custody is the portion of an offender's sentence spent in the community under the supervision of the Department of Corrections. DOC is required to supervise offenders on community custody

<sup>65</sup> RCW 9.95.100

<sup>66</sup> RCW 9.94A.507

<sup>67</sup> RCW 10.95.030 and RCW 9.94A.730

CCB cases make up the largest percentage of cases, by far, under ISRB jurisdiction. The following offenses in Table 1 are CCB qualifying offenses:

**Table 1: Offenses that make up CCB cases**

<p><b>Pursuant to RCW 9.94A.507</b></p>	<ul style="list-style-type: none"> <li>• Rape in the First Degree</li> <li>• Rape in the Second Degree</li> <li>• Rape of a Child in the First Degree</li> <li>• Rape of a Child in the Second Degree.</li> <li>• Child Molestation in the First Degree</li> <li>• Indecent Liberties with Forcible Compulsion Sexually Violent Predator Escape</li> </ul>
<p><b>Or any of the following offenses with a finding of sexual motivation</b></p>	<ul style="list-style-type: none"> <li>• Murder in the First Degree</li> <li>• Murder in the Second Degree</li> <li>• Homicide by Abuse</li> <li>• Kidnapping in the First Degree</li> <li>• Kidnapping in the Second Degree</li> <li>• Assault in the First Degree</li> <li>• Assault in the Second Degree</li> <li>• Assault of a Child in the First Degree</li> <li>• Burglary in the First Degree</li> </ul>

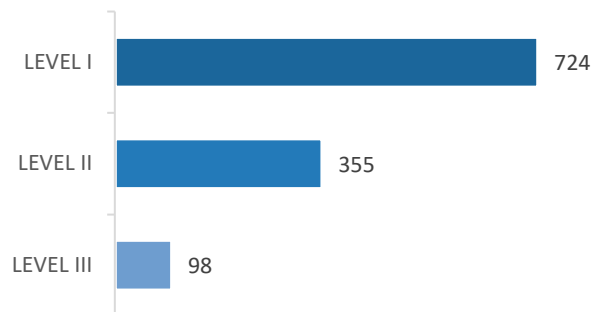
Individuals who have committed these offenses are under the jurisdiction of the ISRB until the expiration of their maximum term. All the offenses referenced above are Class A offenses, which, under current law, requires lifetime supervision. There is currently not a pathway for an individual who is sentenced to lifetime community custody to be reviewed for a potential discharge from supervision. Table 2 details the number of individuals who are incarcerated or under community custody jurisdiction per year. The number of CCB cases continues to grow, and, without the creation of a pathway off of lifetime supervision, will only continue to grow.

**Table 2: Total ISRB Population by Year**

	2014	2015	2016	2017	2018	2019	2020	2021
# of individuals in Prison	2108	2115	2175	2273	2376	2429	2415	2349
# of individuals on community custody	644	717	842	942	1066	1130	1307	1457

Figure 3 shows the breakdown of CCBs on community custody by ESRC-recommended risk level: Anecdotally, sexual recidivism for individuals released under ISRB jurisdiction is low.<sup>68</sup> Most frequently, when an individual is revoked from community custody, it is related to: 1) drug or alcohol use and/or other substance related violations; 2) unapproved dating/sexual relationships – especially with people that have care or custody of minors, and 3) sexually explicit material.

**Figure 3: Registration Level Breakdown**



### What other states do

We reached out to numerous states to understand their processes and procedures related to lifetime supervision. We were able to gather some data on 22 states, though gathering and confirming this information was challenging due to the lack of information publicly available and the significant variances in systems. (Please see Appendix H for further detail). Practices for discharge from lifetime supervision vary greatly amongst the states: For example, Arizona, California, and Hawaii, have processes where an individual can petition for discharge from supervision. Colorado’s process only allows for a step-down to a lower level of supervision, but not discharge from supervision altogether. Connecticut allows discharge if an individual receives an absolute pardon and Rhode Island has a process for a conditional release. Indiana and Michigan do not have a process in place for an individual to be discharged from lifetime supervision.

### Monetary costs of lifetime supervision

According to data from DOC at the time of the writing of this report, there are currently 1,866 individuals under lifetime community custody in Washington. The average length of time an individual convicted of a sexual offense spends under lifetime community custody is 27.9 years.<sup>69</sup> The average cost for supervision of a low-risk individual is \$2,436 per year and the average estimated costs of lifetime supervision is \$67,934 per individual.<sup>70</sup>

<sup>68</sup> Recidivism refers to a person's relapse into criminal behavior. It is measured by criminal acts that result in a return to a Department prison facility with or without a new sentence during a three-year period (36 months) after being released from prison (NIJ). The legislative intent is that the system should positively impact inmates by stressing personal responsibility and accountability and by discouraging recidivism (RCW 72.09.010). [https://www.doc.wa.gov/information/definitions.htm#:~:text=Recidivism%20refers%20to%20a%20person%27s,released%20from%20prison%20\(NIJ%20\)](https://www.doc.wa.gov/information/definitions.htm#:~:text=Recidivism%20refers%20to%20a%20person%27s,released%20from%20prison%20(NIJ%20)).

<sup>69</sup> This number was informed by the average number male life expectancy of 78.69 years and female life expectancy of 82.56 years.

<sup>70</sup> These numbers are estimates based off of the cost of supervision of a low-risk individual and are subject to change. As risk is based on individual factors, there are outliers that carry a higher classification and increased costs. Additionally, the numbers utilized are based on DOC’s workload study (2004) which has not yet been completed. Given the initial results of the study, it is suspected that the costs represented here may be lower than the current actual costs. DOC is currently conducting a more current workload study that is anticipated to be published around the beginning of 2023.

## Collateral costs of lifetime supervision

There are costs associated with lifetime supervision in addition to the financial costs born by the state. These include, but are not limited to, impacts to employment, mental health, and family systems. Lifetime supervision can limit an individual's job prospects as some employers won't hire an individual who is under supervision. This is compounded if the individual is under supervision for the entirety of their life. Supervision generally requires regular contact with a community corrections officer (CCO) which can be challenging to balance if the individual is able to secure employment. Without a pathway off of lifetime supervision, mental impacts, such as lack of hope and ongoing stress and anxiety, may be experienced. We heard from individuals with lived experience that one of their greatest challenges under lifetime supervision is having hope since there isn't currently a pathway off supervision. They reported feeling like there isn't "a light at the end of the tunnel", even if they successfully complete treatment, are deemed low-risk, and are compliant. They further reported increases in stress and anxiety due to the changing of CCOs and the fear that the CCO has the power to immediately disrupt their lives and their families' lives with little to no available recourse to them. Lifetime supervision requirements can also impact the individuals' families and loved ones by conditions that may limit the individual's ability to maintain and sustain pro-social family relationships.

## Challenges with Washington's current lifetime supervision system

There are several challenges with lifetime supervision:

1. **First, there is currently no formal step-down process from lifetime supervision.** This means that when an individual is sentenced to lifetime supervision, currently, they will remain under ISRB jurisdiction for the remainder of their life. The number of people on community custody under the ISRB has continued to grow because of the lifetime supervision requirement; the population under supervision has dramatically increased through the years. Essentially the only relief from supervision is through death. This has led the number of people under the ISRB's jurisdiction to balloon requiring more and more resources. As shown in Figure 3, approximately 2/3<sup>rd</sup>s of individuals currently under the ISRB jurisdiction are considered to be in the lowest risk category and they are taking up a large portion of the ISRB and DOC resources to supervise and manage. This is not an efficient use of resources.
2. **Second, the individual on supervision has to abide by both the conditions set in their Judgement & Sentence and those imposed by the ISRB.** The ISRB cannot modify conditions set in the Judgement & Sentence.<sup>71</sup> Between the two bodies setting conditions, this leads to a large number of conditions the individual must abide by and the CCO to monitor. Additionally, the conditions set in the Judgement and Sentence are unable to be modified without substantial effort to reflect changes in risk by the individual and can be a relic that is no longer applicable to manage current risk presented to the community.

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<sup>71</sup> We recommend that this process be changed to allow the ISRB to send a letter to the Court for consideration of amended conditions. Please see Recommendation #25 of this report for the full recommendation and supporting reasoning.

3. **Third, although Washington uses a risk-based tiering system, currently, the conditions and level of supervision all look the same regardless of the risk level of the individual.** Currently, the ISRB does not have the resources to go back and amend conditions it has imposed with all individuals under their jurisdiction. The ISRB is only able to review conditions on a case-by-case basis, as requested by the individual on supervision (this is typically a written request). Though the ISRB would like to be able to review the conditions for everyone under their jurisdiction, they just aren't able to at this time due to limited resources taken by the ballooning number of people under their jurisdiction.
4. **Fourth, individuals on supervision will likely experience changes in their community corrections officers (CCOs).** Supervision in many counties is assigned by where an individual lives. If the individual moves, even if it's a nearby move, there may be a change in the CCO. Additionally, some offices require individuals to report to different locations. These changes often result in the CCO needing to "learn" the individual under community custody, which has been known to have a significant impact on the individual being supervised (ex: changes in expectations, earned privileges, check-ins, etc.). If a CCO wants to change an individual's level of supervision, the ISRB does not have a say in that. CCOs are required to monitor the conditions that the board and the court have imposed and make sure the individual is following the conditions. A working relationship between the individual and CCO is critical for the success and stability of the individual under supervision. Frequent changes in CCOs and the large number of conditions individuals under supervision are required to abide by leads to CCO's not developing working relationships with the individual, thus making it harder for the individual to be successful while on supervision for life.

## Recommendations – Lifetime Supervision

No. 11 (Voting results – Yes: 8, No: 2, Abstain: 2)

### Recommendation

The SOPB recommends that a pathway off of lifetime supervision should be created for individuals who have committed sexual offenses and meet eligibility criteria, including all of those currently subject to lifetime community custody. Specifically, the SOPB recommends the following time frames and criteria for eligibility for discharge from lifetime community custody:

**Level I.** Individuals who are recommended as a Level 1 upon their release from prison by the End of Sentence Review Committee shall be discharged from community custody five (5) years after their return to the community so long as they meet the eligibility requirements of not committing a "disqualifying event." The Department of Corrections shall review the relevant records to determine if the individual meets the eligibility criteria and process them off of community custody if they meet that criterion.

If the Department determines that a Level I individual does not meet the criteria for relief from lifetime community custody, or can identify a specific safety concern, then that case file shall be sent by DOC to the ISRB for review. DOC may make a referral to the ISRB for review of a Level 1 at least 90 days prior to discharge from community custody if DOC has reasonable grounds to believe the person poses a significant risk of sexual recidivism.

**Level II.** Individuals who are recommended as a Level II by the End of Sentence Review Committee upon their release from prison should be eligible for discharge from supervision ten (10) years after their return to the community so long as they meet the eligibility requirements of not committing a “disqualifying event.” For Level II offenders the ISRB shall review their file, submitted by DOC to the ISRB, to determine if the individual qualifies for relief from community custody and may extend the period of supervision for good cause shown. A review hearing shall be held at least 120 days before the end of the supervision period.

If a disqualifying event occurs within the first 10 years from release for a Level II individual, the individual will not be eligible for discharge from supervision for at least 5 years from the disqualifying event date. A review hearing by the ISRB should be held at least 120-days prior to the discharge from supervision date.

**Level III.** Individuals who are recommended as a Level III by the End of Sentence Review Committee upon their release from prison should be eligible for discharge from supervision fifteen (15) years after their return to the community so long as they meet the eligibility requirements of not committing a “disqualifying event.” For Level III offenders the ISRB shall review their file, submitted by DOC to the ISRB, to determine if they qualify for relief from community custody and may extend the period of supervision for good cause shown. A review hearing shall be held at least 120 days before the end of the supervision period.

If a disqualifying event occurs within the first 10 years from release for a Level III individual, the individual will not be eligible for discharge from supervision for at least 5 years from the disqualifying event date. If a disqualifying event occurs within the last 5 years of supervision for a Level III, then the individual would not be eligible for discharge from supervision for at least 3 years from the disqualifying event date. A review hearing by the ISRB should be held at least 120-days prior to the discharge from supervision date.

We recommend the following as “Disqualifying Events” for discharge from Lifetime Community Custody:

An individual would not be eligible for discharge from community custody if they have had disqualifying events. A disqualifying event is defined as:

- The individual has been found guilty of any serious and risk-relevant violation of the conditions of community custody, as determined by the ISRB at an on-site hearing. “Serious violation” is to be further defined in a future WAC, to include violations such as contact or attempted contact with prohibited person(s) or classes of individuals; use of prohibited drugs/alcohol if these substances were involved in the individual's offense; willful failure to complete required treatment; absconding from supervision, and other violations deemed high-risk by the WAC.
- The individual has been convicted of any new felony offense or any misdemeanor sex offense as defined in RCW 9A.44.128 or 9.94A.030;

- The individual has not completed all recommended treatment as required in the Judgement & Sentence and ISRB Conditions; The SOPB recommends that the ISRB be able to waive this condition if there is a finding that this resulted from the individual's indigence.
- The individual has been found to be non-compliant with conditions of supervision on a repeated basis as documented by DOC and referred to the ISRB. These violations would be addressed on a formal basis by the ISRB prior to release from community custody; and
- The individual has been assessed to be at significant risk for sexual recidivism on an empirically validated DOC approved dynamic risk assessment completed within 120 days of eligibility for discharge.

## Background

For individuals who are considered a Level I, an assumption of eligibility and/or discharge from supervision will be an efficient process for lower-risk, cooperative individuals to be relieved of supervision and will reduce liability concerns for those involved. It will focus resources on those who pose an increased risk (Level II and Level III) and utilize resources more efficiently. Time-free offense research indicates the risk for recidivism cuts in half every 5 years. This was why the 5-year length of time is recommended because cutting risk in half over 5 years would provide a reasonable safeguard against future re-offense. If the disqualifying event occurs reasonably close to a new offense (sexual or non-sexual), the time free calculator suggests that it sets an individual's risk level back at least 3+ yrs, so 5 years was chosen as a safeguard. DOC is able to request an ISRB review as a mechanism for the individuals involved in the case to voice concerns to the ISRB in rare cases where risk level does not accurately capture risk.

For individuals who are considered a Level II or Level III, we recommend a thorough review process to determine if the individual should be discharged from supervision. Leaving this decision up to the ISRB, who takes in consideration the information from DOC, is important because: 1) the ISRB already follows a similar process with the Pre-1984 cases, and 2) the ISRB has been overseeing these individuals throughout their supervision. For these reasons we recommend the ISRB have the jurisdiction to discharge the individual from lifetime supervision and not the court.<sup>72</sup>

The proposal of providing a path off lifetime supervision is based on the significant body of research supporting the longer an individual is in the community offense-free the risk for re-offense predictably declines. The above cited studies in the research section of this report are specific to individuals convicted of a sexual offense, when the larger body research applies to individuals convicted of non-sexual offense indicating the same desistance pattern exists between both populations. The terms of 5, 10 and 15 years offense-free are used to determine when an individual may become eligible to be removed from lifetime supervision based in initial assessed risk level. Lower risk individuals who are already close to the desistance level of risk upon release will cross this threshold within 5 years. While moderate and the majority of high-risk individuals will cross this threshold in 10 and 15 years respectively as risk cuts in roughly half every 5 years. As an

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<sup>72</sup> There are also challenges with current tort law for social services agencies in Washington. Please see our 2022 report entitled *Updates Regarding Implementation of Chapter 236, Laws of 2021, January – June 2022* for more information about these challenges.

approximate heuristic, at 10 years, the individual will present as 1/4<sup>th</sup> the risk they did at release, while at 15 years the individual will present as 1/8<sup>th</sup> the risk they did upon release.

The proposal incorporates the findings of non-sexual offending increases risk to commit a new sexual offense. It does this by adding time if an individual commits a serious violation or new non-sexual offense. Finally, for outlier cases the ability to have the ISRB review any case is available. In conclusion, supervision resources should be focused on those individuals who have recently returned to the community and who present the greatest risk of recidivism.<sup>73</sup> Requiring individuals to remain under supervision after they have reached desistance level results in unnecessary monetary and collateral costs and is not the best use of limited resources.<sup>74</sup> Additionally, allowing the ISRB to work with the sentencing court to modify conditions to reflect the risk the individual presents in the present will provide a flexible up to date supervision strategy for higher risk individuals.

## No.12 (Unanimous)

### Recommendation

The SOPB recommends that individuals who are granted a SSOSA sentence should be supervised by the Department of Corrections for the length of their suspended sentence or 36 months, whichever is longer.

### Background

This is a repeat recommendation based on the SOPB's review of SSOSA and corresponding report from 2013.<sup>75</sup> As noted in *Chapter 1: Treatment Alternatives* of this report, some individuals choose to take a plea for a lesser charge (a Class B or Class C offense) with a prison term rather than pursue a SSOSA if it would result in a Class A conviction due to the current lifetime supervision requirement. Individuals on SSOSA are not under the jurisdiction of the ISRB, they are purely under the supervision of DOC and the sentencing court. Prior to the enactment of the Determinate-Plus (indeterminate) sentencing for Class A sex offense on September 1, 2001, SSOSA cases were supervised for the period of the suspended sentence or 36 months, whichever was longer. Class A offenses often have a suspended sentence of up to 131 months. That was the term of community custody for these defendants before Determinate-Plus. Specifically, the newly adopted statute said:

RCW 9.94A.670, as amended in 2001 added Determinate Plus sentences.

(a) The court shall place the offender on community custody for the length of the suspended sentence, ***the length of the maximum term imposed pursuant to section***

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<sup>73</sup> Rhine, E., Petersilia, J., & Reitz, K., (2015). Improving parole release in America. *Federal Sentencing Reporter*, Vol. 28 (2): 96–104. doi: 10.1525/fsr.2015.28.2.96

<sup>74</sup> We recognize that, should a pathway be created for an individual to be discharged from lifetime supervision, the result would be a significant change to Washington's current system. During this process, we heard from the victims' advocates who expressed concerns that there will be an impact on the victims' community as a result of this change: the truth in sentencing may be impacted since victims were told during the legal process that the individual who caused them harm would have lifetime supervision, which will likely result in victims having to further manage their expectations, and may contribute to a further lack of trust in the legal system.

<sup>75</sup> [https://sgc.wa.gov/sites/default/files/public/sopb/documents/SSOSA\\_review\\_201401.pdf](https://sgc.wa.gov/sites/default/files/public/sopb/documents/SSOSA_review_201401.pdf)



*303 of this act (Determinate-Plus)*, or three years, whichever is greater, and require the offender to comply with any conditions imposed by the department under RCW 9.94A.720.

Our recommendation is to simply return to the prior terms of community custody. A person who is granted a SSOSA is on community custody for the length of the suspended sentence or 36 months, whichever is longer. The current SSOSA statute would be amended to say:

(b) A term of community custody equal to the length of the suspended sentence, ~~the length of the maximum term imposed pursuant to RCW 9.94A.507~~, or three years, whichever is greater, and require the offender to comply with any conditions imposed by the department under RCW 9.94A.703. A supervision termination hearing shall be scheduled with the sentencing court within the last 60 days of the expiration of community custody.

## No. 13 (Unanimous)

### Recommendation

The SOPB recommends for SSOSA cases that the sentencing Judge in the Superior Court hold a supervision termination hearing at the end of the presumed community custody period to determine if the person should be released from community custody.

### Background

The Court determines whether a SSOSA is granted. If a pathway off of lifetime supervision is created, we recommend that a safety valve of requiring a termination hearing at the end of the presumed community custody period be required for individuals on SSOSA prior to being relieved of supervision. The Court would maintain authority in determining whether the individual is ready to be released from community custody.

## No. 14 (Unanimous)

### Recommendation

The SOPB recommends that the DOC and ISRB submit an annual report to the governor and appropriate committees of the legislature detailing the number of individuals eligible for discharge from lifetime supervision; the number of individuals granted discharge from lifetime supervision; and the number of individuals who, subsequent to discharge from lifetime supervision, are investigated for a recent overt act as defined by RCW 71.09.020 or new sex offense as defined by RCW 9A.44.128 or 9.94A.030.

### Background

Should the Legislature decide to move forward with creating a pathway off lifetime supervision, we recommend that monitoring be put in place. Having DOC and the ISRB submit annual reports on these topics will help ensure transparency, monitoring and accountability, and create and provide access to reliable data to help inform future decisions.

# Chapter III: Failure to Register (FTR) & Washouts

## Failure to Register (FTR)

*Our response to: “Review research and current practices and procedures for Failure to Register (FTR) cases and make recommendations regarding how to best ensure community safety while using state resources wisely.”*

### History and literature review of Failure to Register (FTR) offenses

In 1990, Washington state passed an omnibus bill called the Community Protection Act. This bill created several new laws including one that requires people convicted of a sex offense to register with local law enforcement and another one that authorizes law enforcement agencies to notify the public when a person identified as “high risk” of sexual re-offense moves into the community. The rationale for the Act included the following:

*“The legislature finds that sex offenders pose a high risk of engaging in sex offenses even after being released from incarceration or commitment and that protection of the public from sex offenders is a paramount governmental interest.”*

The law regarding community notification was the first of its kind in the nation. Following enactment of the Community Protection Act in Washington, similar registration and community notification laws were enacted by the federal government and by the other 49 states. Since their enactment, numerous governmental agencies and academic researchers have examined the effectiveness of the sex offender registration and notification (SORN) laws in improving public safety. As early as 2009, the Sex Offender Policy Board asked the Washington State Institute for Public Policy (WSIPP) to evaluate the effectiveness of the SORN laws on reducing crime.<sup>76</sup> Based on the limited number of rigorous studies available at that time, it was tentatively concluded that the laws had no statistically significant effect on reducing recidivism.

Since the 2009 WSIPP study, many additional research studies have been completed throughout the country examining SORN laws. A recent meta-analysis of these studies provides comprehensive evidence that the implementation of SORN laws over the last 25 years has had no effect on recidivism.<sup>77</sup> The null effect with respect to sexual offending is not surprising: the research reviewed in this report demonstrates the marked low rate of recidivism in general for individuals convicted of a sexual offense. This leads to the conclusion that the majority, perhaps 85-90% of newly reported sex offenses are committed by people with no prior sex offense convictions and who would therefore not be on the registry.<sup>78</sup> The null effect of the SORN laws on recidivism and public safety was used as evidence in a recent Pennsylvania decision which concluded such laws are unconstitutional.<sup>79</sup>

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<sup>76</sup> Drake, E. & Aos, S. (2009). Does sex offender registration and notification reduce crime? A systematic review of the research literature. *Olympia: Washington State Institute for Public Policy, Document No. 09-06-1101.*

<sup>77</sup> Zgoba, K. & Mitchell, M. (2021). The effectiveness of Sex Offender Registration and Notification: A meta-analysis of 25 years of findings. *Journal of Experimental Criminology*. <https://doi.org/10.1007/s11292-021-09480-z>

<sup>78</sup> Sandler, J., Freeman, N. & Socia, K. (2008). Does a watched pot boil? A time-series analysis of New York state’s sex offender registration and notification law. *Psychology Public Policy and Law*, 14(4), 284-302. DOI: 10.1037/a0013881.

<sup>79</sup> Commonwealth v. Torsilieri, No. 15-CR-0001570-2016, (Pa. Ct. Com. Pl. Aug. 22, 2022).

*“Accordingly, based on the evidence of scientific and academic consensus presented, we find that SORN laws do not have the effect on recidivism and public safety anticipated by the Legislature, and that they are not rationally related to the purposes for which they were enacted.”*

In addition to creating registration and notification laws, the Community Protection Act also created a new law pertaining to people who failed to comply with the registration requirements. At the time the Act was enacted, a Failure to Register (FTR) offense by someone convicted of a Class A sex offense was classified as an unranked (seriousness level 0), Class C felony, C(0), non-sex offense. Unranked offenses have a standard sentencing range of less than 365 days. For an FTR offense committed by someone convicted of a misdemeanor, Class C felony or Class B felony sex offense, the 1990 law classified the FTR offense as a misdemeanor.

Since the passage of the Community Protection Act, multiple changes have been made to 9A.44.130, the statute pertaining to FTR offenses. With each change, the penalties associated with an FTR offense have increased:

- In 1997<sup>80</sup>, an FTR offense committed by someone convicted of Class C felony or Class B felony sex offense was reclassified from a misdemeanor to a C(0) non-sex offense.
- Post 2009<sup>81</sup>, the first FTR offense remained classified as a C(0) non-sex offense and a new 2+ FTR offense was created for second and subsequent FTR offenses. The new 2+ offense was given a seriousness level 2 and classified as a Class C sex offense. Since it was classified as a sex offense, a term of community custody was imposed.
- Post 2012<sup>82</sup>, the first FTR remained classified as a C(0) non-sex offense, the second FTR remained classified as a C(2) sex offense and a new 3+ FTR offense was created for third and subsequent FTR offenses. This new 3+ offense was given a seriousness level 2 and classified as a Class B sex offense.

The creation of the new FTR offenses with greater seriousness classifications resulted in longer periods of incarceration for second and subsequent FTR convictions. From 2000 through 2019, the average sentence for a FTR offense classified as a C(0) non-sex offense has remained approximately 2.5 months. Since its creation in 2009, the average sentence for a FTR offense classified as a C(2) sex offense has been 22.2 months and since its creation in 2012, the average sentence for a FTR offense classified as a B(2) sex offense has been 31.4 months. Please see Figure 4.

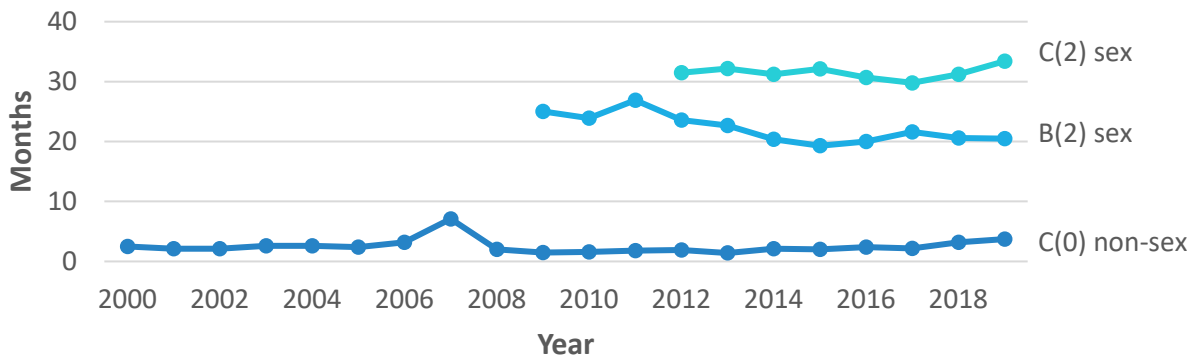
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<sup>80</sup> [HB 1924 \(effective 7/27/1997\)](#)

<sup>81</sup> [SSB 6414 \(effective 6/10/2010\)](#)

<sup>82</sup> [SSB 5154 \(effective 7/24/2015\)](#)

**Figure 4: Average sentence (months) 2000-2019**  
**C(0) non-sex, C(2) sex, and B(2) sex**



The number of people required to register as a sex offender in Washington state has steadily risen since the enactment of the Community Protection Act. As of September 2022: 20,502 people are required to register in Washington as a sex offender. Data from the 20-year timeframe from January 1, 2000, through December 31, 2019, shows the following<sup>83</sup>:

- The number of annual felony FTR convictions has ranged from 295 to 782 with a median of 493.
- 7,349 people have been convicted of a FTR classified as a C(0) non-sex offense.
- 1,622 people have been convicted of a 2 FTR or attempted 2 FTR.
- 1,098 people have been convicted of a 3+ FTR or attempted 3+ FTR.

Multiple governmental and academic studies have been conducted to examine the effectiveness of FTR laws in improving public safety. The first study was done by WSIPP in 2006 upon request of the Washington State Legislature.<sup>84</sup> Using data from 1990-1999, some differences in recidivism rates were observed between people who complied with the registration requirements and people who failed to comply; however, not enough information was provided to determine if the observed differences were statistically significant. Using criminal history data for 2,970 registered sex offenders in South Carolina, no significant difference was found in the recidivism rates between people who complied and people who failed to comply with registration requirements.<sup>85</sup> It was observed that people who failed to comply were significantly more likely to be a minority race and to be younger than people who complied.

A study using data for 1,561 registered sex offenders in Minnesota found that having a current or prior FTR conviction did not significantly increase the risk of sexual or nonsexual recidivism,

<sup>83</sup> All data for Washington state was obtained from the American Equity & Justice Group Dashboard, <https://www.americanequity.org/>

<sup>84</sup> Barnoski, R. (2006). Sex offender sentencing in Washington state: Failure to register as a sex offender—Revised. *Olympia: Washington State Institute for Public Policy, Document No. 06-01-1203A.*

<sup>85</sup> Levenson, J., Letourneau, E., Armstrong, K., & Zgoba, K. M. (2010). Failure to register as a sex offender: Is it associated with recidivism? *Justice Quarterly*, 27, 305-331. doi: 10.1080/07418820902972399.

however an FTR conviction did increase the risk of a subsequent FTR conviction.<sup>86</sup> Similar to previous studies, the observed risk of an FTR offense was significantly higher for minorities. In addition, education appeared to have an impact on FTR offenses. The results showed that having either a GED or high school diploma reduced the risk of FTR recidivism from 43% to 39%. It was noted that FTR offenses are the most common form of recidivism among people convicted of a sex offense in Minnesota. The same situation is observed in Washington.

A quasi-experimental study analyzed the recidivism outcomes of 1,125 sexual offenders.<sup>87</sup> Failure to register was not observed to be a significant predictor of sexual or nonsexual recidivism and FTR convictions were more likely for younger defendants and defendants from minority groups. In addition, defendants with an FTR conviction had a higher number of supervision violations suggesting that an FTR offense may be more a reflection of rule-violating patterns than sexual deviance. Using criminal history data for 7,055 registered sex offenders in New York, the risk factors associated with an FTR conviction were examined.<sup>88</sup> The results reinforced many of the previous observations. FTR offenders were found to be younger, to be of a minority race, and to have a more extensive and varied prior criminal history as well as a record of violating supervision orders. The authors suggest failing to register may reflect a host of underlying characteristics including defiance, carelessness, negligence, confusion, general criminality, or apathy.

Using the scientific evidence gathered over the last 25 years concerning SORN and FTR laws, the American Law Institute recently revised the Model Penal Code pertaining to sexual assault and related offenses.<sup>89</sup> In the revised code, the number of registerable offenses is reduced, the maximum registration period is 15 years, the information on the registry is for law enforcement only (i.e. no community notification), and the penalty for a FTR offense is a misdemeanor. Currently, Maryland is the only state where all FTR offenses are misdemeanors. In Alaska, Iowa, Virginia, and West Virginia, the first FTR offense is a misdemeanor and subsequent FTR offenses are felonies. In South Carolina, the first and second FTR offenses are misdemeanors and the third and subsequent FTRs are felonies. In New Hampshire, an individual convicted of a sexual offense against children who is required to register and who negligently fails to register is guilty of a misdemeanor. If the defendant willfully fails to comply it is a felony. In Oregon, failing to register upon release, failing to report change in address, failing to report an association with an institution of higher education, and failing to sign the sex offender registration form are felony FTR offenses while failing to make an annual report, failing to provide complete and accurate information, failing to participate in a sex offender risk assessment, and failing to submit to fingerprinting or to have a photograph taken are misdemeanor FTR offenses.

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<sup>86</sup> Duwe, G. & Donnay, W. (2010). The effects of failure to register on sex offender recidivism. *Criminal Justice and Behavior*, 37, 520-536. doi: 10.1177/0093854810364106.

<sup>87</sup> Zgoba, K. & Levenson, J. (2012). Failure to register as a predictor of sex offense recidivism: The big bad wolf or a red herring? *Sexual Abuse: A Journal of Research and Treatment*, 24(4), 328 –349. doi: 10.1177/1079063211421019.

<sup>88</sup> Levenson, J., Sandler, J., & Freeman, N. (2012). Failure-to-register laws and public safety: An examination of risk factors and sex offense recidivism. *Law and Human Behavior: Online First Publication*. doi: 10.1037/b0000002.

<sup>89</sup> American Law Institute. (2022). Model penal code: Sexual assault and related offenses: Tentative draft No. 6: Submitted by the Council to the membership of The American Law Institute for consideration at the 2022 Annual Meeting on May 16–18, 2022. Philadelphia, PA: *The Institute*.

# Recommendations: Failure to Register

## No. 15 (Unanimous)

### Recommendation

The SOPB recommends that the offense of Failure to Register, pursuant to RCW 9A.44.132, be reduced from a Seriousness Level II offense to an Unranked Felony for the purposes of sentencing. This would result in a presumed sentencing range of 0 – 12 months.

### Background

Multiple large-scale research studies involving thousands of individuals have shown an FTR offense is not a significant predictor of sexual or nonsexual recidivism. Incarcerating people for an FTR offense has not been shown to improve public safety which is the state goal of the Community Protection Act. We tried to review data to understand the specific reasons that Washingtonians who are required to register fail to register. Unfortunately, this data is not readily available. Based on the research reviewed and our anecdotal experience, due to the complexity of the registration requirements, some people fail to comply due to oversight or confusion. Others fail to comply due to carelessness, lack of resources (such as transportation), employment, housing, mental illness, defiance, apathy, or negligence. An unranked felony will hold these people accountable for their lack of compliance and the potential to receive a felony could help to encourage registration compliance. Additionally, making FTRs an unranked felony will keep the cases in Superior Court, where the judges have subject-matter expertise, and any resulting offense related to that conviction should remain in Superior Court.

## No. 16 (Unanimous)

### Recommendation

The SOPB recommends that for the crime of Failure to Register, defendants shall be given one year of community custody regardless of risk level for a first offense and two years of community custody for subsequent offenses.

### Background

The first offense for FTR should allow for an intervention to help bring the individual into registration compliance. Requiring community custody still provides for accountability without the costs of incarceration and provides a safety valve of supervision. It is important that the individual is supervised regardless of risk to help ensure the individual's needs are assessed and appropriately addressed based on their individual need and identified barriers to registration. We recommend increasing the length of DOC supervision for subsequent FTR offenses up to 2 years so that DOC can provide resources to address barriers to compliance. DOC supervision can promote registration compliance and, since most of these cases will likely not result in a prison term, there should be an effective cost savings.

## No. 17 (Unanimous)

### Recommendation

The SOPB recommends that Failure to Register offenses should not be defined as a “sex offense” under RCW 9A.44.128 of 9.94A.030. Under current law the second offense of Failure to Register and thereafter are defined as “sex offenses.”

### Background

FTRs and subsequent FTRs do not need to be classified as sex offenses. Classifying them as sex offenses may minimize the seriousness of actual sex offenses.

Research has shown that an FTR offense is not a significant predictor of sexual recidivism. However, established risk factors for sexual recidivism include noncompliance with supervision and violations of conditional release. Trends of noncompliance signify higher likelihood of recidivism. Registration is an indicator of compliance with the conditions of release. There is evidence that defiance of registration requirements is consistent with other inappropriate behavior.

## No. 18 (Unanimous)

### Recommendation

The SOPB recommends that Failure to Register should be classified as a “disqualifying offense” as defined in RCW 9A.44.128, which would restart the waiting periods for relief from registration for a conviction.

### Background

Signifiers of general criminality are “non-compliance with supervision [and] violation of conditional release,” both of which directly relate to failure to register.<sup>90</sup> Keeping FTRs as a disqualifying offense from petitioning for removal from sex offense registration takes into account the research and is a tool for compliance. Subsequent FTRs will restart the time required for registration removal eligibility.

## No. 19 (Unanimous)

### Recommendation

The SOPB recommends that individuals under the jurisdiction of the Department of Corrections for a Failure to Register offense, whether they are in the community or still in prison, be assessed to identify the individual’s barrier(s) to registration compliance and provided with resources and tools to support compliance and improve functioning in the community, including housing, vocational rehabilitation, treatment as necessary, and community supports. The SOPB specifically endorses the use of navigators or other specialized corrections approaches in meeting the needs of this population.

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<sup>90</sup> Gotch, K. and Hanson, R. (2016). Risk Assessment for Males Who Have Engaged in Harmful or Illegal Sexual Behavior. ATSA. [https://www.atsa.com/pdfs/ATSA\\_Risk\\_Assessment\\_for\\_Males\\_\(2016\).pdf](https://www.atsa.com/pdfs/ATSA_Risk_Assessment_for_Males_(2016).pdf)



## **Background**

There is currently not any available data that identifies the reasons individuals who are required to register in Washington fail to register. Research studies have shown that people who are convicted of an FTR offense are younger and of a minority race. Other risk factors for an FTR offense include a lack of high school education, cognitive impairments, and homelessness. We recommend focusing attention and our limited resources on understanding the individual factors/reasons that are contributing to failure to register to see if we can help mitigate some of these barriers. DOC navigators will help with resources to address barriers to registration. We recommend increasing the length of DOC supervision for each subsequent FTR offense so that DOC can provide resources to address barriers to compliance.

## **No. 20 (Unanimous)**

### **Recommendation**

The SOPB recommends that the Washington Association of Sheriffs and Police Chiefs (WASPC) review the Model Policy for Washington Law Enforcement regarding Adult and Juvenile Sex Offender Registration and Community Notification (4.24.5501) to identify opportunities to utilize technology to streamline initial and ongoing registration processes.

### **Background**

Registration requirements and processes are done at the county level and vary by county. As technology continues to evolve, we recommend that WASPC look into increasing and modernizing access to reporting. This will help reduce barriers to reporting and increase compliance.

# Offender Score Washouts for Prior Sex Offenses

*Our response to: "Review research and make recommendations regarding best practices for felony washout periods for sex offenses as referenced in RCW 9.94A.525(2)."*

## Definition of "washouts"

Standard range sentences for felony convictions in Washington State are based on an individual's offender score. The offender score is a combination of the individual's prior criminal convictions and the seriousness level of the current charge. All felony convictions and adjudications *must* be counted as criminal history for purposes of sentencing, unless they "wash-out." The term "wash-out" does not appear in statute but is a term of art used by Courts and lawyers to describe the point at which a prior felony conviction can no longer be used to calculate the offender score on a subsequent felony conviction. Prior convictions "wash out" if the individual has spent a designated period of time in the community without committing *any* crime that results in a conviction. For eligible convictions, ordinarily the designated "wash out" period is 5 or 10 years. Class A felonies and sex offenses never "wash out." By way of example:

- After a conviction for the class C felony of Forgery, a person would need to be in the community without committing *any* crimes for a period of 5 years. After that 5 years, the Forgery conviction could no longer be scored against the person on any future felony convictions. However, the Forgery conviction would remain on the individual's criminal history.
- After a conviction for the class C sex offense of Rape 3, even if a person is in the community without committing *any* crimes for a period of 20 or 30 years, that conviction will always score against the person on any future felony convictions because sex offenses never "wash out."

An offense that "washes out" remains on the individual's criminal history for all purposes *except* the calculation of a future offender score.

## Recommendations: Washouts

The SOPB and our FTR & Washouts Subcommittee have discussed washouts at length since the board was convened on this issue. We spent time researching and trying to understand this difficult issue from all perspectives. Unfortunately, during this process we discovered that there is very little research or data on washouts that could help inform our discussions. We offer three possible solutions and supporting statements for these positions (Note: Board members were asked to cast their vote on each washout option which resulted in board members voting a total of 3 times. The following supporting statements represent the voice and opinion of the stakeholder(s) who voted in favor of that option only):

## No. 21

### Recommendation

The SOPB has been unable to achieve any consensus on this difficult issue. We offer three possible solutions and the vote of our Board for those positions.

- **Option 1:** The SOPB recommends no washouts for subsequent offenses. The current state of the law.
- **Option 2:** The SOPB recommends the law allow washouts for subsequent offense only if those are non-violent offenses that are not sex offenses as defined in RCW 9.94A.030.
- **Option 3:** The SOPB recommends that the portion of this assignment related to washouts be completed after the Criminal Sentencing Task Force has completed their work on this subject.

### Statement of support for Option 1: The SOPB recommends no washouts for subsequent offenses. The current state of the law.

#### Voting results

**Yes:** 2 votes — WAPA, WASPC

**No:** 9 votes — DCYF, WACDL, WCSAP, WSAC, WATSA, DOC, ISRB, OCVA, AWC

**Abstain:** 1 vote — SCC

Crimes against persons must be treated differently. Crimes against persons are not crimes of survival. Recent data we were able to gather from DOC indicate that the majority of the crimes committed for re-offenses were crimes against persons (approximately 68%).<sup>91</sup> The victim(s) of a crime against persons, such as a sexual assault, domestic violence or other violent crime, do not get the luxury of “washing out” the long-term and life-altering traumatic impacts they sustain. Washouts for sex offenses is dismissive of the experience and impacts on victims of crime. We are concerned about the message this sends to victims. Washouts do not recognize the unique aspects of sexual assault and abuse in which reports of sexual assault are both unreported, underreported and/or delayed. This is particularly true with regards to child victims who often report year(s), or even decades, later. Some longitudinal research studies spanning 10, 15, and 25 years, have shown increasing recidivism rates and suggest approximately a third of sexual offenders with child victims will be detected for new sexual offenses after 20 to 30 years of opportunity.<sup>92</sup> The prevalence was higher when self-report information was used, with approximately half of the online offenders admitting to a contact sexual offense, consistent with the observation that official records are a conservative estimate of actual offending (even if some of the self-reported offenses are false confessions and did not actually occur).<sup>93</sup> Recidivism of general crime may be a sign of continued antisocial behaviors and beliefs which are connected to risk.<sup>94</sup> Sexual recidivism rates for individuals who commit sex offense are generally low, however, research suggests that individuals who have been convicted of a sex and then continue to commit subsequent sex offenses after

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<sup>91</sup> After offenses for “Failure to Register” and “Attempted Failure to Register” have been excluded.

<sup>92</sup> Hanson, R., Steffy, R., & Gauthier, R. (1993). Long-term recidivism of child molesters. *Journal of Consulting and Clinical Psychology, 61*(4), 646–652. <https://doi.org/10.1037/0022-006X.61.4.646>

<sup>93</sup> Seto, M., Hanson, R., & Babchishin, K. (2011). Contact sexual offending by men with online sexual offences. *Sexual Abuse: A Journal of Research and Treatment, 23*, 124–145. doi: 10.1177/1079063210369013

<sup>94</sup> Yates, P. (2013). Treatment of sex offenders: Research, best practices and emerging Models. *International Journal of Behavioral Consultation and Therapy, 8* (3-4): 89-95. <https://files.eric.ed.gov/fulltext/EJ1017917.pdf>

receiving an intervention are a greater risk to community safety.<sup>95</sup> Additionally, research has demonstrated that repeat offenders account for a disproportionate amount of crime.<sup>96</sup>

If sex offenders don't reoffend, then whether it "washes out" is irrelevant. "Second chances" are treatment alternatives, possible step-downs from supervision, release from prison, good time, and work release. If an individual continues to engage in criminal behavior despite significant interventions by law enforcement, our courts, supervision, treatment providers, etc. over a period of time, we should not offer a more lenient response for persistent offenders when they are demonstrating what certified SOTPs would categorize as high risk behaviors. We should not craft a more lenient response, especially when each new sex offense involves at minimum one new victim and countless secondary victims in our society.

**Statement of support for Option 2: *The SOPB recommends the law allow washouts for subsequent offense only if those are non-violent offenses that are not sex offenses as defined in RCW 9.94A.030.***

**Voting results**

**Yes: 4 votes** — WADCL, DCYF, AWC, WSAC

**No: 7 votes** — WCSAP, WATSA, WASPC, DOC, ISRB, OCVA, WAPA

**Abstain: 1 vote** — SCC

States have multiple reasons for the use of incarceration. Washington State's sentencing scheme focuses on two of these reasons: retribution and incapacitation. Retribution, sometimes referred to as the "just desserts" model, implies that if someone causes harm to the community, that person should be punished and the amount of punishment depends on the seriousness of the harm. Consequently, Washington's sentencing grid has 16 rows for the 16 different levels of felony seriousness, with the shortest sentences for the least serious offenses and the longest sentences for offenses deemed most serious. Incapacitation, through the use of incarceration, is used as a method for improving public safety. If we incarcerate people who are deemed at risk of committing an offense, we can improve public safety. That's the primary reason for the 9 columns in the current sentencing grid. A criminal history score is used as a proxy for an individual's risk to reoffend. To protect the public, a person with a greater criminal history score is deemed a greater threat to public safety and therefore needs to be incarcerated longer than someone who is a first-time offender. Consequently, someone with two previous felonies is given a longer sentence for the same offense than someone with no prior felony convictions.

Research studies concerning incapacitation to achieve public safety show prisons can be criminogenic,<sup>97</sup> especially for persons identified as low-risk.<sup>98</sup> In addition, multiple studies show a

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<sup>95</sup> According to the Static 99.

<sup>96</sup> Lobanov-Rostovsky (2015). Adult sex offender management. *SOMAPI Research Brief*. <https://smart.ojp.gov/sites/g/files/xyckuh231/files/media/document/adultsexoffendermanagement.pdf>

<sup>97</sup> Loeffler, C. E. & Nagin, D. S. (2022). The impact of incarceration on recidivism. *Annual Review of Criminology*, 5(1).

<sup>98</sup> Barnosk, R. (2006). Sex offender sentencing in Washington State: Special sex offender sentencing alternative trends. Olympia: Washington State Institute for Public Policy; Document No. 06-01-1205.

person's *recent* behavior relates to the risk of reoffending, but behavior in the distant past is not related.<sup>99, 100</sup> People convicted of either a sex offense or a non-sex offense desist from criminal behavior as they age and live in the community offense-free.<sup>101, 102, 103, 104, 105</sup> R. Karl Hanson, an expert in the field of sex offenses, in his 2018 article concludes that desistance is the norm:

*“A criminal conviction, however, is a time-dependent risk factor. During the past decade, researchers have examined desistance using statistical models of residual hazards. These studies find that after about 10 years offense-free (5 years for juveniles), the risk presented by most individuals with a criminal record is not meaningfully different from that of the general population. Similar time-free effects are found for both sexual and nonsexual offenses.”*<sup>106</sup>

Therefore, a person who lives in the community offense-free for some period of time after a conviction, is not riskier to public safety than someone who has never had a conviction. Consequently, public safety is not enhanced by giving a longer sentence to a person with a long-ago conviction. Washington state recognizes that desistance is the norm for people convicted of a Class C and/or Class B non-sex offense. If a person convicted of a Class C non-sex offense, lives in the community five years offense-free, that conviction is not counted in the criminal history score for any future offense. It is “washed out.” Similarly, if a person convicted of a Class B non-sex offense, lives in the community ten years offense-free, that conviction will wash out and will not count in the criminal history score for any future offense.

However, currently, Washington state does not allow any sex offense to wash out, which is inconsistent with well- documented research: people convicted of a sex offense desist from criminal behavior with time and eventually pose no more risk than someone from the general population. We've learned from the research that public safety is not enhanced by giving a person with a long-ago, sex offense conviction a longer sentence than others. The only reason to give a person with a long-ago sex offense conviction a longer sentence is to enact retribution. We acknowledge that other current Washington state laws include a blanket *exclusion* for people convicted of a sex offense. For example, a sex offense conviction makes a person ineligible for the First Time Offender Waiver and all other sentencing alternatives except for SSOSA (available only to certain people). Similarly,

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<sup>99</sup>Kurlychek, M., Brame, R., & Bushway, S. (2006). Scarlet letters and recidivism: Does an old criminal record predict future offending? *Criminology & Public Policy*, 5(3): 483-504. [http://clerk.seattle.gov/~cfpics/cf\\_320351g.pdf](http://clerk.seattle.gov/~cfpics/cf_320351g.pdf)

<sup>100</sup> Kurlychek, M., Brame, R., & Bushway, S. (2006). Enduring risk? Old criminal records and short-term predictions of criminal involvement. *Crime & Delinquency*, 53(1): 1-24. doi: 10.1177/0011128706294439

<sup>101</sup> Bushway, S., Thornberry, T., & Krohn, M. (2003). Desistance as a developmental process: A comparison of static and dynamic approaches. *Journal of Quantitative Criminology*, 19(2), 129-153. <https://doi.org/10.1023/A:1023050103707>

<sup>102</sup> Bushway, S. D. & Piehl, A. M. (2007). The inextricable link between age and criminal history in sentencing. *Crime & Delinquency*, 53(1): 156-183. doi: 10.1177/0011128706294444

<sup>103</sup> Blumstein, A. & Nakamura, K. (2009). Redemption in the presence of widespread criminal background checks. *Criminology*, 4(2): 327-359. <https://doi.org/10.1111/j.1745-9125.2009.00155.x>

<sup>104</sup> Soothill, K. & Francis B. (2009). When do ex-offenders become like non-offenders. *The Howard Journal of Criminal Justice*, 48(4): 373-387. <https://doi.org/10.1111/j.1468-2311.2009.00576.x>

<sup>105</sup> Hanson, R., Letourneau, E., Harris, A., Helmus, L., & Thornton, D. (2017). Reductions in risk based on time offense-free in the community: Once a sexual offender, not always a sexual offender. *Psychology, Public Policy, and Law*, 24(1): 48-63. <http://dx.doi.org/10.1037/law0000135>

<sup>106</sup> Hanson, R. K. (2018). Long-term recidivism studies show that desistance is the norm. *Criminal Justice and Behavior*, 45(9). <https://doi.org/10.1177/0093854818793382>

people convicted of a sex offense are excluded from earning the maximum earned release time for good behavior while incarcerated. Excluding people with a sex offense conviction from benefits given to people with a non-sex offense conviction is not unique to Washington. Such exclusions exist in all 50 states and at the federal level. In contrast to all the other states and the federal government, Washington is the only one currently that does not allow *any sex offense* to wash out.

A recent opinion piece by C. L. Carpenter, Professor of Law at Southwestern Law School, describes the history behind these blanket exclusions and the faulty assumptions that drive them.<sup>107</sup> She concludes with the following:

*“Blanket exclusions are but a small piece of a larger tapestry of legislative and community animus targeting registrants. Fueled by inaccurate data and community panic, “all except for provisions” only further punitive measures designed to isolate and marginalize this community. Saying something is true does not make it so. And saying it louder does not make it truer.”*

**Statement of support for Option 3: The SOPB recommends that the portion of this assignment related to washouts be completed after the Criminal Sentencing Task Force has completed their work on this subject.**

**Voting results**

**Yes:** 10 votes — WACDL, ISRB, OCVA, AWC, DOC, DSHS, WATSA, WCSAP, WAPA, WSAC

**No:** 1 vote — DCYF

**Abstain:** 1 vote — SCC

We are aware that the Criminal Sentencing Task Force and the Sentencing Guidelines Commission are reviewing Washington’s current sentencing system, including washouts for offenses that are non-sex offenses. We are concerned that without knowing the finalized recommendations from the Commission and Task Force, any recommendation that the SOPB gives regarding washouts for sex offenses could compound or conflict with recommendations for other offenses made by these groups.

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<sup>107</sup> Carpenter, C. L. (2020). Blanket exclusions, animus, and the false policies they promote. *Southwestern Law School Law Review*.

# Chapter IV: Sex Offender Management System Improvements

# Sex Offender Management System Improvements

*Our response to: “Make recommendations regarding sex offender policies and procedures related to the above referenced policies, and make recommendations as appropriate regarding improvements to treatment, housing, community re-entry and other relevant policies.”*

During this assignment, and on previous projects from the Legislature, we have identified areas of Washington’s sex offender management system that we believe could benefit from improvements. One identified area of significant importance is related to treatment availability for individuals, both adults and juveniles, who have committed sexual offenses. Washington has a serious shortage of sex certified offense treatment providers (SOTPs). In our review of treatment practices we conducted in 2021 related to juveniles, we identified that current pay rates and licensing requirements may discourage new providers from treating problematic and illegal sexual behaviors.<sup>108</sup> In our 2021 project related to increasing treatment provider capacity for treating LRA clients, we recommended changes to current practices and procedures to address Washington’s treatment provider shortage and expand our pool to include new providers.<sup>109</sup> Numerous studies have been published locally and nationally that show the effectiveness of treatment for individuals who commit sexual offenses. We offer the following recommendations to improve Washington’s current sex offender management system and help increase and expand Washington’s treatment services:

## Recommendations: System Improvements

### No. 22 (Unanimous)

#### Recommendation

The SOPB recommends that the Department of Health Sex Offense Treatment Provider requirements outlined in RCW 18.155.020 be amended to expand the definition of providers who are eligible to be Affiliate SOTP providers by allowing Licensed Mental Health Counselor Associates (LMHCAs), Licensed Independent Clinical Social Worker Associates (LICSWA), Licensed Advanced Social Worker Associates (LASWA), and Licensed Marriage and Family Therapist Associates (LMFTAs) to increase provider availability to ensure a sufficient supply of appropriate providers.

#### Background

There is a shortage of certified SOTPs in the state. Earning an SOTP license is a difficult and lengthy process. The license requirements and fees for SOTPs to provide services are cumbersome and contribute to the shortage of SOTPs and access to services in Washington State. The current pay rate and service fees for providers are major barriers to recruiting new providers to work in

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<sup>108</sup> Please see our report entitled *Recommendations and Current Practices for Minors who have Committed Sex Offenses* for further information and recommendations regarding treatment for minors and

<sup>109</sup> Please see our report entitled *Recommendations to Increase the Capacity of Sex Offense Treatment Providers who serve Less Restrictive Alternative (LRA) Clients*



Washington. Quite often, treatment providers are paid higher rates in other states compared to pay rates here. However, this comparison is difficult because Washington’s licensing requirement system is structured differently. Treating problematic or illegal sexual behavior is difficult work and requires a substantial investment of time and money to obtain the necessary education and skillset to be an effective provider. Given the level of liability associated with being a treatment provider, the low rate of pay and reimbursement discourages providers from practicing in Washington. Improving these items would expand access to vital treatment. Removing as many barriers as possible for SOTPs will help contribute to youth and families receiving the treatment services they need.

Current licensing requirements for SOTPs within state statute<sup>110</sup> also impose limits that are confusing and disincentivize the need to expand the field of treatment providers. These providers are considered either a “Certified” SOTP or a “Certified Affiliate” SOTP. A Certified SOTP is a licensed psychologist, licensed marriage and family therapist, licensed social worker, licensed mental health counselor, or psychiatrist, who is certified to examine and treat clients who commit sex offenses. If these providers are licensed affiliates (i.e., individuals who hold one of the above underlying credentials who are working towards full licensure as an SOTP), then the state considers them Certified Affiliate SOTPs. Certified Affiliate SOTPs are supervised by Certified SOTPs until they complete the required number of supervised hours and other criteria to become a Certified SOTP (Chapter 246-930 WAC and RCW 18.155.030). Certified SOTPs who supervise Affiliates typically take on the supervisory responsibility because they have the expertise and capacity to do so. Currently, Certified SOTPs can supervise no more than two Certified Affiliates per state law. The second path to become a certified SOTP is to work for a state-run treatment program for individuals who have committed a sexual offense.

RCW 18.155.020 defines an Affiliate SOTP. In June 2020, there was a change in how the underlying credential for an affiliate SOTP was legally written and subsequently interpreted by DOH. The language now reads that providers need to be a licensed social worker, licensed mental health counselor or licensed LMFT to provide treatment services with this population. However, DOH interprets that wording as “fully licensed,” — not as an associate social worker or LMHC — which is a major barrier to increasing access to treatment and providers. Affiliates are closely supervised and have significant oversight. As the law currently states (and how DOH puts it into practice) providers must complete the number of hours of supervised work that comes to three years of full-time work to obtain full licensure of their mental health professional credential to get fully licensed and then an additional three years to become an SOTP (which cannot happen concurrently) before they can work with this population. This creates an undue hardship for licensed mental health providers and a barrier for new treatment providers entering the field. Providers have also expressed it’s a deterrent to becoming an SOTP.

Providers who are an LMHCA, LICSWA, LASWA, or LMFTA are not considered by DOH to hold the underlying credential required to become an SOTP-Affiliate. We consulted with members of the Sex Offender Treatment Provider Advisory Committee under the Department of Health to better understand the amount of applications by clinicians to become SOTPs. Since the legislative changes and subsequent DOH interpretation, as of the writing of this report, the SOTP Advisor Committee

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<sup>110</sup> See [RCW 18.155.020](#).

reports almost no new applications for providers to become SOTPs through the affiliate path. The path to becoming an SOTP through working for a state-run treatment program has produced some new SOTP's but not as many as originally expected.

## No. 23 (Unanimous)

### Recommendation

The SOPB recommends that the Department of Health Sex Offense Treatment provider requirement in [RCW 18.155.020](#) be modified to allow SOTPs to supervise up to 4 Affiliates, regardless of full-time or part-time status.

### Background

There is a shortage of SOTPs in Washington and a shortage of providers who can supervise affiliate and prospective-affiliate providers. RCW 18.155.020 states a supervisor can supervise only 2 affiliates. This affects the availability and accessibility of treatment providers and creates additional barriers for increasing SOTPs. Increasing the number of affiliates that an SOTP can supervise will improve provider accessibility.

## No. 24 (Unanimous)

### Recommendation

The SOPB recommends that an agency be directed to administer a funding program to assist in reducing the costs associated with the licensure for Sex Offender Treatment Providers (SOTPs).

### Background

We have a shortage of SOTPs. Removing barriers, such as the extra costs associated with getting a SOTP license, could encourage clinicians to become SOTPs. All credentials through the Department of Health are required to be self-supporting. The small number of credentialed SOTPs creates a burdensome fee structure that is a disincentive to providers working in this field. Essentially, this problem is a "Catch 22" situation in which providers do not apply to become SOTPs because the costs to them are high, however, in order for the costs to be lowered, more providers need to be credentialed as SOTPs. The Legislature should look for ways to subsidize the cost of SOTP licensure fees to encourage clinicians to become credentialed SOTPs.

## No. 25 (Unanimous)

### Recommendation

The SOPB recommends that, subject to judicial approval by the sentencing court, the ISRB may recommend, via letter to the sentencing court, modification to conditions of supervision imposed by the court under ISRB jurisdiction. The ISRB may not address restitution or other legal financial obligations and the sentencing court retains the authority to delete or modify conditions.

## Background

There currently isn't a formal process for an individual to have a condition of community custody changed and/or amended. Conditions are imposed at the time of sentencing and may need to be re-evaluated as time goes on. The purpose of this recommendation is to create an avenue for which duplicative, non-applicable, and/or archaic conditions can be modified to streamline conditions of supervision to more appropriately support successful reentry and risk management. For example, a blanket prohibition on internet access creates barriers to employment, education, housing and other stabilizing resources in today's web-based world. Other examples include conditions that are imposed at the time of sentencing which may have been relevant at that time, but, if the individual is on supervision for life, may no longer be applicable many years later as the individual, and their circumstances and life situation, have changed. There are some individuals who are caught in a "Catch 22" situation due to the current process: because the ISRB cannot currently amend any conditions imposed by the sentencing court, and some counties across the state will not amend conditions in the Judgement & Sentence, the individual can be stuck with no recourse.

## No. 26 (Unanimous)

### Recommendation

The SOPB recommends the following in order to correct the current contrast between RCW 4.24.550 and Washington's Public Records Act:

- The SOPB recommends that RCW 4.24.550 be amended to add a new section: (12) Sex offender and kidnapping offender registration information is exempt from public disclosure under chapter 42.56 RCW, except as otherwise provided in 4.24.550.
- The SOPB recommends that RCW 42.56.240 be amended to add a new section: 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.

### Background

There is currently a contrast between RCW 4.24.550 and Washington's Public Records Act. Addressing this contrast regarding publicly disclosable registration information by making amendments to RCW 4.24.550 and RCW 42.56.240 will have significant positive impacts as it relates to keeping information on compliant level I offenders, of which most juveniles are leveled, as outlined in RCW 4.24.550. Washington's risk-based, leveling and community notification matrix are considered a model across the county. It should be our priority to maintain the integrity of the system by correcting the contrast between statutes. This recommendation is a repeat recommendation from us that we originally made to the Legislature in 2015 and again in 2021.<sup>111</sup>

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<sup>111</sup> [SOPB 2015 Report](#)

Washington's comprehensive statutory scheme that controls the release of information to the public regarding sex and kidnapping offenders contained in RCW 4.24.550 has worked well since its inception with the passage of the Community Protection Act in 1990.<sup>112</sup> RCW 4.24.550 should be considered an "other statute" under RCW 42.56.070. Washington's Public Records Act requires agencies to produce public records upon request "unless the record falls within the specific exemptions of this chapter, or any other statute which exempts or prohibits disclosure of specific information or records".<sup>113</sup> Releasing Level I sex and kidnapping offender information is the equivalent to broad-based community notification, which is generally reserved for higher-risk sex and kidnapping offenders in our state. This functionally eliminates our tiered risk-level approach to community notification, which the Legislature and many other stakeholders have worked diligently over the last 20 plus years to develop, implement and improve.<sup>114</sup>

The widespread dissemination of Level I offender information has harmfully impacted victims who are often known to, related to, or connected with offenders. This particularly impacts Level I minors who did not have community notification requirements.<sup>115</sup> The social science research we reviewed indicates that widespread dissemination of information collected for all sexual offenders often unintentionally creates obstacles to community reentry that may actually undermine, rather than enhance, public safety.<sup>116</sup> The widespread dissemination of Level I offender information has even greater collateral consequences for low-risk juvenile offenders and their families. Minors who commit sex offenses already have many challenges re-integrating into society and this would be another obstacle. Releasing their information likely negatively impacts a variety of known risk factors, which may ultimately increase their risk for participating in future criminal behavior.<sup>117</sup> Widespread dissemination of their registration information also undermines the legal rationale for upholding the constitutionality of the registration and notification process that the Washington Supreme Court adopted.<sup>118</sup>

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<sup>112</sup> [SOPB 2015 Report](#) page 17

<sup>113</sup> See RCW 42.56.070. [SOPB 2015 Report](#) page 18

<sup>114</sup> [SOPB 2015 Report](#) page 18

<sup>115</sup> [SOPB 2015 Report](#) page 19

<sup>116</sup> [SOPB 2015 Report](#) page 20

<sup>117</sup> [SOPB 2015 Report](#) page 20

<sup>118</sup> [SOPB 2015 Report](#) page 22

# Appendices

# Appendix A

House Public Safety Committee Request Letter



State Representative  
45<sup>th</sup> Legislative District  
**Roger Goodman**

## Washington State Legislature

Public Safety  
**Chair**

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Statute Law  
**Chair**

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Criminal Sentencing Task  
Force  
**Co-Chair**

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March 29, 2022

Brad Meryhew  
Chair, Washington State Sex Offender Policy Board  
P.O. Box 43124  
Olympia, WA 98504-3124

Dear Mr. Chair,

I deeply appreciate and highly value the well-informed advice from the Sex Offender Policy Board (SOPB) to the Governor and the Legislature on issues relating to sex offender policy and management. To that end, in my capacity as Chair of the House Public Safety Committee, I hereby request that the SOPB convene, pursuant to RCW 9.94A.8673, to undertake the following projects to assist the Legislature in addressing sex offender policy:

1. Conduct a current review of the Special Sex Offender Sentencing Alternative (SSOSA) and make recommendations for improvements to the SSOSA process, including the current eligibility criteria, judicial discretion and barriers to accessibility. These recommendations should address any shortages in sex offender treatment or other services employed by this alternative sentence.
2. Review research and make recommendations regarding best practices related to sentencing alternatives for individuals with sexual offenses, including “non-contact” sex offenses.
3. Review research and make recommendations regarding best practices and procedures related to lifetime supervision of adults convicted of sexual offenses to include: the monetary and collateral costs of lifetime supervision; the impact on community safety of lifetime supervision; and any recommendations regarding procedures to end lifetime supervision in individual cases or in its entirety.
4. Review research and current practices and procedures for Failure to Register (FTR) cases and make recommendations regarding how to ensure community safety most effectively while wisely using scarce public resources.
5. Review research and make recommendations regarding best practices for felony “washout” periods for sex offenses, as provided in RCW 9.94A.525(2).
6. Make recommendations regarding sex offender policies and practices related to the above referenced policies, and make recommendations as appropriate regarding improvements to treatment, housing, community re-entry and other relevant policies.

Brad Meryhew, Chair, Sex Offender Policy Board  
March 29, 2022  
page two

I request that the SOPB transmit a final report with recommendations on the policy matters enumerated by December 1, 2022. I intend to invite you and other representatives of the SOPB to present and report on these issues to the House Public Safety Committee during a public work session.

Thank you in advance for the efforts of the SOPB members and staff to accomplish this important work. I hope and believe that the information and recommendations from your report will significantly assist the ongoing work of the Legislature and Washington State Criminal Sentencing Task Force.

Yours sincerely,

A handwritten signature in black ink that reads "Roger E. Goodman". The signature is written in a cursive style with a large initial 'R' and a distinct 'E'.

Representative Roger Goodman  
Chair, House Public Safety Committee  
Co-Chair, Washington State Criminal Sentencing Task Force



## **Appendix B**

### Voting Results by Stakeholder

## SOPB Voting Results by Member Affiliation

The SOPB includes members who represent the following twelve organizations:

- 1) Washington State Department of Children, Youth & Families, Juvenile Rehabilitation (DCYF)
- 2) Washington Association of Sheriffs and Police Chiefs (WASPC)
- 3) Washington Association of Prosecuting Attorneys (WAPA)
- 4) Washington Association of Criminal Defense Lawyers (WACDL)
- 5) Indeterminate Sentencing Review Board (ISRB)
- 6) Washington State Superior Court Judges Association (WASCJA)
- 7) Office of Crime Victims Advocacy (OCVA)
- 8) Association of Washington Cities (AWC)
- 9) Department of Corrections (DOC)
- 10) Washington State Association of Counties (WSAC)
- 11) Washington State Department of Social and Health Services, Special Commitment Center (SCC)
- 12) Washington Association for the Treatment of Sexual Abusers (WATSA)
- 13) Washington Coalition of Sexual Assault Programs (WCSAP)

The table below outlines the voting results for the juvenile sex offense treatment recommendations from the SOPB by members' affiliate organization. 12 votes in favor is a unanimous vote.<sup>1</sup>

<b>Recommendation</b>	<b>Results</b>	
<p><b>No. 1</b></p> <p>The SOPB recommends that the SSOSA statute be protected and preserved. We believe the evidence is strong that this sentencing alternative is an effective tool to resolve many cases and has proven itself over the decades.</p>	<b>Yes: 12</b>	<b>No: 0</b>
	Unanimous support	
<p><b>No. 2</b></p> <p>The SOPB recommends that cost barriers to SSOSA be reduced by the implementation of sliding scale fee schedules for evaluations and treatment and the creation of low-cost treatment options.</p>	<b>Yes: 12</b>	<b>No: 0</b>
	Unanimous support	
<p><b>No. 3</b></p> <p>The SOPB recommends that, where possible, work release programs be established and expanded to allow those who otherwise lack the resources to take advantage of SSOSA and other treatment alternatives.</p>	<b>Yes: 12</b>	<b>No: 0</b>
	Unanimous support	
<p><b>No. 4</b></p> <p>The SOPB recommends that RCW 9.94A.670 be clarified to include language that requires an individual to enter a plea of</p>	<b>Yes: 12</b>	<b>No: 0</b>
	Unanimous support	

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<sup>119</sup> Statement by SCJA regarding votes: "The SCJA does not take a formal position at this time until such time as the Legislature drafts a bill. The SCJA does appreciate the increased judicial oversight and discretion being considered in these recommendations." As SCJA is not formally weighing in on the recommendations with a vote, 12 votes in favor is a unanimous vote.

<p>guilty prior to trial in order to be eligible for this sentencing alternative.</p>			
<p><b>No. 5</b> The SOPB recommends that a sentencing alternative similar to SSOSA be enacted for those convicted of violations of RCW 9.68A. related to Depictions of Minors Engaged in Sexually Explicit Conduct so long as the person did not create the images in question.</p>	<p><b>Yes: 12</b> Unanimous support</p>		<p><b>No: 0</b></p>
<p><b>No. 6</b> The SOPB recommends that a sentencing alternative similar to SSOSA be enacted for those convicted of an internet sting or other sex offense not involving an identifiable victim.</p>	<p><b>Yes: 8</b></p>	<p><b>No: 2</b></p>	<p><b>Abstain: 2</b></p>
	<p>DCYF WAPA WACDL ISRB AWC WSAC WATSA WCSAP</p>	<p>WASPC OCVA</p>	<p>SCC DOC</p>
<p><b>No. 7</b> The SOPB recommends that this treatment alternative only be available to those who are willing to take responsibility for some sexual misbehavior/a strong willingness to address behaviors that led them to their offense.</p>	<p><b>Yes: 12</b> Unanimous support</p>		<p><b>No: 0</b></p>
<p><b>No. 8</b> The SOPB recommends the following criteria for this treatment alternative, similar to the current criteria for SSOSA eligibility, which we endorse:</p> <ul style="list-style-type: none"> <li>- No prior sex offense convictions or adjudications, and no adult convictions for a violent offense committed within five years of the instant offense; and</li> <li>- A standard sentencing range includes a sentence of eleven years or less.</li> </ul>	<p><b>Yes: 12</b> Unanimous support</p>		<p><b>No: 0</b></p>
<p><b>No. 9</b> The SOPB recommends that the Court impose standard conditions similar to SSOSA:</p> <ul style="list-style-type: none"> <li>- Annual review hearings, including treatment termination hearings; and</li> <li>- Up to five years of community-based SOTP treatment.</li> </ul>	<p><b>Yes: 12</b> Unanimous support</p>		<p><b>No: 0</b></p>
<p><b>No. 10</b> The SOPB recommends that the Court hold a supervision termination hearing at the end of the suspended sentence for the Court to agree with the termination of community custody.</p>	<p><b>Yes: 12</b> Unanimous support</p>		<p><b>No: 0</b></p>

No. 11	Yes: 8	No: 2	Abstain: 2
<p>The SOPB recommends that a pathway off of lifetime supervision should be created for individuals who have committed sexual offenses and meet eligibility criteria, including all of those currently subject to lifetime community custody. Specifically, the SOPB recommends the following time frames and criteria for eligibility for discharge from lifetime community custody:</p> <p><b>Level I.</b> Individuals who are assessed as a Level 1 upon their release from prison by the End of Sentence Review Committee shall be discharged from community custody five (5) years after their return to the community so long as they meet the eligibility requirements of not committing a “disqualifying event.” The Department of Corrections shall review the relevant records to determine if the individual meets the eligibility criteria and process them off of community custody if they meet that criterion.</p> <p>If the Department determines that a Level I individual does not meet the criteria for discharge from lifetime community custody, or can identify a specific safety concern, then that case file shall be sent by DOC to the ISRB for review. DOC may make a referral to the ISRB for review of a Level 1 at least 90 days prior to discharge from community custody if DOC has reasonable grounds to believe the person poses a significant risk of sexual recidivism.</p> <p><b>Level II.</b> Individuals who are assessed as a Level II by the End of Sentence Review Committee upon their release from prison should be eligible for discharge from supervision ten (10) years after their return to the community so long as they meet the eligibility requirements of not committing a “disqualifying event.” For Level II offenders the ISRB shall review their file, submitted by DOC to the ISRB, to determine if the individual qualifies for discharge from community custody and may extend the period of supervision for good cause shown. A review hearing shall be held at least 120 days before the end of the supervision period.</p> <p>If a disqualifying event occurs within the first 10 years from release for a Level II individual, the individual will not be eligible for discharge from supervision for at least 5 years from the disqualifying event date. A review hearing by the ISRB should be held at least 120-days prior to the discharge from supervision date.</p> <p><b>Level III.</b> Individuals who are assessed as a Level III by the</p>	DCYF WASPC WACDL AWC DOC WSAC WATSA ISRB	OCVA WCSAP	SCC WAPA

End of Sentence Review Committee upon their release from prison should be eligible for discharge from supervision fifteen (15) years after their return to the community so long as they meet the eligibility requirements of not committing a “disqualifying event.” For Level III offenders the ISRB shall review their file, submitted by DOC to the ISRB, to determine if they qualify for discharge from community custody and may extend the period of supervision for good cause shown. A review hearing shall be held at least 120 days before the end of the supervision period.

If a disqualifying event occurs within the first 10 years from release for a Level III individual, the individual will not be eligible for discharge from supervision for at least 5 years from the disqualifying event date. If a disqualifying event occurs within the last 5 years of supervision for a Level III, then the individual would not be eligible for discharge from supervision for at least 3 years from the disqualifying event date. A review hearing by the ISRB should be held at least 120-days prior to the discharge from supervision date.

We recommend the following as “Disqualifying Events” for discharge from Lifetime Community Custody:

An individual would not be eligible for release from community custody if they have had disqualifying events. A disqualifying event is defined as:

- The individual has been found guilty of any serious and risk-relevant violation of the conditions of community custody, as determined by the ISRB at an on-site hearing. “Serious violation” is to be further defined in a future WAC, to include violations such as contact or attempted contact with prohibited person(s) or classes of individuals; use of prohibited drugs/alcohol if these substances were involved in the individual's offense; willful failure to complete required treatment; absconding from supervision, and other violations deemed high-risk by the WAC.
- The individual has been convicted of any new felony offense or any misdemeanor sex offense as defined in RCW 9A.44.128 or 9.94A.030;
- The individual has not completed all recommended treatment as required in the Judgement & Sentence and ISRB Conditions; The SOPB recommends that the ISRB be able to

<p>waive this condition if there is a finding that this resulted from the individual's indigence.</p> <ul style="list-style-type: none"> <li>• The individual has been found to be non-compliant with conditions of supervision on a repeated basis as documented by DOC and referred to the ISRB. These violations would be addressed on a formal basis by the ISRB prior to release from community custody; and</li> <li>• The individual has been assessed to be at significant risk for sexual recidivism on an empirically validated DOC approved dynamic risk assessment completed within 120 days of eligibility for discharge.</li> </ul>			
<p><b>No. 12</b> The SOPB recommends that individuals who are granted a SSOSA sentence should be supervised by the Department of Corrections for the length of their suspended sentence or 36 months, whichever is longer.</p>	<p><b>Yes: 12</b> Unanimous support</p>		<p><b>No: 0</b></p>
<p><b>No. 13</b> The SOPB recommends for SSOSA cases that the sentencing Judge in the Superior Court hold a supervision termination hearing at the end of the presumed community custody period to determine if the person should be released from community custody.</p>	<p><b>Yes: 12</b> Unanimous support</p>		<p><b>No: 0</b></p>
<p><b>No. 14</b> The SOPB recommends that the DOC and ISRB submit an annual report to the governor and appropriate committees of the legislature detailing the number of individuals eligible for discharge from lifetime supervision; the number of individuals granted discharge from lifetime supervision; and the number of individuals who, subsequent to discharge from lifetime supervision, are investigated for a recent overt act as defined by RCW 71.09.020 or new sex offense as defined by RCW 9A.44.128 or 9.94A.030.</p>	<p><b>Yes: 12</b> Unanimous support</p>		<p><b>No: 0</b></p>
<p><b>No. 15</b> The SOPB recommends that the offense of Failure to Register, pursuant to RCW 9A.44.132, be reduced from a Seriousness Level II offense to an Unranked Felony for the purposes of sentencing. This would result in a presumed sentencing range of 0 – 12 months.</p>	<p><b>Yes: 12</b> Unanimous support</p>		<p><b>No: 0</b></p>
<p><b>No. 16</b> The SOPB recommends that for the crime of Failure to</p>	<p><b>Yes: 12</b> Unanimous</p>		<p><b>No: 0</b></p>

<p>Register, defendants shall be given one year of community custody regardless of risk for a first offense and two years of community custody for subsequent offenses.</p>	<p>support</p>	
<p><b>No. 17</b>  The SOPB recommends that Failure to Register offenses should not be defined as a “sex offense” under RCW 9A.44.128 of 9.94A.030. Under current law the second offense of Failure to Register and thereafter are defined as “sex offenses.”</p>	<p><b>Yes: 12</b>  Unanimous support</p>	<p><b>No: 0</b></p>
<p><b>No. 18</b>  The SOPB recommends that Failure to Register should be classified as a “disqualifying offense” as defined in RCW 9A.44.128, which would restart the waiting periods for relief from registration for a conviction.</p>	<p><b>Yes: 12</b>  Unanimous support</p>	<p><b>No: 0</b></p>
<p><b>No. 19</b>  The SOPB recommends that individuals under the jurisdiction of the Department of Corrections for a Failure to Register offense, whether they are in the community or still in prison, be assessed to identify the individual’s barrier(s) to registration compliance and provided with resources and tools to support compliance and improve functioning in the community, including housing, vocational rehabilitation, treatment as necessary, and community supports. The SOPB specifically endorses the use of navigators or other specialized corrections approaches in meeting the needs of this population.</p>	<p><b>Yes: 12</b>  Unanimous support</p>	<p><b>No: 0</b></p>
<p><b>No. 20</b>  The SOPB recommends that the Washington Association of Sheriffs and Police Chiefs (WASPC) review the Model Policy for Washington Law Enforcement regarding Adult and Juvenile Sex Offender Registration and Community Notification (4.24.5501) to identify opportunities to utilize technology to streamline initial and ongoing registration processes.</p>	<p><b>Yes: 12</b>  Unanimous support</p>	<p><b>No: 0</b></p>

## No. 21

The SOPB has been unable to achieve any consensus on this difficult issue. We offer three possible solutions and the vote of our Board for those positions.

- **Option 1:** The SOPB recommends no washouts for subsequent offenses. The current state of the law.

### Voting results

Yes: 2 votes — WAPA, WASPC

No: 9 votes — DCYF, WACDL, WCSAP, WSAC, WATSA, DOC, ISRB, OCVA, AWC

Abstain: 1 vote — SCC

- **Option 2:** The SOPB recommends the law allow washouts for subsequent offense only if those are non-violent offenses that are not sex offenses as defined in RCW 9.94A.030.

### Voting results

Yes: 4 votes — WADCL, DCYF, AWC, WSAC

No: 7 votes — WCSAP, WATSA, WASPC, DOC, ISRB, OCVA, WAPA

Abstain: 1 vote — SCC

- **Option 3:** The SOPB recommends that the portion of this assignment related to washouts be completed after the Criminal Sentencing Task Force has completed their work on this subject.

### Voting results

Yes: 10 votes — WADCL, ISRB, OCVA, AWC, DOC, SCC, WATSA, WCSAP, WAPA, WSAC

No: 1 vote — DCYF

Abstain: 1 vote — SCC

## No. 22

The SOPB recommends that person-first language be incorporated into newly written statutes and in every-day written and verbal communications in regard to minors who have committed sexual offenses.

**Yes: 12**  
Unanimous  
support

**No: 0**

## No. 23

The SOPB recommends that the Department of Health Sex Offense Treatment provider requirement in RCW 18.155.020 be modified to allow SOTPs to supervise up to 4 Affiliates, regardless of full-time or part-time status.

**Yes: 12**  
Unanimous  
support

**No: 0**

## No. 24

The SOPB recommends that an agency be directed to administer a funding program to assist in reducing the costs associated with the licensure for Sex Offender Treatment

**Yes: 12**  
Unanimous  
support

**No: 0**



Providers (SOTPs).		
<p><b>No. 25</b></p> <p>The SOPB recommends that, subject to judicial approval by the sentencing court, the ISRB may recommend, via letter to the sentencing court, modification to conditions of supervision imposed by the court under ISRB jurisdiction. The ISRB may not address restitution or other legal financial obligations and the sentencing court retains the authority to delete or modify conditions.</p>	<p><b>Yes: 12</b></p> <p>Unanimous support</p>	<p><b>No: 0</b></p>
<p><b>No. 26</b></p> <p>The SOPB recommends the following in order to correct the current contrast between RCW 4.24.550 and Washington’s Public Records Act:</p> <ul style="list-style-type: none"> <li>- The SOPB recommends that RCW 4.24.550 be amended to add a new section: (12) Sex offender and kidnapping offender registration information is exempt from public disclosure under chapter 42.56 RCW, except as otherwise provided in 4.24.550.</li> <li>- The SOPB recommends that RCW 42.56.240 be amended to add a new section: 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.</li> </ul>	<p><b>Yes: 12</b></p> <p>Unanimous support</p>	<p><b>No: 0</b></p>

## **Appendix C**

WASPC's Response to 2022 SOPB Recommendations (November 28, 2022, to SOPB Chair)



Washington Association of  
**SHERIFFS &  
POLICE CHIEFS**

3060 Willamette Drive NE  
Lacey, WA 98516  
360-486-2380 (Phone)  
360-486-2381 (Fax)  
www.waspc.org

**President**  
Chief Steve Crown  
City of Wenatchee

November 28, 2022

**President-Elect**  
Sheriff Kevin Morris  
Douglas County

Brad Meryhew, Chair

**Vice President**  
Chief Darrell Lowe  
City of Redmond

Washington State Sex Offender Policy Board (SOPB)

Deliver to [brad@meryhewlaw.com](mailto:brad@meryhewlaw.com)

**Past President**  
Sheriff Rick Scott  
Grays Harbor County

**Subject: WASPC Response to 2022 SOPB Recommendations**

**Treasurer**  
Chief Brett Vance  
City of Montesano

The Washington Association of Sheriffs and Police Chiefs (WASPC) recognizes the SOPB's efforts to reach a consensus on the slate of recommendations to be provided in response to the assignment from Representative Roger Goodman as Chair of the House Public Safety Committee. Although our organization was able to agree to most of the recommendations through compromise, we cannot agree with all of them. The following is not an attempt to undermine the work of the SOPB, rather the following is a memorialization of our concerns regarding certain recommendations, and in one case, our strong support.

**Executive Board**

Chief Michelle Bennett  
City of Edmonds

Chief Cherie Harris  
City of Kirkland

Sheriff Clay Myers  
Kittitas County

Chief Rafael Padilla  
City of Kent

Sheriff James Raymond  
Franklin County

Sheriff Brad Thurman  
Cowlitz County

Chief Sam White  
Lower Elwha Klallam  
Police Department

Chief John Batiste  
Washington State Patrol

Richard Collodi, SAC  
FBI—Seattle

Steven D. Strachan  
Executive Director

**Treatment Alternatives Recommendation 5:** WASPC agrees that in most cases, a conviction for violation of RCW 9.68A, related to depictions of minors engaged in sexually explicit conduct, is often an individual's first intervention for sexual offending. If the system can make a meaningful intervention and engage the individual in treatment, the likelihood of continued sexual offending decreases. It is for this reason, that WASPC voted in favor of this recommendation. However, we have concerns regarding those individuals convicted of dealing in depictions (RCW 9.68A.050) being offered a SSOSA-like alternative. Dealing depictions is more serious than possession/viewing. Much like creating depictions, dealing/sharing depictions further victimizes the actual victims depicted in the images and warrants a more serious intervention.

**Treatment Alternatives Recommendation 6:** WASPC objects to the recommendation to offer a SSOSA-like alternative to individuals convicted of an internet sting or other sex offense not involving and identifiable victim.

- Seeking underage stranger victims is predatory behavior and should not be eligible for sentencing alternatives.
- If an individual was seeking, and making contact with, identifiable juvenile victims on the internet, they would not be eligible for a sentencing alternative. The offense behavior is no different when there is an identifiable juvenile victim compared to an internet sting victim.

- The SOPB, in a 2013 report stated that, “the purpose of SSOSA was to support and encourage family member victims to engage in the criminal justice system, knowing there was an opportunity for the offender to receive treatment rather than exclusively a prison term.”
- The creators of the Static 99 Risk Assessment, the risk assessment tool used to determine an individual’s risk to sexually reoffend within the community at large in Washington State, do not differentiate between a real victim and a “sting” victim when assessing risk.
- We are unaware of any documented research demonstrating decreased risk among this population.
- The National Center for Missing and Exploited Children (NCMEC) observed a 97.5% increase from 2019 to 2020 in reports of online enticement<sup>1</sup>. According to Lindsey Olsen, NCMEC’s executive director, “Offenders are very effective at grooming children, gaining their trust, isolating them from their parents and then exploiting them. Parents often think that it would ‘never’ happen to their child, but we know that is simply not true.”

Furthermore, WASPC objects to the ongoing consideration that the SOPB has authority over law enforcement investigations<sup>2</sup>. Discussions regarding sting investigations, and specifically “Net Nanny Investigations,” lacked any law enforcement input.

**Lifetime Supervision Recommendation #11:** WASPC voted in favor of this recommendation. However, we do have concerns with the inconsistency in the agency responsible for determining if an individual meets the eligibility criteria for discharge from lifetime supervision. For those individuals where the End of Sentence Review Committee (ESRC) recommends a level I risk determination, this responsibility will be with the Department of Corrections. For those individuals where the ESRC recommends a level II or III risk determination, this responsibility will be with the Indeterminate Sentence Review Board.

Additionally, the “disqualifying events” for discharge from lifetime supervision do not specifically include mechanisms for victim or law enforcement concerns to be considered.

**Failure to Register Recommendation #16:** WASPC voted in favor of this recommendation. However, we want to memorialize our belief that any individual ordered to supervision for a failure to register (FTR) conviction shall be supervised by the Department of Corrections and shall not be eligible to be “screened off” of supervision. Furthermore, any individual ordered to supervision for an FTR conviction shall not be eligible for supervision compliance credits.

**Sex Offender Management System Improvements Recommendation # 26:** WASPC strongly supports the recommendation to correct the current contrast between RCW 4.24.550 and Washington’s Public Records Act (PRA). The current landscape allows for abuse of the PRA, undermining Washington’s very intentional sex offender registration and notification laws. Abuse of the PRA is allowing shadow websites to publish more detailed information, including photos, full residential address and a synopsis of crime/victim information, regarding level I registrants, who are generally not published to the Washington State Sex Offender Public Website. This causes privacy concerns for victims and safety concerns for registrants and their families/co-habitants. Level I offenders are least likely to sexually reoffend within the community at large.

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<sup>1</sup> [Rise in Online Enticement and Other Trends: NCMEC Releases 2020 Exploitation Stats \(missingkids.org\)](https://www.missingkids.org)

<sup>2</sup> [RCW 9.94A.8673: Sex offender policy board—Membership—Expenses and compensation. \(wa.gov\)](https://www.wa.gov)

Thank you for your consideration of our concerns. We respectfully request that WASPC's concerns regarding certain recommendations, and our strong support of the PRA recommendation, be included as an appendix in the final SOPB report.

Sincerely,



Jamie Weimer, Projects and Programs Manager

Cc: SOPB: Vice-Chair Jedd Pelander, Whitney Hunt  
WASPC: Terrina Peterson, James McMahan

## **Appendix D**

Data on SSOSA Cases by Year

### Number of SSOSA Cases Granted Per Year by Offense Conviction

Offense	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	Total
Assault 3						2	1	1		2	6
Assault of a child 2	1			1							2
Burglary		1									1
Child molest 1*	24	23	32	30	23	21	32	16	16	15	232
Child molest 2	11	5	5	7	12	8	13	9	8	13	91
Child molest 3	4	5	1	1	2	2	2	1	3	2	23
Commer sex abuse						1					1
Communication with minor	1				1			1			3
Dealing depictions 1	1								2		3
Extortion 2						1					1
Incest 1	3		3	4	2	2	2	4	1		21
Incest 2		1	1						1		3
Indecent exp		1									1
Indecent Lib - DD victim	3	6	2	2	1		5	4		1	24
Indecent lib with force*	2		1			2		1		3	9
M/D/P W/I Marij 1st offense	1										1
Poss of depictions 1	2	1				3			2		8
Poss of depictions 2	1		1			1	1	1	1	1	7
Rape 2 (attempt)*			1				1				2
Rape 3				2		1		2			5
Rape of a child 1*	18	15	22	22	13	14	12	12	10	8	146
Rape of a child 2*	11	5	13	3	6	5	3	7	4	7	64
Rape of a child 3	10	11	13	6	11	10	5	7	8	9	90
Residential burglary							1				1
Sexual exploitation		1	2		2	3	1	1	2	3	15

Sexual misconduct			1		1				1		3
Tampering with a witness									1		1
Unlawful imprisonment			1								1
Viewing depictions 2								1			1
Voyeurism							1			1	2
<b>Total SSOSA granted per year:</b>	<b>93</b>	<b>75</b>	<b>99</b>	<b>78</b>	<b>74</b>	<b>76</b>	<b>80</b>	<b>68</b>	<b>60</b>	<b>65</b>	<b>768</b>

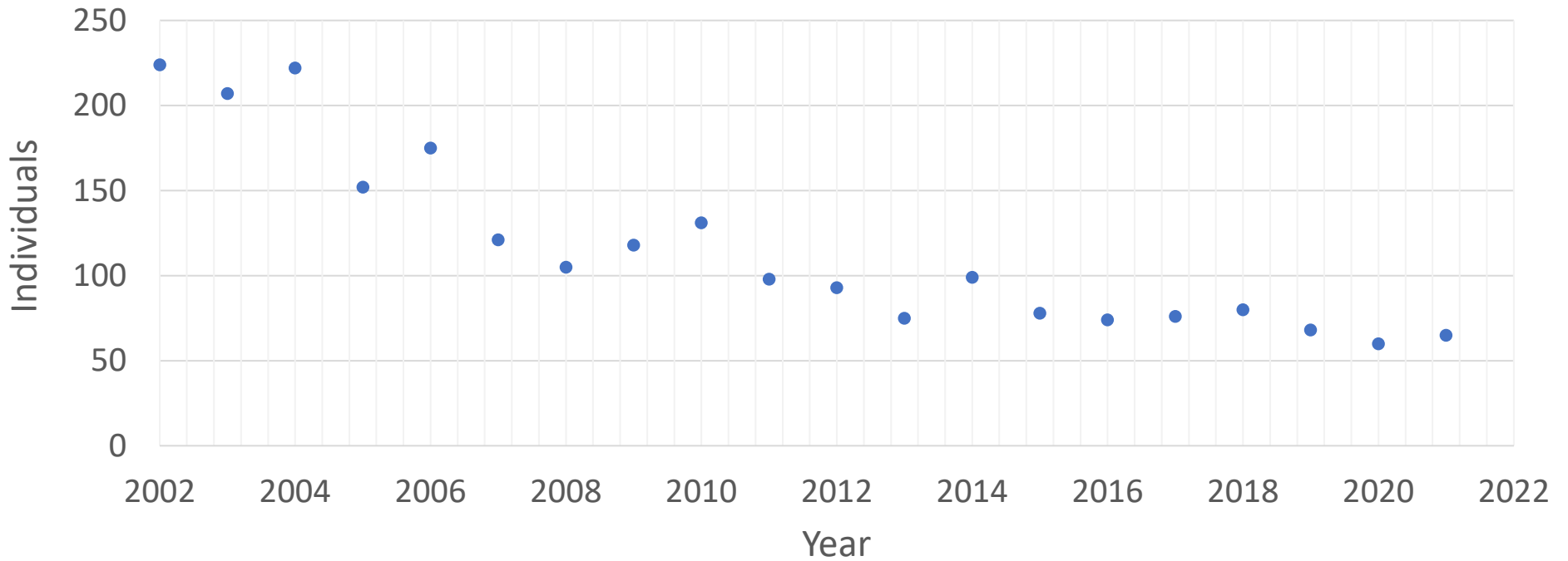
\* = Denotes Class A offenses Requiring Lifetime Supervision



### SSOSA Cases Per Year

Year	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
# of Cases Eligible for SSOSA	822	857	861	769	773	702	632	682	622	587	606	547	579	584	522	553	570	635	547
# of Cases Granted SSOSA	224	207	222	152	175	121	105	118	131	98	93	75	99	78	74	76	80	68	60
% of Individuals Granted SSOSA	27%	24%	26%	20%	23%	17%	17%	17%	21%	17%	15%	14%	17%	13%	14%	14%	14%	11%	11%

### Number of Individuals Granted a SOSSA by Year



## **Appendix E**

Email Communications - Re: Empirical Information on Sting Cases  
from Experts

From: Michael O'Connell <moconnell@droconnelltx.com>  
Sent: Thursday, October 27, 2022 2:41 PM  
To: Hunt, Whitney (OFM)  
Subject: FW: empirical info on sting cases

External Email

Here is the personal communication I got from (and I'm sure I shared with you and the subcommittee) on the risk profile of persons caught in sting cases. I recall this was discussed in the subcommittee and led to greater support of a sentencing alternative for sting cases. This addressed the concern that these cases must present greater risk of reoffense than for people who knew their vicim ahead of time and were eligible for a SSOSA.

I would hope this gets addressed in the subcommittee report and the footnote attached for this personal communication from the co-developer of the Static-99R and the Stable.

Michael A. O'Connell, Ph.D., MSW  
9800 Harbour Pl., #204  
Mukilteo, WA 98275  
425-374-8504  
Fax: 425-404-3948  
<https://gcc02.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.droconnelltx.com%2F&data=05%7C01%7Cwhitney.hunt%40ofm.wa.gov%7C799fa5465f2c48a82b0b08dab8640234%7C11d0e217264e400a8ba057dcc127d72d%7C0%7C0%7C638025037357288924%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6IklhaWwiLCJXVCI6Mn0%3D%7C2000%7C%7C%7C&mp;sdata=805J2tPm078%2FYH%2BYrzxfOphduH9MG9%2FGpwIXHiW%2F41E%3D&reserved=0>

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-----Original Message-----

From: David Thornton <davidsmthornton@icloud.com>  
Sent: Tuesday, September 6, 2022 11:59 AM  
To: Michael O Connell <moconnel@mindspring.com>

Cc: atsa-ml@mail-list.com  
Subject: empirical info on sting cases

Hi Michael

As you know there is no data that speaks directly to the risk presented by this group.

To put this in context, most evaluations are of people who differ in some ways from the typical individuals in research studies. Minimally, we are evaluating someone now, but research data is usually from people who were released 10 to 20 years ago. Further, although static actuarial instruments have been widely studied, most people in the USA will be practicing in states for which there haven't been large scale local trials of these instruments.

Going beyond this, there are often particulars of someone's history that distinguish them. I recently evaluated someone whose parents used to punish him by making him dress in female clothes and threatening to tell everyone he was gay. I am sure that others have come across similar histories but this specific punishment is rare enough that only a small proportion of those in research samples would have been punished in just this specific way.

A temptation is to responding to this by trying to say that we should do some kind of individualized case formulation to take this uniqueness into account, and should disregard actuarial assessment. However, we know this does not work. Over-riding actuarials in an unstructured way generally makes prediction less accurate.

I suggest the general principle should be that one should assume that actuarial assessment applies unless you have strong reasons based on theory or evidence for believing that actuarial assessment will materially over-estimate or materially underestimate risk for this kind of case. The justification for this principle is that it has generally held true in previous research.

In the example you are concerned with there is no obvious reason why sting cases where someone believes they are interacting with a child via the internet would be different from cases where someone was actually interacting with a child via the internet. I think therefore that the question would be better framed as whether this more general class of cases are likely to present a different level of risk. I am guessing that the kind of cases you are talking about divide into "Internet luring" cases and cases where

there is some kind of sexual communication or display that is illegal because it is directed towards a minor.

Even for this broader group, I doubt we yet have sufficient data this to demonstrate the calibration of risk assessment instruments. A way to approach this would be to say that this offense in part resembles typical contact offenses and in part resembles CSEM internet offenses. To the extent that it resembles contact offenses then regular static actuarial results should apply while to the extent that it resembles internet CSEM offenses then it should signal a lower risk.

There is no basis for asserting that it implies a higher risk than is implied by static actuarial results.

David Thornton, Ph.D.  
FASTR LLC

> On Sep 2, 2022, at 7:18 PM, Michael O Connell (moconnel at  
mindspring.com) <atsa@mail-list.com>  
wrote:

>

> This message was sent by Michael O Connell moconnel@mindspring.com

>

> I had no responses when I posted this question a couple of weeks ago.

> I'd REALLY like to hear anything the list has to offer:

>

> -----Original Message-----

> From: atsa@mail-list.com (mailto:atsa@mail-list.com)

> <atsa@mail-list.com (mailto:atsa@mail-list.com)> Sent: Wednesday,

> August 17, 2022 1:48 PM

> To: atsa-ml@mail-list.com (mailto:atsa-ml@mail-list.com)

> Subject: RE: [ATSALIST] Sting Operations

>

> The Washington State Sex Offender Policy Board has been asked by the

> state's sentencing guidelines commission to make recommendations for

> sentencing alternatives for cases that currently have no sentencing

> option except for a prison term.

>

> Since 1984 Washington has had a Special Sex Offender Sentencing

> Alternative

> (SSOSA) where those who are convicted of many sex offenses, found

> amenable to treatment and safe to participate in community-based

> treatment and community supervision (mostly with some jail time) and

> have the balance of their sentence suspended (with a list of

> supervision conditions.)

>

> A couple (maybe 15 years ago) legislative revisions included changed

> eligibility requirements to say that the relationship between victim

> and offender could not have been solely for the purposes of sexual

> exploitation. You would not be eligible if you grabbed a kid off a  
> schoolyard and molested them in the woods.  
>  
> About 12 years ago a defendant got a SSOSA for Possession of  
> Depictions of Minors. The prosecutor appealed and, in a published  
> opinion, the appeals court said this case did not meet the definition.  
> There was not a pre-established relationship with an identified victim.  
>  
> As the Board has considered sentencing alternatives, there seem broad  
> support for sentencing alternative for depictions cases.  
>  
> But sting cases have, for years, also been deemed ineligible because  
> there is not an identifiable victim (as listed in the charging  
> documents.) There has been only some support for a sentencing  
> alternative for these cases. One argument is there is no way to assess  
> risk, since the actuarial tools were not normed on these types of  
> cases. Yes, the coding rules do say that this was not a stranger  
> victim if there was contact for more than 24 hours before the  
> attempted meet-up. But that's a post-hoc coding decision, not based  
> on many of these cases, since they are a relatively new phenomenon.  
> Plus there is an "ick factor" associated with these cases, especially  
after reading the sexual nature of  
the message exchange.  
>  
> So, a substantial minority of the Board members do not appear inclined  
> to consider offering the sentencing court the option (hardly a  
> directive) to hand down a community-treatment and sentencing  
> alternative to a mandatory prison term.  
>  
> Is there a response to the argument that we have no idea how risky  
> these guys are (or they must be higher risk) because the risk tools  
> have not been normed on this sub-population?  
>  
> Michael A. O'Connell, Ph.D., MSW  
> 9800 Harbour Pl., #204  
> Mukilteo, WA 98275  
> 425-374-8504  
> Fax: 425-404-3948  
> <https://gcc02.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.droconnelltx.com%2F&data=05%7C01%7Cwhitney.hunt%40ofm.wa.gov%7C799fa5465f2c48a82b0b08dab8640234%7C11d0e217264e400a8ba057dcc127d72d%7C0%7C0%7C638025037357288924%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6IklhaWwiLCJXVCI6Mn0%3D%7C2000%7C%7C%7C&sd=805J2tPm078%2FYH%2BYrzxfOphduH9MG9%2FGpwIXHiW%2F41E%3D&reserved=0>  
> )  
>  
> "Follow your heart but take your brain with you."  
>

> -- Alfred Adler  
>  
> -----Original Message-----  
> From: <iccsnw@gmail.com (mailto:iccsnw@gmail.com)>  
> Sent: Aug 17, 2022 11:46 AM  
> To: <atsa@mail-list.com (mailto:atsa@mail-list.com)>  
> Subject: RE: [ATSALIST] Sting Operations  
>  
> Totally agree and all great points, Laurie - I think I've evaluated  
> every single example you provided! And this is exactly why it is so  
> very important to utilize validated risk/need tools in order to  
> individualize responses IMHO.  
>  
> Katie  
>  
> On Wed, Aug 17, 2022 at 10:32 AM Humbert, Laurie H (SOR) wrote:  
>  
>> I have read dozens of sting police reports (including the chat logs),  
>> and as in everything, they vary substantially and the details matter.  
>> I am not addressing citizen vigilante stings. Often times an  
>> undercover officer  
>> (UC)  
>> will post a profile on a site or enter a chat room (sometimes teen  
>> chat rooms  
>> - what's an adult male doing there?!!) and wait for someone to  
>> contact them.  
>> They usually disclose very early that they are underaged, usually 14  
>> or  
>> 15 (some sites often require you to be 18 to register). That's pretty  
>> standard.  
>>  
>> After that, it depends. Some UCOs work pretty hard to get the male to  
>> discuss sexual topics and push for meetings. You wonder if the guy  
>> wouldn't go to meet the child if not so tempted by such a willing  
>> vixen. But other UCOs play it pretty innocent, and let the male lead  
>> the discussion. These cases feel much more worrisome. Sometimes it is  
>> somewhere in between. They often remind the guy multiple times of  
>> their age. Often the offender will ask them if they are a cop  
>> (especially when the "child" refuses to send nude pictures), yet take  
>> the denial on face value. Often they talk about how they could get in  
>> trouble for meeting up with the child. Yet, they go to the meeting  
>> place...  
>>  
>> I note that the Static99R coding rules consider these to be  
>> legitimate crimes against a "victim":  
>>  
>> For internet offences as per the sections on victim items (pages  
>> 85-86), the victim is identified as the person the offender believes  
>> he is in contact with (e.g., a female child), even if the person on  
>> the receiving end of the communication is actually an adult police  
>> officer.  
>>  
>> Also, several of the crimes charged in these cases are considered  
>> Category A offenses:

>>  
>> \* Contributing to the delinquency of a minor (where the offence had a  
>> sexual  
>> element)  
>> \* Distributing obscene materials to minors (no economic motive;  
>> presume that intent is sexual unless there is clear economic motive)  
>> \* Internet Luring  
>> \* Online Solicitation  
>> \* Sexual Communication with a Minor  
>>  
>> as well as attempted indecent assault. Since the police don't send  
>> nude photos back (they make excuses like their phone camera function  
>> is broken or they don't have a webcam), they don't get charged with  
>> things like posing a child in the nude or possession of child  
>> pornography, but often it's not for want of trying.  
>>  
>> I guess my point is, just because it is a sting doesn't mean it  
>> wouldn't happen (or hasn't happened!) with a real child, though there  
>> are definitely cases where the UCO enticement of the guy is so  
>> intense it is hard to know.  
>> As always, the devil is in the details. Just because it is a police  
>> sting operation does not mean the behavior should be discounted, IMHO.  
>>  
>> Laurie  
>  
> --  
> Katherine "Katie" Gotch, MA, LPC, ATSA-F \*she/her pronouns\* Oregon  
> SOTB Certified Clinical Sexual Offense Therapist Integrated Clinical &  
> Correctional Services, LLC 21370 SW Langer Farms Parkway Suite 142  
> #424 Sherwood, Oregon  
> 97140 (503) 498-8119  
> <https://gcc02.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.iccsnorthwest.com%2F&data=05%7C01%7Cwhitney.hunt%40ofm.wa.gov%7C799fa5465f2c48a82b0b08dab8640234%7C11d0e217264e400a8ba057dcc127d72d%7C0%7C0%7C638025037357288924%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6IklhaWwiLCJXVCI6Mn0%3D%7C2000%7C%7C%7C&sdata=YZhjDZGuElfavV5amPlcFFzCYS6l2dMDrjiQ%2F%2FAMIYQ%3D&reserved=0>  
> (https://gcc02.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.iccsnorthwest.com%2F&data=05%7C01%7Cwhitney.hunt%40ofm.wa.gov%7C799fa5465f2c48a82b0b08dab8640234%7C11d0e217264e400a8ba057dcc127d72d%7C0%7C0%7C638025037357288924%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6IklhaWwiLCJXVCI6Mn0%3D%7C2000%7C%7C%7C&sdata=YZhjDZGuElfavV5amPlcFFzCYS6l2dMDrjiQ%2F%2FAMIYQ%3D&reserved=0)  
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> ---

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>

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# Appendix F

## What Other States Do: Lifetime Supervision

### What Other States Do: Lifetime Supervision<sup>1</sup>

State	Lifetime Supervision Relief (Y/N)	Process for Relief (if applicable)
Arizona	Yes	The Court on its own initiative or on application of the probationer, after notice and an opportunity to be heard for the prosecuting attorney and, on request, the victim, may terminate the period of probation or intensive probation and discharge the defendant at a time earlier than that originally imposed if in the court's opinion the ends of justice will be served and if the conduct of the defendant warrants it.
Colorado	Yes	There is relief but only to lower the level of supervision. Of note is the lengthy annual report out to their Legislature that does not contain information about how this is protecting their community or assisting those on supervision. In 1998, the General Assembly passed the Sex Offender Lifetime Supervision Act, which requires lifetime supervision for most class 2, 3, and 4 felony sex offenses. There are a number of sentencing options available to the Court under the Act: Probation for a minimum of 10 years to a maximum of life for a class 4 felony, and a minimum of 20 years and a maximum of life for a class 2 or 3 felony. Intensive supervision probation (ISP) is required for all lifetime probationers until further order of the court. Department of Corrections for at least the minimum of the presumptive range of sentencing to a maximum of life.
Connecticut	Yes	If an individual receives an absolute Pardon.
Hawaii	Yes	Parole Board can grant early discharge. No specifics known.
Indiana	Yes	No Stepdown process. The individual may petition the Court to remove the finding of Sexually Violent Predator (SVP) after 10 years of no new charges. This ends lifetime supervision.
Illinois	Yes	Prisoner review Board can look at them after 20 years for most serious offenses and 10 years for others. Parole Officer and Treatment Provider shall make recommendations to the Board. Recommendations shall be based on the criteria established by the Management Board under section 3-17-40.
Georgia	Yes	May request discharge after 15 years in the community. Some serious offenses are barred by statute from seeking early discharge. If the individual has a new conviction of any kind they are never eligible for relief. Requires a court order or commutation. There is no step-down process.
Maryland	Yes	The Maryland Sex Offender Policy Board has recommended several changes to the law. Their lifetime supervision is not in lieu of prison like Washington's. It is after all confinement and probation time is done. They have no punishment mechanism in place to address violations that may occur short of charging them with a new misdemeanor offense. Persons may petition to be discharged after 5 years and every year thereafter. Victims are not involved in the process. A risk assessment must be completed by a sex offender treatment provider within 3 months of the petition being filed. The report must indicate "The petitioner is no longer a danger to others" and requires a report from the CCO and polygrapher. The law doesn't clearly state how the process is supposed to work. a polygrapher too. Unclear if law enforcement can weigh in.
Michigan	No	Has Lifetime GPS. Persons can be imprisoned for up to 2 years for not complying with the GPS requirements. No step down process or process for discharge.
Minnesota	Unknown	Conditional release of sex offenders. (a) Notwithstanding the statutory maximum sentence otherwise applicable to the offense or any provision of the sentencing

<sup>120</sup> This chart contains data that we were able to collect during the time of the assignment. Gathering this data was challenging and there is some missing information. Additionally, this data is accurate as of the time of the writing of this report and is subject to change.

		<p>guidelines, when a court sentences a person to prison for a violation of section 609.342, 609.343, 609.344, or 609.345, the court shall provide that after the person has completed the sentence imposed, the commissioner of corrections shall place the person on conditional release. If the person was convicted for a violation of section 609.342, 609.343, 609.344, or 609.345, the person shall be placed on conditional release for five years, minus the time the person served on supervised release. If the person was convicted for a violation of one of those sections a second or subsequent time, or sentenced under subdivision 6 to a mandatory departure, the person shall be placed on conditional release for ten years, minus the time the person served on supervised release.</p>
Nevada	Unknown	<p>Conditional release. (b) The conditions of release may include successful completion of treatment and aftercare in a program approved by the commissioner, satisfaction of the release conditions specified in section 244.05, subdivision 6, and any other conditions the commissioner considers appropriate. If the offender fails to meet any condition of release, the commissioner may revoke the offender's conditional release and order that the offender serve the remaining portion of the conditional release term in prison. The commissioner shall not dismiss the offender from supervision before the conditional release term expires.</p>
West Virginia	Yes	<p>No discharge or step down process in place. Up to 50 years of supervision. With exemplary behavior can be released after 2 years by the sentencing court.</p>

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