

Fall 2024

# Suggestions and general recommendations for House Bill 2178 (2024) regarding a pathway off of lifetime supervision for individuals convicted of sex offenses in Washington State

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## **Sex Offender Policy Board**

Report submitted to the House Community Safety, Justice & Reentry Committee



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# Sex Offender Policy Board membership

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**Jamie Weimer, SOPB Vice-chair**

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

**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

**Gunner Fulmer**

Walla Walla County commissioner | Association of Washington Counties

**Jill Getty**

Board member | Indeterminate Sentence Review Board

**Jimmy Hung**

Chief deputy prosecutor | Washington Association of Prosecuting Attorneys

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**Acknowledgements for contributions to the SOPB's 2024 assignment**

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## I. 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. As part of that assignment, the SOPB was tasked 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 its entirety.*

The SOPB met virtually once a month beginning March 31, 2022, and established a subcommittee to examine the issue and make recommendations to the full board. The Board then discussed and finalized its recommendations, submitted its report to the Legislature in December 2022,<sup>1</sup> and presented its recommendations to the House Public Safety Committee in January 2023.<sup>2</sup>

During the 2024 Legislative Session, the Chair of the House Community Safety, Justice and Reentry Committee introduced House Bill 2178 which set forth a path for individuals convicted of sex offenses to seek discharge from lifetime supervision. The bill did not advance from the policy committee.

### May 2024 Request from House Community Safety, Justice & Reentry Committee

On May 9, 2024, the Chair of the House Community Safety, Justice & Reentry Committee convened the SOPB:

To review the substantive provisions of House Bill 2178 (2024), to identify key points of contention among SOPB members, and to attempt to build consensus on an amended version of the bill.<sup>3</sup>

The request further details that the SOPB should submit its comments related to House Bill 2178 to the Community Safety, Justice and Reentry Committee by December 1, 2024, in preparation for anticipated legislative action in the 2025 legislative session.

### Processes for this project

The SOPB did not establish a subcommittee for the 2024 project as this was previously completed in 2022.<sup>4</sup> Instead, the Board decided to expand upon and rereview the materials and information from 2022. The SOPB also invited voices from both the victim advocates community and the lived

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<sup>1</sup> [Recommendations for SSOSA reforms: treatment alternatives for certain sex offenses; lifetime supervision; failure to registers; washouts; and system improvements.](#)

<sup>2</sup> The House Public Safety Committee was renamed the House Community Safety, Justice, and Reentry Committee in 2024.

<sup>3</sup> Please see Appendix A to read the convening letter by the Chair of the House Community Safety, Justice & Reentry Committee in full.

<sup>4</sup> Please see our 2022 [report](#) for further detail on the subcommittee process.

experience community to be a part of the discussions for this assignment.

The SOPB held 8 meetings with the initial meetings dedicated to reviewing the research and understanding the varying perspectives of those represented within the SOPB. The SOPB also received additional research support from Dr. Lauren Knoth-Peterson, Senior Research Scientist with the Public Safety Policy & Research Center (PSPRC), who conducted an extensive analysis of the national landscape regarding lifetime supervision pathways. Together, the Board reviewed the current practices and procedures of each state as it relates to pathways off of lifetime supervision. Again with support from Dr. Knoth-Peterson, the Board reviewed current research and best practices as it relates to lifetime supervision and heard presentations from the victim advocacy community and lived experience community on their perspectives.

This report seeks to expand on the previous 2022 report and provide further clarity, information and recommendations for policymakers to consider when establishing a pathway off of lifetime supervision for individuals convicted of a sexual offense in Washington State.

While the SOPB was unable to establish or reach consensus on final recommendations for this report outside of recommendations for the individuals on Special Sex Offender Sentencing Alternative (SSOSA), the concluding section does put forth some general principles that members agree are important for policymakers to consider as they move forward with revisions to the proposal outlined in House Bill 2178.<sup>5</sup>

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<sup>5</sup> [House Bill 2178 \(2024\)](#)

## II. Background and History of Lifetime Supervision

### Definition of lifetime supervision v. community custody

Throughout this report “supervision” and “community custody” are used 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 chapter 9.94A Revised Code of Washington and served in the community subject to controls placed on the offender’s movement and activities by the department. So as not to confuse the pathway process with relief from registration, which is not discussed in this report, the term “discharge” is used to refer to the pathway for removal from lifetime supervision.

### 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 on the felony sentencing grid.<sup>6</sup> The SRA also authorized the Special Sex Offender Sentencing Alternative (SSOSA) as an alternative sanction.

However, the SRA system was later 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 crimes, the legislature enacted the Community Protection Act of 1990. This Act established the process for civil commitment of those deemed a Sexually Violent Predator (SVP), 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 for sex offense convictions.

A decade later, 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 still a term within the range on the felony sentencing gride, but the maximum term is the statutory maximum sentence for the crime.<sup>7</sup> A determinate-plus offender is subject to the jurisdiction of the Indeterminate Sentence Review Board (ISRB).

### Background of SSOSA Statute and Lifetime Supervision

The SRA (1984) authorized the Special Sex Offender Sentencing Alternative (SSOSA) as an alternative sentence from a prison sentence. One of the primary purposes for SSOSA was to encourage victims to engage in the criminal justice system, knowing there was opportunity for the perpetrator to receive treatment without a lengthy term of incarceration.

The decision to impose a SSOSA sentence 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

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<sup>6</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.

<sup>7</sup> [ESSB 6151 \(2001-2002\)](#).

community custody. Originally, an individual was eligible for SSOSA if:

- 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, eligibility for SSOSA was modified to include the following criteria:

- 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>8</sup>

The 2004 Legislature also expanded what the judge is to consider in the SSOSA decision<sup>9</sup>:

- An examination report provided by a treatment provider.<sup>10</sup>
- 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>11</sup>
- Whether the SSOSA is too lenient in light of the circumstances.

Originally, individuals receiving SSOSA were discharged from supervision at the end of the term of community custody ordered with their original sentence. 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. In 2001, the Legislature revised the SSOSA statutes to include SSOSA cases associated with a Class A felony to also be included in the state's lifetime supervision policies.

The SOPB has reviewed and made recommendations on several occasions as it relates to SSOSA.<sup>12</sup> The first formal review of SSOSA occurred in 2013 and the published report noted that individuals who receive a SSOSA have lower rates of recidivism than those meeting criteria for SSOSA who are sentenced to prison instead of the sentencing alternative. It also noted the significant financial savings for community treatment versus years of incarceration and expressed concern that the number of defendants receiving SSOSA was declining as seen in Figure 1<sup>13</sup>, despite the data showing that SSOSA is an effective sentencing alternative for individuals assessed as low risk.<sup>14</sup>

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<sup>8</sup> Internet-based crimes (such as depictions offenses and individuals convicted of sex offense through sting operations) are excluded from eligibility for SSOSA due to the requirement of having an established relationship with the victim.

<sup>9</sup> ESHB 2400

<sup>10</sup> This component had been required to the 2004 legislation.

<sup>11</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.

<sup>12</sup> [2013 Report](#), [2022 Report](#)

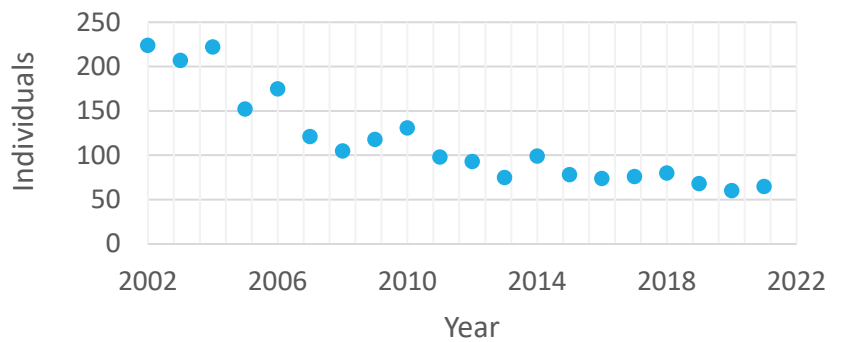
<sup>13</sup> Data obtained in 2022 from Caseload Forecast Council annual Statistical Summary of Adult Felony Sentencing reports.

<sup>14</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)



This was further expanded upon in the SOPB’s 2022 and the historical and current context of the SSOSA program was provided. The report noted that the number of individuals who receive SSOSA has continued to decline, with one of the largest barriers for eligibility being the significant costs associated with individuals granted the alternative and unable to pay for treatment (which is an expectation of the sentencing alternative). It was also noted that lifetime supervision has been reported to be a significant barrier for individuals eligible for a SSOSA: many defendants are choosing 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 the sentencing alternative would result in a Class A conviction with lifetime supervision. As referenced above, 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, and were not required to be on lifetime supervision.

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



One of the most successful and valuable components of SSOSA is the involvement and support from the victims in the criminal process, which is unique. SSOSA allows for accountability by encouraging victims to disclose abuse without fear that the individual known to them who caused them harm (e.g., their parents, guardians, siblings, grandparents, etc.) will be in prison forever.

### Washington’s Indeterminate Sentence Review Board (ISRB)

The ISRB was first established in 1935 as the Board of Prison Terms and Paroles. The ISRB is a quasi-judicial board located in the Department of Corrections (DOC). 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 Revised Code of Washington (RCW), Washington Administrative Code (WAC), and court rulings in decision making; 2) to approve/deny offender release plans for individuals under ISRB jurisdiction; 3) to impose appropriate conditions of parole/community custody for individuals under ISRB jurisdiction;<sup>15</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>16</sup> Individuals who committed felony level offenses prior to July 1, 1984, and who were sentenced to prison. These individuals serve 3 years of parole supervision upon their release from confinement.

<sup>15</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>16</sup> RCW 9.95.100

- **Juvenile Board (JUVBRD) cases.**<sup>17</sup> Juveniles who have been convicted of Aggravated Murder in the 1<sup>st</sup> Degree or who have been sentenced to confinement terms over 20 years. These individuals serve 3 years of community custody upon their release.
- **Community Custody Board (CCB) cases.**<sup>18</sup> Individuals who have committed certain sex offenses after September 1, 2001. Nearly all CCB cases have lifetime community custody requirements upon release from confinement. Individuals with subsequent Class B and Class C sex offenses can also be sentenced to ISRB supervision up to 10 and 5 years, respectively.

Table 1 lists are CCB qualifying offenses. Together, the CCB cases make up the largest percentage of cases under ISRB jurisdiction.

**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</li> <li>• 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 CCB qualifying offenses are under the jurisdiction of the ISRB until the expiration of their maximum term. All CCB qualifying offenses are Class A felonies, which includes a maximum sentence of life, resulting in lifetime supervision. There is currently not a pathway off of lifetime supervision for individuals sentenced to lifetime community custody under RCW 9.94A.507 subsection 5 which states:

*When a court sentences a person to the custody of the department under this section, the court shall, in addition to the other terms of the sentence, sentence the offender to community custody under the supervision of the department and the authority of the board for any period of time the person is released from total confinement before the expiration of the maximum sentence.*

<sup>17</sup> RCW 10.95.030 and RCW 9.94A.730

<sup>18</sup> RCW 9.94A.507

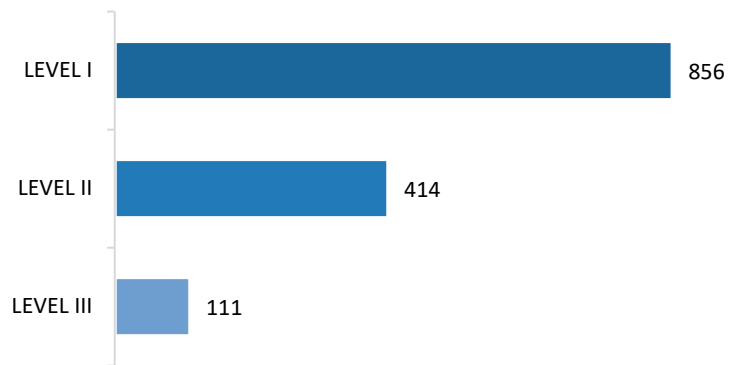
Table 2 details the number of individuals who are incarcerated or under community custody jurisdiction per year. The number of CCB cases continues to grow, and, without the creation of a pathway off of lifetime supervision, will likely continue to grow.<sup>19</sup>

**Table 2: Total ISRB Population by Year (as of July 2024)**

	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024 <sup>20</sup>
# of individuals in Prison	2,108	2,115	2,175	2,273	2,376	2,429	2,415	2,349	2,320	2,350	2,380
# of individuals on community custody	644	717	842	942	1,066	1,130	1,307	1,457	1,526	1,655	1,728

Figure 1 shows the breakdown of CCBs on active supervision by ESRC-recommended risk level: Anecdotally, sexual recidivism for those released under ISRB jurisdiction is low.<sup>21</sup> Most often, revocation from community custody is related to: 1) drug or alcohol use and/or other substance related violations; 2) unapproved dating/sexual relationships – especially with people who have care or custody of minors, and 3) sexually explicit material.

**Figure 1: Registration Level Breakdown**



**Lifetime supervision in other states**

When the SOPB first took a formal look at lifetime supervision for the 2022 assignment, the Board reached out to numerous states to understand their processes and procedures related to lifetime supervision. The Board was able to gather data on 22 states, though gathering and confirming this information was challenging due to the lack of publicly available information and significant variances in systems. For 2024, the SOPB collaborated with Washington’s Public Safety Policy & Research Center (PSPRC) to do a more complete review of the national landscape.

<sup>19</sup> At some point it is anticipated that growth will slow as the number of individuals sentenced to lifetime supervision nears the number of individuals under lifetime supervision who die; the data projecting when this plateau will likely occur does not currently exist. This is also difficult to predict because of the many dynamic factors that contribute to the growth/decline of this population growth, like changing eligibility criteria. It is expected that the number of individuals under lifetime supervision will increase for the foreseeable future

<sup>20</sup> As of July 2024.

<sup>21</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).

## How the PSPRC conducted its review for the SOPB

The PSPRC staff developed a resource for the Board to use throughout deliberations<sup>22</sup>. Specifically, the PSPRC compiled information about other states' statutory policies for lifetime supervision of persons convicted of a sex offense and, when applicable, statutes related to a pathway off of lifetime supervision. This resource provided examples to the Board about the structure of similar policies within other states; this allowed the Board to identify components in the creation of a pathway off of lifetime supervision in Washington.

The scope of this resource was limited to unique sentencing policies for individuals convicted of a sex offense. See Figure 2 and the introduction of the resource for more information.

The PSPRC identified 26 states with lifetime supervision policies for persons convicted of a sex offense. Of those states, 20 also had an established pathway off of lifetime supervision.

The PSPRC identified general components of different state policies for pathways off of lifetime supervision and provided a brief summary of these components. This section briefly describes some of the core components seen across state policies.

### Decision-Maker

States designate different agencies with the authority to grant discharge from lifetime supervision. In most cases, the authority lies with the court or parole board (or similar review board). In at least one state (Nevada), petitions could be filed with either the court *or* a review board.

### Minimum Supervision Time

Half of the states (n = 10) require individuals to serve a minimum amount of time under supervision prior to seeking discharge from lifetime supervision requirements. The most time to eligibility was 15 years (n = 5), followed by 5 years (n = 3), and 10 years (n = 1). One state had varying time to eligibility based on offense severity (either 20 years or 10 years). One additional state did not require a minimum amount of time on supervision, but instead tied eligibility to the individual's age, with individuals being eligible after reaching age 65. The remaining states (n = 9) did not have a specific time identified in statute but may have established guidance in administrative codes or agency regulations.

### Information Required for Decision to Grant Discharge

States varied in the type of information required to be considered when determining whether to

Figure 2: Scope of PSPRC State Resource

Included:

- Lifetime supervision policies specifically for individuals convicted of a sex offense.
- Policies for discharge from lifetime supervision that apply specifically to individuals convicted of a sex offense.

Excluded:

- General indeterminate sentencing structures.
- General parole statutes.
- General clemency and pardons policies.
- General policies for early release from supervision.

<sup>22</sup> Knoth-Peterson, L. (2024). Lifetime Supervision: Compilation of State Policies. Public Safety Policy & Research Center, Olympia, Washington. Forthcoming.

grant discharge from lifetime supervision. Not all states specified the types of information required for consideration in state statutes but may have had additional guidance in administrative codes or agency policies. When specifics were required, the most common was notice to and opportunity for the prosecuting attorney to give their opinion (n = 7) and a treatment provider or psychologist/psychiatrist evaluation or report (n = 7). Additionally, considerations specified in statutes were to give notice to and opportunity for victims, to give opinion and to give notice to and opportunity for police, law enforcement, or to give opinion to community supervision officials.

Some states explicitly required an updated risk assessment to be conducted prior to granting discharge from supervision. Some states refer simply to a non-specific risk assessment, while others refer to a clinical evaluation by a psychologist or psychiatrist.

### Criteria for Granting Discharge from Supervision

In nearly all states, the decision to grant discharge is based on the court or review board considering the individual's progress over time and the continued risk to public safety. In nearly all states, the burden is on the individual to prove they should be granted discharge from supervision. For example, in Maine, statutes state discharge may be granted when it has been established, "that the petitioner is no longer a danger to others."<sup>23</sup> Similarly, in New Jersey, statutes indicate that discharge may be granted, "upon proof by clear and convincing evidence that the person has not committed a crime for 15 years since the last conviction or release from incarceration, whichever is later, and that the person is not likely to pose a threat to the safety of others if released from parole supervision."<sup>24</sup>

In at least one state, the presumption at the time of review is that an individual will be granted discharge from lifetime supervision unless the state meets an established burden to justify continuation of supervision. In New Mexico, statutes indicate, "when a sex offender has served the initial five years of supervised parole, and at two and one-half year intervals thereafter, the supervision board shall review the duration of the sex offender's supervised parole. At each review hearing, the attorney general shall bear the burden of proving by clear and convincing evidence that the sex offender should remain on parole."

### Research related to supervision

Post-release supervision serves multiple purposes. According to the American Law Institute Model Penal Code,<sup>25</sup> those purposes include promoting the rehabilitation and reintegration of individuals transitioning from prison to the community. These purposes may be achieved by setting supervision conditions that reduce the risk of committing a new offense and supporting the individual's needs for a successful transition, including housing, employment, family support, medical care, and mental-health care. The 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, including those convicted of a sex offense, are at

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<sup>23</sup> M.R.S. Title 17-A Section 1881. Inclusion of period of supervised release after imprisonment

<sup>24</sup> NJ Rev Stat Section 2C:46-6.4 – Special sentence of parole supervision for life

<sup>25</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*.

the highest risk for re-offense immediately after release. A substantial body of research exists demonstrating (1) a wide range in risk of recidivism among individuals convicted of a sexual offense; (2) a substantial decline in risk of recidivism over time and; (3) a point in which risk of recidivism can become so low that it is indistinguishable from the risk of someone with a criminal history but no history of sexual offending spontaneously committing a sexual offense.<sup>26</sup> The policy of supervision of individuals who are convicted of a sexual offense is to provide oversight and guidance to further mitigate the risk of committing another sexual offense. It follows that policies should change as the risk presented to the community changes.

**Desistance.** Desistance is generally understood as the point in which the risk that someone with a criminal history will commit a new offense is equal to or less than the risk that an individual who has never been arrested would spontaneously commit a crime. Hanson et al.<sup>27</sup> propose their understanding 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.”*

Desistance may be accelerated with the presence of protective factors that lead an individual toward lifestyle stability including but not limited to, meaningful social connections, housing and employment. Supervision, when mixed with treatment and reintegrative services, can be an effective means to help individuals build the foundation of a prosocial lifestyle long enough for it to become routine, habitual and reinforcing, furthering the desistance process.<sup>28</sup> When used solely as a surveillance tactic, the requirement of supervision may actually be a barrier to establishing and maintaining prosocial bonds due to the extensive contact requirements and/or supervision conditions and can hinder the desistance process.<sup>29</sup>

**Isolating cause and effect of lifetime supervision.** Research is limited in the ability to identify the causal impact of extended supervision on reducing recidivism, particularly with regard to increased supervision for sex offenses. Across the country, many states implemented substantial criminal

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<sup>26</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>27</sup> Hanson et al (2018).

<sup>28</sup> Washington State Institute for Public Policy. 2024. Cost Benefit Results: Adult Criminal Justice. Olympia, WA. Accessed November 20, 2024. <https://wsipp.wa.gov/BenefitCost?topicId=2>. Notably, the Washington State Institute for Public Policy finds that supervision without treatment (surveillance only) does not significantly reduce recidivism outcomes, highlighting the importance of treatment services as a part of supervision.

<sup>29</sup> Kazemian, L. (2021). *Pathways to desistance from crime among juveniles and adults: applications to criminal justice policy and practice*. Washington, DC: National Institute of Justice.

justice reforms through the 1990s and early 2000s, with most aimed at increasing punishments for sex offenses. These policy changes included longer prison sentences, longer terms of community supervision (including lifetime supervision), the imposition of registration and notification requirements, expansions of civil commitment, the introduction of sexually violent predator policies and punishments, and the establishment of three strikes laws that often include violent sex offenses.

Given the complexity of these multi-pronged reforms, it is nearly impossible to isolate the unique effects of any individual policy change. For example, changes in the outcomes for those on supervision may not be related to changes to supervision, but rather, a result of longer prison sentences prior to release to the community and the subsequent changes in the demographics of those in the community, including a much older population with a lower propensity to engage in crime. Similarly, the highest risk populations are now more likely to end up in civil commitment or designated as a sexually violent predator, generally reducing the average risk of community supervision populations.

Due the confounding policy changes, it would be inappropriate to say that a reduction in recidivism was the result of changes in supervision as the change in recidivism may actually be a result of the longer prison sentences, older ages at release to supervision, increased civil commitment, etc. There are currently no definitive evaluations of lifetime supervision that can indicate the specific benefit or cost of these policies.

**Sexual Offending and the Life Course.** While research specific to lifetime supervision policies are limited, there is a substantial body of evidence evaluating the likelihood of recidivism over time for individuals convicted of a sex offense. These studies can help inform the appropriate use of resources for community supervision, including the possibility of lifetime supervision.

Longitudinal studies of risk of recidivism demonstrates a reliable pattern of desistance over time. In general, risk of offending declines with age. This pattern is consistent with general offending patterns, with substantial declines observed as early as age 40 and continuing through the life-course.

There are some variations in the age-crime curve based on the type of offending. For example, there is some evidence of a later peak and subsequent decline for those engaged in extrafamilial child sex offenses compared to rape or incest.<sup>30</sup>

In general, studies consistently find extremely low (in many cases, near-zero) rates of sexual recidivism at age 60 years of age or older, even for those with multiple sex offense convictions in their history.

**Desistance Markers.** Researchers have attempted to identify “desistance markers” for individuals convicted of a sex offense. Put simply, researchers ask if individuals are crime-free, at what point is it likely that they will remain crime-free? Longitudinal studies consistently find that most recidivism

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<sup>30</sup> Skelton, A., & Vess, J. (2008). Risk of sexual recidivism as a function of age and actuarial risk. *Journal of Sexual Aggression*, 14(3), 199-209.

occurs within the first few years after release, consistent with general offending patterns.

In an examination of recidivism data of over 7,000 individuals, researchers 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>31</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>32</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.

Similarly, Thornton and colleagues sought to provide additional information to policymakers about the relative risk of sexual recidivism based on Static 99R scores and time crime-free in the community.<sup>33</sup> Drawing on the results of prior studies, the authors seek to provide a resource for policymakers and case managers to better quantify desistance from sexual crime over time. The authors note that they tested whether age added predictive information to their models but found that age does not increase the accuracy of predictions above and beyond consideration of original Static 99R risk scores and time free in the community. Put simply, the two factors most important for identifying an individual's risk of recidivism are their original risk level at release and the amount of time they have remained in the community crime-free.

Thornton et al.'s evaluations of the likelihood of recidivism over time for different risk levels consistently found that the desistance marker for low-risk individuals was about 5 years crime-free in the community. For moderate risk individuals, the desistance marker was around 10 years crime-free in the community. Finally, for high-risk individuals, the desistance marker was likely between 15 and 18 years crime-free in the community. The PSPRC staff created a resource providing further explanation for the Board of the results of the Thornton et al 2021 study.

Moreover, Hanson and colleagues (2018) examined non-sexual recidivism and how it impacted the overall risk to reoffend. Results showed non-sexual recidivism did increase the risk of sexual recidivism, however, did slow the reduction in sexual recidivism, slightly delaying the desistance marker of time in the community without a new sex offense. Thornton et al., also examined the likely desistance markers for populations who recidivate with a non-sexual offense and the results of these analyses were provided to SOPB members.

The research indicates that our current system of lifetime supervision is not necessary for public safety. Specifically, if the risk of sexual recidivism is equal to the risk of sexual offending in the broader population of individuals with a criminal history, continued supervision of those with a sexual offense history no longer provides a unique benefit to public safety. Resources currently

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<sup>31</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>32</sup> Hanson et al (2018).

<sup>33</sup> Thornton, D., Hanson, R. K., Kelley, S. M., & Mundt, J. C. (2021). Estimating lifetime and residual risk for individuals who remain sexual offense free in the community: Practical applications. *Sexual Abuse*, 33(1), 3-33.



being used to supervise this population could be better spent investing in supervision of those who are higher risk and or investing in prevention and victims services<sup>34</sup>. Hanson and colleagues similarly 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>35</sup>*

## **Monetary costs of lifetime supervision**

According to data from DOC, in 2022, there were 1,866 individuals under lifetime community custody in Washington. To date, individuals convicted of a sexual offense have spent an average of 27.9 years under lifetime community custody.<sup>36</sup> The average cost for supervision of a low-risk individual was \$2,436 per year and the average estimated costs of lifetime supervision was \$67,934 per individual.<sup>37</sup> It is likely that these numbers have increased in 2024.

## **Challenges with Washington’s current lifetime supervision system**

In our 2022 report, we previously identified 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 they will remain under ISRB jurisdiction for the remainder of their life; essentially, the only discharge from supervision is through death. The number of people on community custody under the ISRB continues to grow because of the lifetime supervision requirement, dramatically increasing the total population under active supervision and need for additional resources. As shown in Figure 1,

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<sup>34</sup> It is recognized that there are some studies indicating that sex offenses are likely to be underreported to the police. However, the effect that has on the accuracy of crime statistics would apply both to recidivism data for those convicted of a sex offense and those with no sex offense history. The studies described here compare the rates of offending for those with and without a sex offense history and find that they are both near-zero (1-2%) after a certain period of time. It is possible that the rate is greater than 1-2% due to underreporting, but that should be true for both populations at an equal rate. The important consideration here is whether there is a unique difference in the risk for those with a history compared to those without a history who are not subject to lifetime supervision policies. Further, there is some evidence that offenses are actually more likely to be identified for individuals under supervision. These studies find equivalent rates of offenses committed, even though it is possible that the actual rates of offending are underestimated in the populations without a sexual offense history.

<sup>35</sup> Hanson et al (2018).

<sup>36</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>37</sup> These numbers are 2022 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 was not yet complete at the time. Given the initial results of the study, it is suspected that the costs represented here may be lower than the current actual costs. The cost for low-risk individuals was used to get a foundational understanding of costs because this is the largest group of individuals on supervision in Washington State.

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 account for a large portion of the ISRB and DOC supervision and management resources. 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 forth in the Judgement & Sentence (J&S).<sup>38</sup> However, the ISRB can impose additional conditions. During the 2024 legislative session, ESHB 2303<sup>39</sup> expanded the ISRB's ability to impose or modify a person's community custody conditions. Even with the 2024 legislative changes, individuals often face a large number of court- and ISRB-imposed conditions they must abide by and the CCO must monitor. Additionally, conditions set in the J&S cannot be modified without substantial effort to reflect changes in risk by the individual. Some conditions initially set in the J&S are no longer applicable years after the individual's release to the community, or have already been addressed and therefore could be removed.
3. **Third, although Washington uses a risk-based tiering system, the conditions and level of supervision are the same regardless of the individual's risk level<sup>40</sup>.** Currently, the ISRB does not have the resources to review and amend conditions imposed with all individuals under their jurisdiction. The ISRB only reviews conditions on a case-by-case basis, as requested by the individual on supervision (typically a written request). Though the ISRB would like to be able to review the conditions for everyone under their jurisdiction, they are unable to due to limited resources exacerbated by the increasing number of people under its jurisdiction.
4. **Fourth, individuals on supervision will likely experience changes in their community corrections officers (CCOs).** Supervision is often assigned based on where an individual lives. If the individual moves, even with a local move, there may be a change in the assigned CCO. Additionally, some offices require individuals to report to different locations. Finally, there is frequent turnover in the employment of CCOs, meaning even if an individual does not move, they are likely to have multiple changes in their CCO over the course of their supervision. These changes often result in the CCO needing to "learn" the individual under community custody, which has a significant impact on the individual being supervised (e.g., changes in expectations, earned privileges, check-ins, etc.). CCOs are required to monitor and enforce the conditions imposed by the ISRB and the court. In addition, if a CCO wants to change an individual's intensity of supervision, they may do so without approval of the ISRB. The relationship between an individual and their CCO is critical for the success and stability of those under supervision. Frequent changes in CCOs undermines stability in working relationships with the individual and their supervisors, thus making it harder for the individual to be successful, especially if on supervision for life.

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<sup>38</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.

<sup>39</sup> ESHB2303

<sup>40</sup> "Level of the individual" refers to the level of risk to sexually offend in the community at large for the purposes of community notification.

## **Concerns from the victims' community about a pathway off of lifetime supervision**

Advocates for the victims' community have expressed some concern and caution regarding the establishment of a pathway off lifetime supervision for individuals convicted of sex offenses. Advocates noted that many victims face significant challenges and hurdles navigating the criminal justice legal system. This is widely known and research has indicated these challenges with the system impacted victims' trust in the legal system and have contributed to victims under- or not reporting abuse. The Board heard reports that some victims testify in trial and then feel dismissed in the rest of the criminal justice process. Once a verdict and sentence are rendered, victims expect the sentence imposed will be the sentence served. Establishing a pathway off of lifetime supervision may have a negative impact on victims who expected their perpetrator would be under supervision and/or incarcerated for life.

In addition to the immediate impacts on victims upon the commission of a crime, some victims of sex crimes experience lifelong consequences from the harm that was perpetrated against them. Advocates emphasize that a pathway off of lifetime supervision must keep victims at the forefront of policymakers' minds and ensure that victim input is not only included in consideration for any type of discharge from supervision, but also that the victim's input is expressly noted in any policy. Additionally, it should be explicitly clear that the pathway off lifetime supervision does not disrupt or nullify any non-contact orders (NCO), including sexual assault protection orders (SAPOs) and domestic violence protection orders (DVPOs). Finally, the resources invested in the well-being of victims should be comparable to the resources invested in the treatment and rehabilitation of the perpetrators. Resources for victims should be available not only for when a victim is first harmed and seeking justice through the legal system, but also if the state establishes a possible pathway off supervision, which may result in additional traumatic experiences for the victim(s).

## **Collateral consequences of lifetime supervision**

There are collateral consequences associated for individuals under lifetime supervision in addition to the financial costs born by the state. These include, but are not limited to, impacts to employment, mental and physical health, and family systems. Lifetime supervision often limits an individual's job prospects as many employers will not hire an individual who is under supervision. This has lifelong impacts for those without a pathway off supervision. Supervision often requires regular contact with a CCO which can be challenging to balance if the individual is able to secure employment.

Without a pathway off of lifetime supervision, individuals may experience mental impacts, such as lack of hope and ongoing stress and anxiety. The SOPB heard from individuals with lived experience that one of their greatest challenges under lifetime supervision is the struggle to have hope since there is currently not a pathway off of supervision. These individuals 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 with all requirements. They further reported increases in stress and anxiety due to the changing of CCOs and the fear that comes from knowing their 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 since

conditions may limit the individual's ability to maintain and sustain pro-social family relationships. As an individual on lifetime supervision ages, and their need for long term care increases, they are unable to access long term care services from facilities that prohibit people on supervision from accessing care. This strain is often felt by family members who bear the burden of trying to provide end-of-life care in their homes with limited or no support. Individuals on lifetime supervision, especially those without family support, fear that they may become homeless due to these barriers.

### **III. Current Assignment: Considering Components of a Pathway off Lifetime Supervision**

The current assignment before the SOPB is to review House Bill 2178 and the proposed structure for a pathway off lifetime supervision in Washington State. The Board decided to tackle the review by breaking down the process proposed in House Bill 2178 (2024) into components, hereinafter referred to as HB 2178, and including separate discussion about the bill's modifications to SSOSA. This section describes the SOPB's approach and the subsequent suggestions for policymakers to consider when revising the proposal for a pathway.

#### **The SOPB's approach to the current assignment**

The SOPB's initial goal for the assignment was to reach consensus on recommendations that could be made to policymakers to amend HB 2178, per the request from the legislature. Members each came to the discussions in good faith and with their own unique perspectives on this issue, often varying greatly from each other. Members made a repeated conscious effort to hear and learn from each other, interested stakeholders and the public. It became clear through discussions that reaching consensus would not be possible under the given time constraints, with the exception of the discussion about modifications to SSOSA which were unanimously supported by the members.

Due to the complexities of this subject, and the limited time for completion of the project, the Board decided against holding a formal vote on specific recommendations. Instead, the Board took informal, live polls during meetings and gathered feedback from board members. The results of these polls are included in this report in Appendix B. For these polls, all board members were allowed to cast their votes and could vote for as many options as they could support. For entities with multiple representatives co-chairing representation, each person was able to participate in the discussions and polls. Input was also gathered from the director of legal advocacy from King County Sexual Assault Resource Center and the executive director of Washington Voices.

This report notes the results of the informal polls taken and provides supporting information where possible to help guide policymakers as they consider the construction of a pathway off lifetime supervision for those who have committed sex offenses. References to HB2178 are made under each component when possible and consensus on components, when reachable, is highlighted throughout. Several members and stakeholders have elected to provide organization perspectives that provide further clarity and information on this issue (please see Appendices C through H for more information).

## SSOSA and Lifetime Supervision

For the 2024 assignment, the Board re-reviewed and discussed SSOSA as it relates to lifetime supervision. HB 2178 makes modifications to the SSOSA statute based on recommendations made by the Board in its 2022 report. The additional language proposed in HB 2178 section 5(b) of the bill might seemingly reflect minor changes to the statute, however the addition of this component has substantial impact:

*A supervision termination hearing shall be scheduled with the sentencing court within the last 60 days of the presumed expiration of community custody to determine if the individual should be released from community custody.*

The result of this change is the removal of SSOSA cases from lifetime supervision, thus returning SSOSA cases to back to the original intention of the 2001 statute. With this change, SSOSA cases would not be included in a pathway off of lifetime supervision as they would no longer be subject to lifetime supervision.

### 2024 Unanimous SSOSA recommendations by the SOPB

During discussions for this assignment there seemed to be consensus amongst the members regarding SSOSA cases and lifetime supervision. The Board held a formal vote at its November 21, 2024, meeting regarding the re-submission of the unanimous 2022 recommendations made on this subject.<sup>41</sup> The board *unanimously* recommends the following:

**RECOMMENDATION 1:** 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.

**Supporting background.** This is a repeated recommendation based on the SOPB's review of SSOSA and corresponding reports from 2013 and 2022. Simply put, the recommendation is to return to the prior terms of community custody for this group of individual. 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:

- (a) 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.

**RECOMMENDATION 2:** The SOPB recommends that the sentencing Judge in the Superior Court hold a supervision termination hearing at the end of the presumed community custody period to

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<sup>41</sup> The formal votes were 6 in favor, 3 abstentions, and 0 against.

determine if the person should be released from community custody.

**Supporting 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. The statute amendments above include proposed language for this recommendation.

### **2022 unanimous SSOSA recommendations**

In addition to the recommendations above, the SOPB also supports the following recommendations that were made in 2022 regarding the expansion and protection of SSOSA:

**Recommendation 1**

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.

**Recommendation 2**

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.

**Recommendation 3**

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.

**Recommendation 4**

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.

Should a pathway off lifetime supervision be established, the 4 recommendations above will need to be addressed simultaneously for successful implementation.

## **Non-SSOSA cases and Lifetime Supervision**

There is general consensus among the SOPB and the stakeholders involved with the Board that a process for discharge from lifetime supervision should be established. However, members ran into challenges during discussions regarding how exactly a pathway off of lifetime supervision should work and what the definition of “discharge from lifetime supervision” fully entails.

### **Fundamental pathway questions: full discharge vs. a step-down approach**

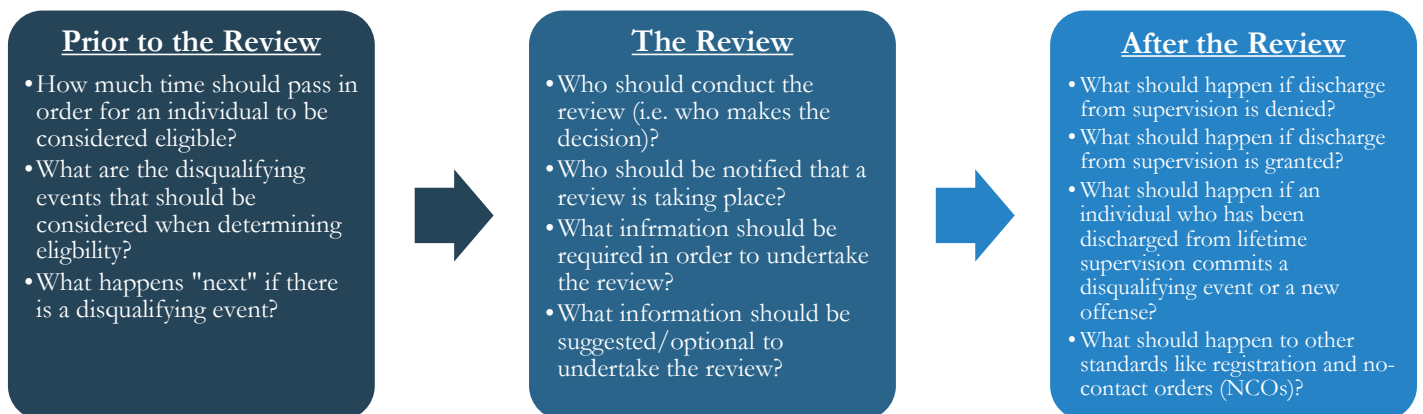
In HB 2178, the pathway set forth establishes the guidelines for how an individual becomes eligible for consideration for discharge from supervision. During the 2024 meetings and discussions, there was disagreement about whether or not all individuals, regardless of ESRC level at the time of release, should be eligible for discharge upon review *or* whether some individuals should be eligible instead for a step-down process through which the individual could eventually be discharged from lifetime supervision. For this second process, conditions would be required that, once met, the

individual could then apply to receive some sort of reduction or step-down process, whether that be reductions in the ESRC level, community custody contact requirements, or discretionary conditions set forth by the ISRB.

There was a general feeling amongst the members that a step-down in ESRC is not the intention of any proposal for a step-down process because this would likely cause changes to community supervision and registration, which is not what we are encouraging or recommending. Options that could be used for a step-down model were discussed, including step-downs in community supervision contact standards or adjustments to conditions as appropriate; however, community custody is tied to statute and sentences imposed by the court. Alternatively, the step-down could be focused on a reduction in additional conditions imposed by the ISRB. Rather than the current ad-hoc review process for changes in ISRB conditions, this would create a systematic review process for all individuals under lifetime supervision (notably increasing the resources needed by the ISRB).

### Three Process Steps

A pathway off of lifetime supervision can be broken down into three main parts: steps prior to the review, the review itself, and actions after the review. Each part seeks to answer the below questions with the sum of the parts serving as a template for a complete pathway off lifetime supervision.



### Part I: Prior to the Review

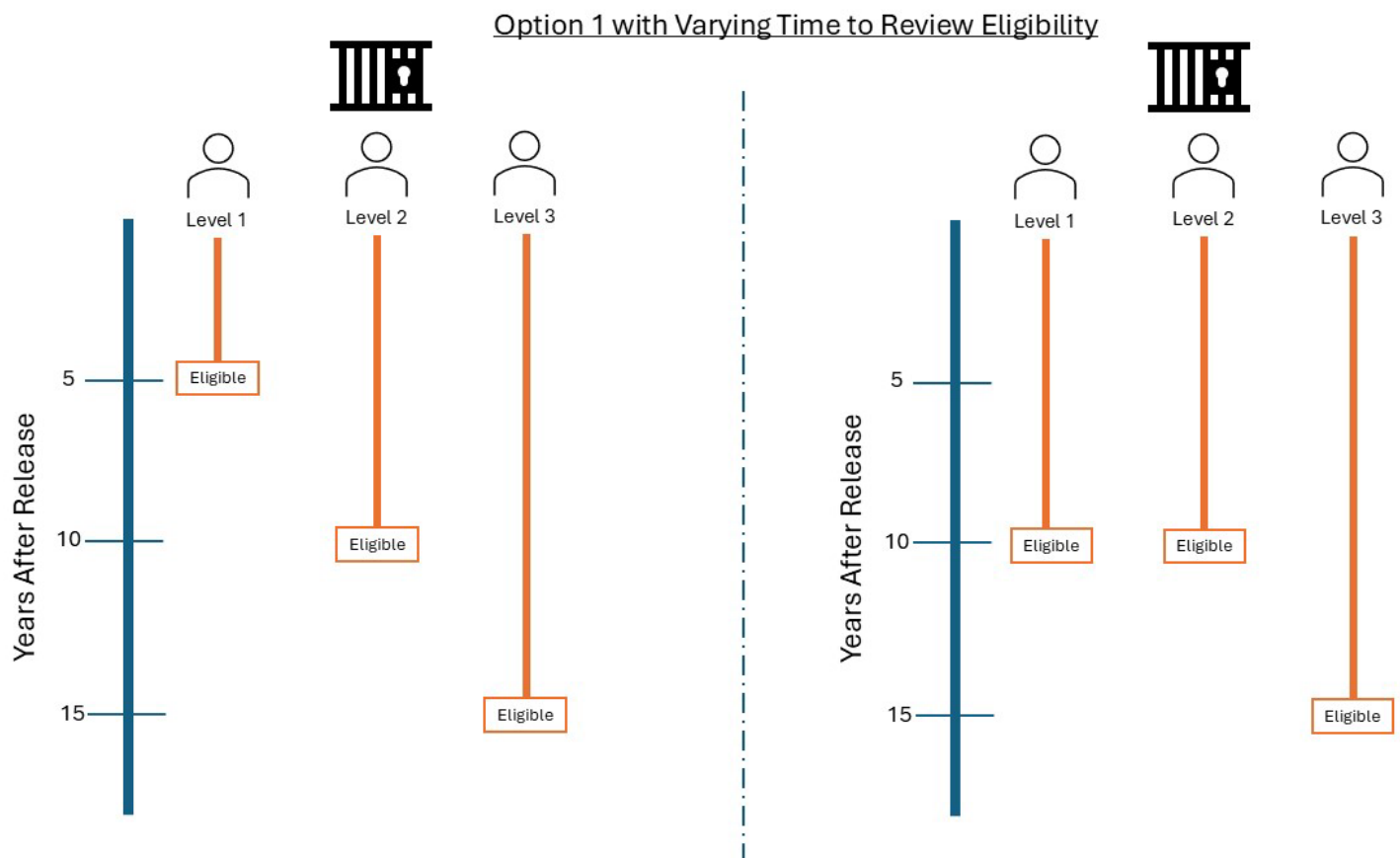
**Timeframe for eligibility.** It is worth noting that the component with the greatest differences amongst the members is related to the timeframes for eligibility for discharge off the pathway. Members generally agree that a minimum amount of time should pass prior to an individual being eligible for consideration for discharge from active lifetime supervision. HB 2178 set forth a plan for consideration for discharge that is tied to the individual's risk level,<sup>42</sup> with Level 1 starting at 5 years, Level 2 starting at 10 years, and Level 3 starting at 15 years. Though HB 2178 includes specific language based on some of the SOPB's prior 2022 recommendations, when the board reopened the issue in 2024, members struggled to reach consensus on eligibility timelines. To aid the Board in its

<sup>42</sup> Risk level is tied to the individual's End of Sentence Review Committee (ESRC) level at the time the individual was released from custody. Population refers to individuals who have gone to prison, who did not receive a SSOSA, and who have since been released.



discussions, PSPRC staff prepared visual aids depicting some of the options around timeframes that were discussed throughout the duration of the assignment. These visual aids were not intended to depict any exact proposal, but rather to assist in understanding the general structural options discussed by members. As such, these aids may not represent exact proposals (e.g., the specific timelines, levels included, etc.) ultimately suggested by members.

**Figure 4. Option 1 with Varying Time to Review Eligibility**



**Option 1 with Varying Time to Review Eligibility.** Option 1 shows two examples of conceptualizing timeframes of eligibility by level. In the first option (on the left) the time to review eligibility is distinct for each Level, consistent with the times proposed in HB 2178. An alternative approach, depicted on the right, would set the time to review eligibility at the same amount for Level 1 and Level 2 individuals (in this example, 10 years) and set a longer time to review eligibility for Level 3 individuals (in this example, 15 years). Alternatively, you could establish a structure with Level 1 individuals being eligible at 10 years and both Level 2 and Level 3 being eligible at 15 years.

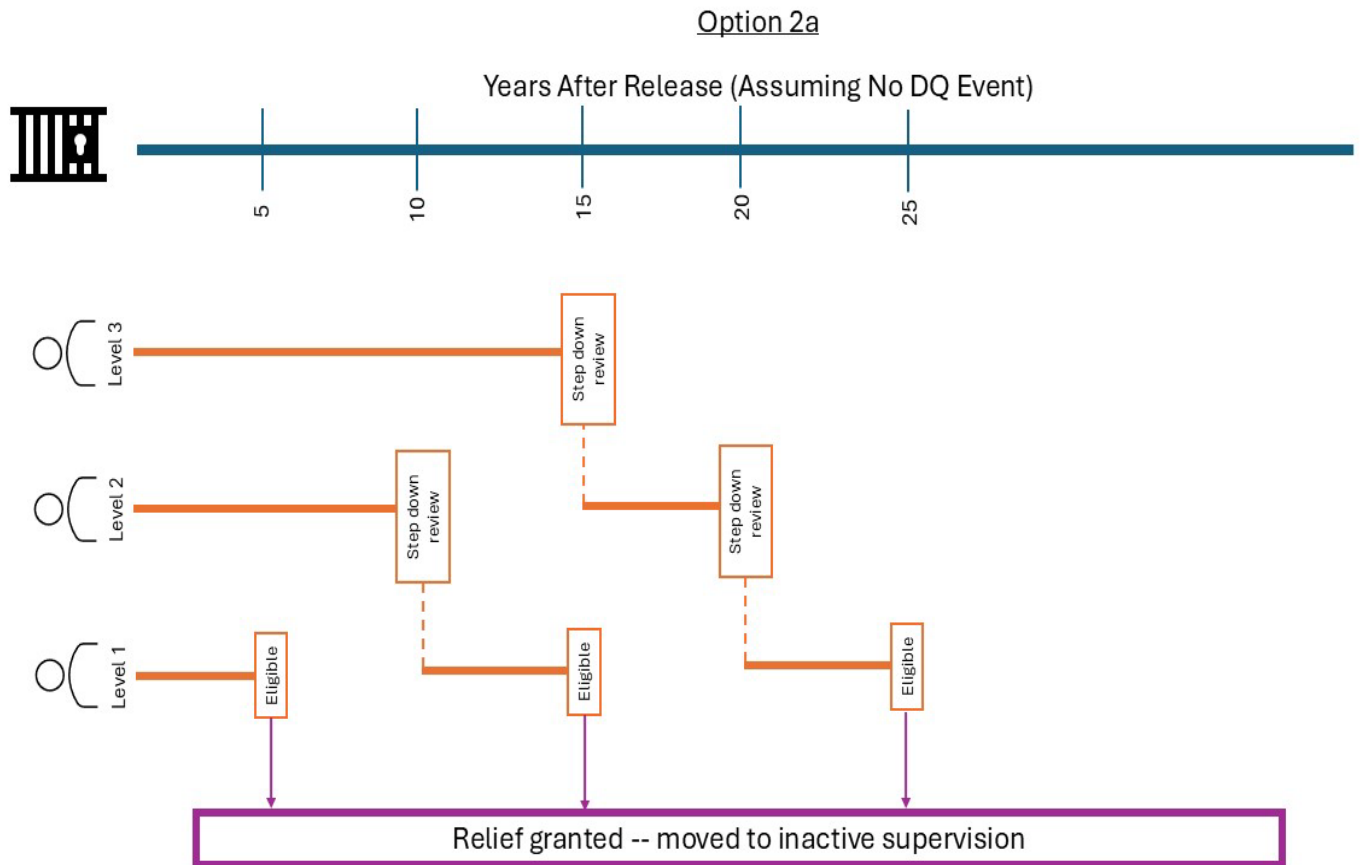
The opinions of board members in 2024 differed both with regard to whether each Level should have a distinct time to eligibility and what the specific time to review eligibility for each Level.

Further complicating the discussion about timelines was the aforementioned disagreement about whether the pathway should allow for any eligible individual to be discharged, or if some individuals would have to undergo a “step down” process to eventually be discharged. By request of the Board, the PSPRC produced additional visual aids to depict potential scenarios under combinations of these



parameters.

**Figure 5. Option 2a – Visualization of a Step-Down Process**

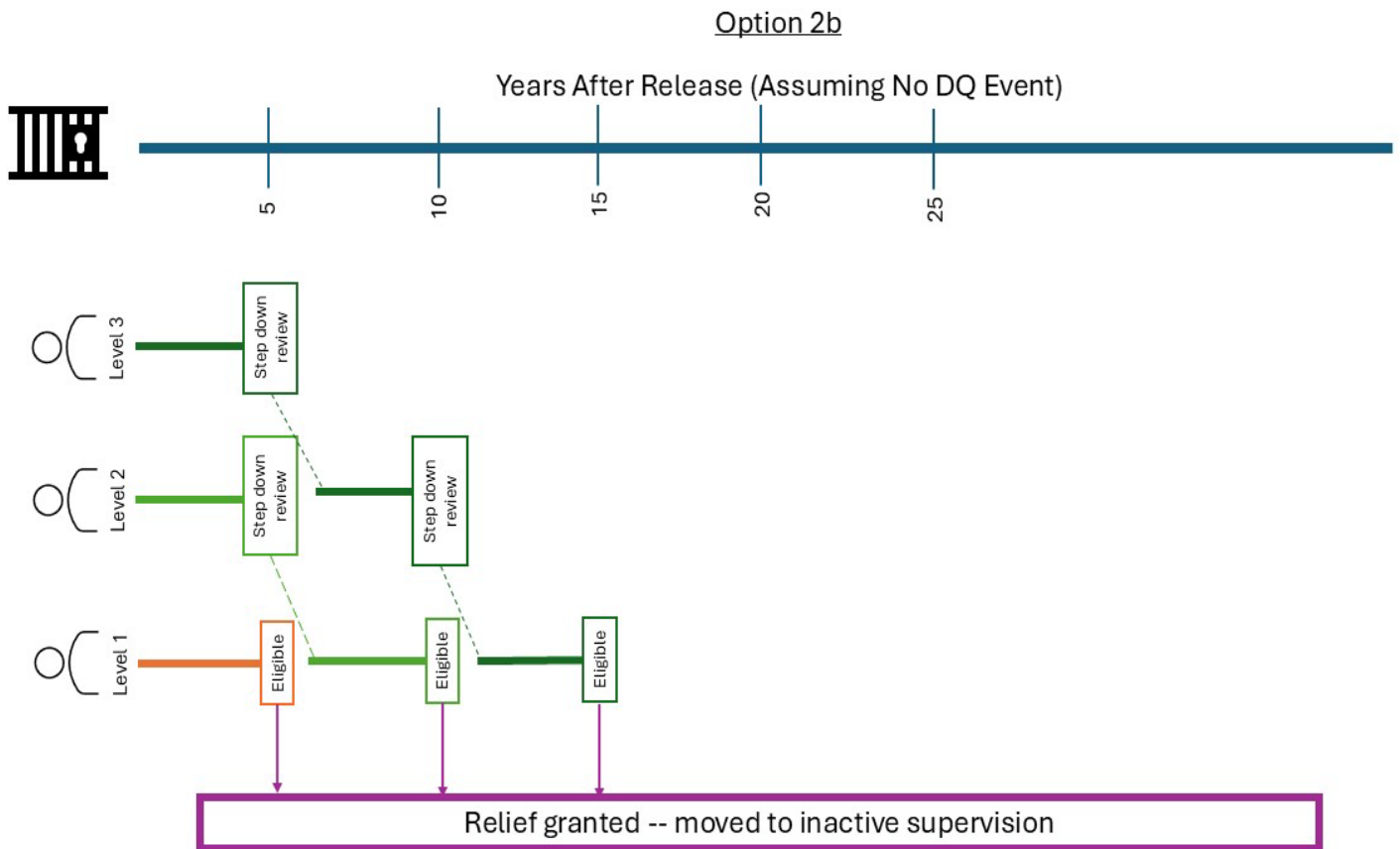


**Option 2a.** Option 2a depicts one possible approach to a step-down process, specifically for Level 2 and Level 3 individuals, using the originally proposed timelines for review eligibility of 10 and 15 years. Under this scenario, Level 3 individuals would be eligible for review 15 years after release (assuming no disqualifying event), but the review would be for a step down, not a complete discharge. If granted a step down, the individual would be eligible for review again after a set period of time (in this illustration, 5 years) at which time they could again be granted a “step down.” Finally, upon a third review (in this illustration, after another 5 years), the individual would be eligible for discharge from active supervision and may be moved to inactive supervision. Under this step-down approach, Level 3 individuals would not actually be eligible for discharge from active supervision until 25 years after release from incarceration.

Similarly, Level 2 individuals would be eligible for review at 10 years after release (assuming no disqualifying event), but the review would be for a step down, not a complete discharge. If granted a step down, the individual would be eligible for review again after a set period of time (in this illustration, 5 years) at which time they could be discharged from active supervision and moved to

inactive supervision. Under this step-down approach, Level 2 individuals would not actually be eligible for discharge from active supervision until 15 years after release from incarceration.

**Figure 6. Option 2b – Visualization of an Alternative Step-Down Process**



**Option 2b.** Option 2b shows an alternative step-down approach that would maintain the time to eligibility for discharge from active supervision that was proposed in HB 2078. Under this approach, all individuals would be eligible for initial review after 5 years following release from incarceration. While Level 1 individuals would be eligible for discharge from active supervision at this time, Level 2 and Level 3 individuals would instead be eligible for a step-down in supervision.

Level 2 and Level 3 individuals would have a subsequent review 5 years later, a total of 10 years after release from incarceration. At this time, Level 2 individuals would be eligible for discharge from active supervision (consistent with the 10 year time to eligibility in HB 2078) while Level 3 individuals would be eligible for another step-down. After another 5 years, a total of 15 years after release from incarceration, Level 3 individuals would be eligible for discharge from active supervision.

While Option 2a significantly delays the time to eligibility for discharge from active supervision that

was proposed in HB 2078, Option 2b integrates a step-down approach to allow Level 2 and Level 3 individuals to have monitoring over time, adjustments to their supervision in recognition of rehabilitative progress, and maintains the originally proposed time to eligibility for discharge.

**Discussion.** Board members struggled with being able to reach consensus on which timeframe model should be used. An informal poll was held during several meetings after extensive discussion by the members.<sup>43</sup> The results were 4:3, with 4 in favor of a step-down process being a required component of the pathway (similar to Options 2a and 2b)<sup>44</sup>, and 3 members not feeling that a step-down process should be a required component of the pathway (similar to Option 1)<sup>45</sup>. The Board then considered, if a step-down process was a required component, should the step-down process be based on risk level. When a poll was taken, the results were 5:3:1, with 5 in favor of the step-down being based on risk level, 3 voting no, and 1 not applicable. Ultimately, no consensus was reached.

**Disqualifying events for eligibility.** When considering eligibility, members were able to reach consensus on several criteria that should disqualify an individual from eligibility for discharge from supervision. The members discussed the “temporary disqualifying criteria” set forth in in sections 4(a) of HB 2178. The following were *unanimous* when an informal poll was taken:

*Individuals should not be eligible for consideration for discharge from active lifetime supervision if any of the following disqualifying events has occurred:*

- A. The individual has been found guilty of any serious and risk-relevant violation of the conditions of community custody.
- B. 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.
- C. The individual has been assessed to be at significant risk for sexual recidivism.
- D. The individual has violated any no contact orders (NCOs) related to the victims and/or minors

These components were discussed but were not unanimous when a poll was taken:

- E. The individual has not completed all recommended treatment as required in the Judgement & Sentence and ISRB Conditions. (5 yes, 2 no)
- F. The individual has been found to be non-compliant with conditions of supervision on a repeated basis as documented by DOC. (5 yes, 2 no)

Items A-C, E and F above are all addressed in HB 2178 under section 4(a). Item D above is a new component proposed by victim advocates during 2024 discussions which received unanimous support from members in informal polls. Although there was not consensus on item E, it was noted

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<sup>43</sup> To view the poll results in full, please see Appendix B. Poll results are included to provide policymakers with as much information as possible regarding what members were thinking and/or preferred at the time of discussions and the writing of this report.

<sup>44</sup> It was noted during discussions that there are some internal procedures regarding contact standards that involved a step-down process internally at DOC. Those who voted “yes” in this question indicated that the current, internal step-down processes that occur at DOC already is not enough of a formal process for step-down and an additional step-down process should be included.

<sup>45</sup> The votes taken were informal votes. Members were not required to vote and could vote more than once. Representatives from the victim advocates and lived experience communities also could cast informal votes.

that, should the pathway require completion of all recommended treatment as referenced above, the resources necessary for treatment should be provided to individuals if their noncompliance is due to an inability to pay, rather than waiving the treatment requirement.

**When an individual commits a disqualifying event while waiting for discharge from lifetime supervision eligibility.** Members discussed what should happen if an individual commits a disqualifying event before being eligible for consideration for discharge from lifetime supervision:

- Option 1: The eligibility clock for discharge restarts once a disqualifying event occurs.
  - HB 2178 details that an individual who is assessed to be a Level 1 must have 5 years of supervision in the community without a disqualifying event to be eligible to request discharge from lifetime supervision. For example, Using Option 1 as an example, if an individual commits a disqualifying event 3 years after release from incarceration, the individual would need to show 5 consecutive years supervised in the community without a disqualifying event. Thus, the earliest they would be eligible for consideration is year 8.
- Option 2: The eligibility clock for discharge does not fully start over, but an extension of the clock based on level should be added
  - Using the same example above, if an individual is on year 3 of supervised release from incarceration and commits a disqualifying event, an additional amount of time would be added to the 5-year eligibility requirement in HB 2178. This option requires that extension timeframes be determined in advance and standardized. This could be less than Option 1, for example if the extension was only 2 years, the individual would be eligible in year 7.
- Option 3: If an individual commits a disqualifying event while awaiting consideration of discharge from lifetime supervision, the individual is forever ineligible to request discharge from lifetime supervision.
- Option 4: If an individual commits a disqualifying event while awaiting consideration of discharge from lifetime supervision, then the ISRB may extend the timeframes for eligibility for discharge for a period of time they deem appropriate based on the underlying details of the disqualifying event.
  - For example, person A and person B are both eligible for discharge from supervision after 5 years. In year 4, both individuals engage in a disqualifying event. After review, the ISRB determines that eligibility for person A should be extended by 1 year based on the circumstances of the disqualifying event, so person A is not eligible until year 6. The disqualifying event for person B was determined to be more serious after review, and the ISRB determines eligibility for review for person B be extended by 3 years, so person B is not eligible until year 8. This option assumes that the decision-maker is the ISRB and gives authority to the decision-maker to determine what the appropriate amount of time is needed to be added to the eligibility clock based on the circumstances and details of the disqualifying event.

When a poll was taken, Options 1 and 2 had the most votes tied at 4 each, while 1 voted for option 4 and 0 voted for option 3. As previously mentioned, members struggled with reaching consensus in

determining timeframes for eligibility. There was general support for some form of extension to timeframes for individuals who commit a disqualifying event while on lifetime supervision.

**Administrative pre-reviews for eligibility.** Members discussed what should occur if an individual were to submit a request for discharge from lifetime supervision before they meet the eligibility requirements referenced above (timeframe requirements and disqualifying events). There was general agreement during discussions that an administrative, pre-review or pre-screen process should be established by the decision-making body as a component of the pathway. The intention of the administrative process is to help prioritize limited resources by only completing full reviews/hearings those who have met all of the eligibility requirements prior to review. There is general support for the administrative process to be based on reviewing how much time has passed since the individual was released from incarceration and/or the presence of a disqualifying event. If both thresholds have not been met during the administrative pre-review, then the individual's request should be automatically declined without requiring a hearing by the decision-making body. Only those individuals whose requests have been pre-reviewed and determined to meet basic eligibility requirements should require any form of formal hearing process.

## Part II: The Review

**The decision-maker.** The SOPB spent considerable time discussing and evaluating who would be the appropriate entity to conduct the review to determine eligibility for the pathway off of lifetime supervision. For individuals who are on lifetime supervision and who did not receive a special sex offender sentencing alternative (SSOSA), the board members felt that the ISRB would be the most appropriate decision-making body as they oversee these individuals throughout their supervision. Additionally, the ISRB already has a similar process in place when addressing the Pre-1984 cases. HB 2178 identifies the ISRB as the decision-maker for all individuals pursuing discharge from lifetime supervision with the exception of SSOSA cases, in which case the bill identifies that the court should serve as decision-maker for those under SSOSA.

Advocates for the victims community referenced some preference of the sentencing court as the decision-maker for all cases emphasizing how SSOSA prioritizes victim-input. Advocates encourage that a similar victim-input process be included in the pathway, regardless of the decision-maker.

**Process for seeking discharge.** Members discussed four different processes for an individual seeking discharge from lifetime supervision (assuming that the decision-maker would be the ISRB):

- **Option 1:** The individual seeking discharge from lifetime supervision must submit a request for discharge to the decision-maker when the individual becomes eligible.
- **Option 2:** The ISRB should be required to conduct regular reviews for eligibility and initiate the review process when an individual meets the minimum time requirements.

### The Review

- Who should conduct the review (i.e. who makes the decision)?
- Who should be notified that a review is taking place?
- What information should be required in order to undertake the review?
- What information should be suggested/optional to undertake the review?

- Option 3: The ISRB should be required to monitor when an individual is eligible based on time and let the individual know they have become eligible. The individual can decide whether or not to request a review hearing for discharge.
- Option 4: The DOC monitors an individual's eligibility and when the individual achieves eligibility then DOC forwards the information to the ISRB for review

When a poll was taken, the majority of the board members selected Option 4 (8 yes). Option 3 (5 yes) and Option 2 (4 yes) were the next highest and Option 1 received 2 votes. In conversations amongst the members, this component seemed to come down to individual members' philosophies and perspectives about where the burden should lie for initiating the discharge from lifetime supervision process.

**Intensity of review.** The board considered what the intensity of the review should be for each request for discharge from lifetime supervision. We considered three options:

- Option 1: The ISRB should be required to conduct a full review for all requests for discharge from lifetime supervision.
- Option 2: There is a presumption of automatic discharge from lifetime supervision for Level 1 individuals (if all of the criteria has been met) and a full review by the ISRB for all Level 2 and Level 3 requests for discharge.
- Option 3: The ISRB should conduct a full review for every request that is received for discharge from lifetime supervision, but the intensity of the review should be based on level.

Option 2 above is similar to what HB 2178 proposes. Board members who supported Option 2 did so with the caveat that, for Level 1 individuals with an automatic presumption of discharge, any of the entities identified in the next section "notification for review" could file concerns with the ISRB and request a full review, thereby halting the automatic process and moving the request to full review. Option 3 assumes that the pre-screen administrative process has determined that the individual has met the initial timeframe and disqualifying event criteria. Option 3 received 5 votes when a poll was taken, Option 2 received 4 votes and Option 1 received 2 votes. Some board members did not feel comfortable with agreeing to an automatic discharge process for this population, while advocates of this automation emphasize prioritizing limited state resources on the highest-risk individuals.

**Notification of review.** When an individual requests a discharge from lifetime supervision, we recommend that several different entities be notified and given an opportunity to provide feedback when a request is considered. Notably, this requirement is just to allow the listed organizations and individuals to be able to give feedback if they would like. Feedback would not be required for a hearing to move forward.

- A. Prosecutors Office
- B. Victim(s)
- C. Police/Law enforcement (e.g., registration official for the county)
- D. DOC Official (e.g., CCO)
- E. Treatment providers



- F. Any concerned community member who has signed up for notification (as many times there are uncharged victims of individuals)

Items A-D were unanimous when a poll was taken. With regards to item E, board members who did not support E did so because they felt that input from treatment providers should be sought if possible, but should not be required or hold up an individual from review for discharge. They note that many individuals who may seek discharge from lifetime supervision have successfully completed treatment many years ago and the treatment provider may no longer be the best reference for how the individual is currently doing at the time of review. Additionally, treatment providers may move, change practices, and/or retire making it difficult to get ahold of them.

With regards to Item B, the board recognizes that not all victims may want to be notified or to participate in the discharge review process. Members encourage the decision-maker to make every effort to reach out to the victim(s) and to also afford them an opt-out option if they would prefer to not be notified. Additionally, some individuals convicted of sex offenses are convicted of non-contact offenses, such as possession of child sexual exploitation materials (CSEM) or those caught in law enforcement stings, and may not have a known victim.<sup>46</sup> With regards to Item F, victim advocates encourage its inclusion and note that there may be concerned community members who are actually victims from unadjudicated cases (due to the complexities of the legal system).

**Required information to undertake a review.** HB 2178 requires that the ISRB “shall review relevant records” when undertaking a review for discharge and section 3(b)(i) identifies entities for input. The board *unanimously* suggests that the following materials be required in order for a request for discharge to be considered by the decision-making body:

- A. Updated criminal history report
- B. Updated record of treatment completion if applicable, to include information regarding any and all treatment the individual has engaged in since their conviction
- C. An updated case file from DOC
- D. Testimony from individuals/entities identified above under “notification for review”

There were several components discussed that did not have consensus:

- E. Updated record of paid and unpaid legal financial obligations (LFOs), specifically restitution (3 yes, 1 no)
- F. Evaluation by a certified Sex Offender Treatment Provider (cSOTP) conducted within 6 months of the request for discharge (4 yes, 3 no)
- G. Before the review hearing, the board shall conduct, and the offender may participate in, an examination of the offender, incorporating methodologies that are recognized by experts in the prediction of sexual dangerousness. The board may consider a person's failure to participate in an examination for board decision-making. (2 yes, 4 no)

With regards to Item F, several board members noted the current challenges facing Washington with a shortage of treatment providers. Requiring this evaluation could place an additional burden on

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<sup>46</sup> We discussed the history and research about this population more in Chapter 1 of our 2022 [report](#).

providers. If an evaluation similar to what is mentioned in item F is required, we discussed who should be responsible for funding the evaluation. When a poll was taken, 5 members felt the state should be responsible for paying for the evaluation, while 3 members felt that the individual requesting discharge should be required to pay for the evaluation, but a process for fee waiver based on income or financial status should be utilized.

It should be noted that members spent time discussing whether an updated polygraph should be a required component of the pathway, as there are some states that do require this in their processes. Current DOC policy while an individual is on supervision already requires polygraphs to include assessments every 3 months the individual is in treatment and every 6 months the individual is on supervision post-treatment (if applicable). When a poll was taken, 0 members voted for an additional polygraph requirement.

**Suggested/optional information to undertake a review.** HB 2178 does not articulate what types of information individuals may submit for consideration by the decision-making body. While members came to the conclusion during discussions that these additional materials should not be a requirement of the pathway, including the following in statute could help provide suggestions to individuals about what may assist with the review. The board *unanimously* suggests that the following optional materials be included when a request for discharge is considered by the decision-making body when available:

- A. Letters of support from individual’s family, friends, employers, or other associates. (6 yes)
- B. Direct letter from the person requesting discharge (8 yes)
- C. Other successful treatment completion (e.g., non sex-offense specific treatment) (8 yes)
- D. Proof of residence and/or employment by the individual. (8 yes)

For any of the individuals or items referenced above, it is recommended that both form-based written testimony and an opportunity to testify at a hearing be offered.

### Part III: After the Review

**When an individual’s request for discharge from lifetime supervision is granted.** HB 2178 defines “discharge from community custody” in 4(b):

*“Discharge from community custody” means the individual is no longer under the supervision of the department or the board, unless a required return to community custody occurs before the statutory maximum of the crime of conviction.*

The bill further clarifies that discharge “shall not impede the restoration of civil rights, count as probation, or terminate the jurisdiction of the board”, “shall not impact an offender’s duty to register under RCW 9A.44.130”, and “shall not impact community notification under RCW 4.24.550”. Eligibility

#### After the Review

- What should happen if discharge from supervision is denied?
- What should happen if discharge from supervision is granted?
- What should happen if an individual who has been discharged from lifetime supervision commits a disqualifying event or a new offense?
- What should happen to other standards like registration and no-contact orders (NCOs)?



requirements are identified in sections 4(d)(i) and (ii). In 2024, members generally support that this discharge from supervision would mean that the individual is no longer under *active* supervision, but no formal definition or clarity on the subsequent process was agreed to due to time constraints. Members also generally support a process that would bring individuals back under ISRB lifetime supervision if an individual commits certain offenses after being discharged from lifetime supervision which is discussed in a separate suggestion below.

**When an individual's request for discharge from lifetime supervision is denied.** Members discussed several different timeframes regarding how much time should pass before an individual is eligible to re-request discharge from lifetime supervision should an individual's request be denied:

- Option 1: The eligibility clock restarts, so a full passage of the timeframes identified based on level must pass before re-eligible (0 votes)
- Option 2: 2 years (2 yes)
- Option 3: 5 years (3 yes)
- Option 4: It depends on the level - level determines the amount of time (5 yes)
- Option 5: This should be left up to the ISRB to determine upon review (7 yes)

When a poll was taken, the majority of members felt that this timeframe should be left up to the decision-making authority and/or to have the timeframe be dependent on level, not just a flat number of years for all denials.

**When an individual who is discharged from lifetime supervision commits a new offense after being discharged.** We discussed what should happen if an individual who is discharged from lifetime supervision commits a new offense after being discharged from supervision. The following represent the options that the board was able to narrow down to, but consensus was not reached.

- Option 1: If the individual commits a new offense and the new offense is a non-sex offense, then nothing. (5 yes)
- Option 2: If the individual commits a new sex offense, then that individual reverts back to lifetime supervision status. (5 yes)
- Option 3: If the individual is arrested for a sex offense or a violent offense, the ISRB may bring that individual back under their jurisdiction (5 yes)
- Option 4: Any arrest that the ISRB is made aware of would require a potential hearing and decision from the ISRB (2 yes)

The board generally support a process that would bring individuals back under ISRB lifetime supervision if an individual commits certain offenses after being discharged from lifetime supervision. HB 2178 includes a definition of "return to community custody" (section 4(c)) that states the ISRB resumes community custody of an individual due to a *conviction* for a crime reasonably related to the crime which placed the individual under the jurisdiction of the board, risk of re-offense, or community safety. During member discussions, there was not consensus on what should trigger a return to lifetime supervision, including the types of offense and whether the return should be initiated after an arrest or only after a conviction.

**Incorporating No Contact Orders in legislation.** We recommend that explicit language that NCOs or other protective orders *must* remain even if discharge from supervision is granted until or unless a modification to those protective orders is filed with the court. This was a new suggestion brought forward by the victim advocates community in 2024 discussions which members *unanimously* supported when a poll was taken. The current proposal under HB 2178 does not specifically address no contact orders.

## **IV. Conclusion: Agreed Upon General Principles for the Pathway**

While the board was unable to reach final consensus on proposed recommendations for this report, withstanding the unanimous recommendations regarding SSOSA cases, there were many general principles for the pathway upon which the majority of the members agree. The following components were discussed during the project and had general support in discussions, but neither a poll nor a formal vote were held due to constraints:

### **SSOSA Cases**

Based on our recommendations above for the pathway off lifetime supervision, and that the ISRB serve as the decision-maker for non-SSOSA cases, we foresee issues related to funding and capacity with the ISRB that will need to be addressed legislatively during the pathway's development. The ISRB is currently at capacity and establishing a pathway off lifetime supervision would require both an increase in staff and budget to implement any new pathway.

### **Establish a pathway off lifetime supervision for non-SSOSA cases.**

While members were unable to reach consensus on some of the finer details and components of the pathway, there was general support that a pathway off lifetime supervision should be established for all eligible individuals convicted of a sex offense in Washington State.

### **Consideration of unintended consequences for victims**

Any discharge from lifetime supervision should be clear about the potential impact on other protections for victims such as non-contact orders.

### **Pathways should be intentional in their inclusion of victims in the process**

An opt-out about future communications from the decision-maker when a review is undertaken should be made available to all victims. We heard from victim advocates that any new pathway process should be trauma-informed and victim-centered. This should include both the option to participate in the process and the option to opt-out from receiving communication from the decision-maker if the victim(s) do not wish to receive it.

### **Increased funding for victims and victim advocates will be needed for any new pathway development**

Advocates for the victims' community noted that, with the expansion of a pathway off lifetime supervision, funding will be needed for additional advocates to serve victims during this process.

Funding should also be allocated for victims who may need to seek crime victims' compensation funding for therapeutic support or other financial impacts or costs.

### **Ongoing reporting measures**

In 2022, we made a recommendation regarding ongoing monitoring being put into place should the legislature decide to move forward with creating a pathway off of lifetime supervision. HB 2178 incorporates the previous recommendations made by the board in 2022 in the 2022 report in Section 5: the bill requires DOC and the ISRB to submit annual reports on these topics, which could help ensure transparency, monitoring and accountability, and create and provide access to reliable data to help inform future decisions. It further requires that 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. The board continues to support this requirement in 2024.

In addition to the monitoring above, we encourage that research be conducted to assess the impact of any policy change regarding lifetime supervision. This research should assess a variety of outcomes, such as recidivism and prosocial outcomes of those who receive discharge from lifetime supervision, (e.g. employment, housing, family relationships, etc.), as well as impacts on the health and well-being of victims and any unintended consequences such as a decrease in the individuals willingness to report sexual abuse.<sup>47</sup> Funding will be needed and is encouraged to be allocated for this purpose. Additionally, we encourage the research to include demographic information for both individuals on/discharged from lifetime supervision and victims to better identify any racial and gender disparities.

### **Clear communication of the process**

We encourage any DOC- or ISRB-required paperwork for inclusion in the process be clear, concise language that is equitable, fair and universal so that all involved persons know what is required and should be included for review for each request from discharge.

### **Access for eligible individuals.**

We encourage that the pathway off of lifetime supervision be available to everybody who is eligible, regardless of financial status.

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<sup>47</sup> Victim advocates note that there is some research that suggests that policy changes that do not consider the impact to the victim(s) could lead to a decline in reporting as victims may fear that the system is incapable of holding perpetrators accountable.

# Appendices

# Appendix A

House Community Safety, Justice & Reentry Request Letter

STATE REPRESENTATIVE  
45<sup>th</sup> LEGISLATIVE DISTRICT  
ROGER GOODMAN

State of  
Washington  
House of  
Representatives



COMMUNITY SAFETY,  
JUSTICE, & REENTRY  
CHAIR  
STATUTE LAW COMMITTEE  
CHAIR  
CIVIL RIGHTS & JUDICIARY  
HUMAN SERVICES, YOUTH,  
& EARLY LEARNING

May 9, 2024

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

Re: Review/Comments on Lifetime Supervision/House Bill 2178

Dear Mr. Chair:

In 2022, the Legislature directed the Sex Offender Policy Board (SOPB) to review research and make recommendations regarding best practices and procedures related to lifetime supervision of adults convicted of sex offenses, including: 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. The SOPB submitted its report to the Legislature in December 2022 and presented its recommendations to the House Public Safety Committee in January 2023.

In my capacity as Chair of the House Community Safety, Justice and Reentry Committee, and in response to the SOPB's recommendations, I introduced House Bill 2178 during the 2024 legislative session, which set forth a path for individuals convicted of sex offenses to seek relief from lifetime supervision. Several productive stakeholder discussions helped to guide refinements to the measure, but the bill did not advance further than the policy committee, so the proposal is still a "work in progress."

I deeply appreciate and highly value the well-informed advice from the SOPB to the Governor and the Legislature on issues relating to sex offender policy and management. To that end, I hereby request that the SOPB convene its membership, pursuant to RCW 9.94A.8673, to review the substantive provisions of House Bill 2178 (2024), to identify key points of contention among SOPB members, and to attempt to build consensus on an amended version of the bill.

Brad A. Meryhew  
May 9, 2024  
page two

I further request that the SOPB submit its comments related to House Bill 2178 to the House Community Safety, Justice and Reentry Committee by December 1, 2024, in preparation for anticipated legislative action in the 2025 legislative 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 you provide will significantly assist the ongoing work of the Legislature.

All best wishes,

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

Roger Goodman  
Chair, House Community Safety, Justice and Reentry Committee

Cc: Whitney L. Hunt  
Keri-Anne Jetzer

## **Appendix B**

### Lifetime Supervision Component Checklist with Poll Results



## SOPB: Lifetime Supervision Component Checklist with Poll Results

Below represents the recommended additions under each component and the informal poll results (green).

- 1. Who conducts the review/makes the decision?** (Original: Who makes the decision/receives the petitions?)
  - a. The sentencing court - 1
  - b. The ISRB - 7
  
- 2. Who conducts the review/makes the decision for SSOSA cases?** (Original: Will SSOSA cases follow the same process as established in Q1?)
  - a. The sentencing court will make the decision for SSOSA cases - 9
  - b. The ISRB will make the decision for SSOSA cases - 0
  - c. Revert back to system prior to 2001 where supervision ends at the end of the suspended sentence or for 36 months, whichever is longer. – Unanimous
  
- 3. What is the minimum amount of time that must pass prior to an individual being eligible for consideration for relief from active lifetime supervision?** (original: What is the time frame for eligibility to file a petition?) **(select one)**
  - a. Flat rate of 10 years for anyone
  - b. Tied to level:
    - i. Level 1: 5 years
    - ii. Level 2: 10 years
    - iii. Level 3: 15 years
  - c. Tied to level:
    - i. Level 1: 10 years
    - ii. Level 2: 10 years
    - iii. Level 3: 15 years
  - d. Other – come prepared with specific alternative

*\*Note: Level is tied to ESRC level at time of release from custody. Population is individuals who have gone to prison, who did not receive a SSOSA, and who have since been released.*

Poll Results: No vote taken due to varying opinions about the step-down process. Please see questions 17 and 18 for results around inclusion of a step-down process.

- 4. If the request for relief is denied, how long until the individual may be reconsidered for relief (if denial is not based on presence of disqualifying event)? (select one)** (original: If the petition is denied, how long until the petitioner may refile for relief)
  - a. Clock restarts, so full passage of time based on level. - 0
  - b. 2 years - 2
  - c. 5 years - 3
  - d. It depends on the level - 5
  - e. This should be left up to the ISRB (ie similar to how time is added if the individual is found not releasable) - 7
  
- 5. Is there an administrative pre-review/pre-screen for the eligibility of requests? (select 1)**

- a. Yes – if not eligible based on time passed or presence of disqualifying event, request automatically declined without hearing. - 6
  - b. No – all requests must have a full hearing - 0
- 6. What is the intensity of review for each request for relief? (select 1)**
- a. Full review for all requests regardless of level - 2
  - b. Presumption of automatic relief for Level 1 (if all criteria has been met) and full review for level 2 and level 3. Any of the authorities listed in Q9 may file concerns and request a full review for Level 1 individuals. - 4
  - c. Review for everyone but intensity is based on level- 5
- 7. What are the disqualifying events for seeking relief from lifetime supervision?** (original: What are the disqualifying events for filing a petition) **(select as many that apply, not mutually exclusive)?**
- a. The individual has been found guilty of any serious and risk-relevant violation of the conditions of community custody. (7 yes, 0 no)
  - b. 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; (8 yes, 0 no)
  - c. The individual has not completed all recommended treatment as required in the Judgement & Sentence and ISRB Conditions. (5 yes, 2 no)
    - i. Note: If an individual cannot comply with treatment requirements because of funding capacity (or inability pay), those resources should be provided rather than waiving the treatment requirement.
  - d. The individual has been found to be non-compliant with conditions of supervision on a repeated basis as documented by DOC (5 yes, 2 no)
  - e. The individual has been assessed to be at significant risk for sexual recidivism (8 yes, 0 no)
  - f. Violations of NCO's regarding victims and/or minors (8 yes, 0 no)
- 8. What happens if an individual commits a disqualifying event?** (original: Does a disqualifying event restart the clock for petition eligibility or does it disqualify individuals for life?) **(select one)**
- a. Restart the clock for relief eligibility - 4
  - b. Disqualify for a relief forever - 0
  - c. Not full restart of clock but an extension of the clock based on level - 4
  - d. If a disqualifying event has occurred, then the ISRB may extend the amount of time until consideration for relief from supervision for a period of time that they deem appropriate based on the details of the event - 1
- 9. Who must be notified and given opportunity to provide feedback when a request for relief is considered (select all that apply, not mutually exclusive)?** *NOTE: Feedback is not required, but individuals must be given the opportunity to provide feedback if they wish.*
- a. Prosecutors Office (7 yes, 0 no)
  - b. Victim(s) (7 yes, 0 no)
  - c. Police/Law enforcement (e.g., registration official for the county) (8 yes, 0 no)
  - d. DOC Official (e.g., CCO) (8 yes, 0 no)
  - e. Treatment providers (6 yes, 2 no)

- f. Any concerned community member who has signed up for notification (as many times there are uncharged victims of individuals) (5 yes, 1 no)

**10. How should feedback be provided for consideration during the review for relief from lifetime supervision?** (original: For each of those identified in Q9, how should feedback be provided? (please select Option A or B below for every entity identified in Q9))

- a. Form-based written testimony – 5
- b. Opportunity to testify at hearing – 0
- c. Both/Either – 7

**11. What, if any, materials must be included in a request for relief and considered by the decision-making body (select all that apply, not mutually exclusive)?**

- a. Updated criminal history report (6 yes, 0 no)
- b. Updated record of treatment completion if applicable (all treatment since conviction) (7 yes, 0 no)
- c. Updated record of paid and unpaid legal financial obligations (LFOs), specifically restitution (3 yes, 1 no)
- d. Evaluation by a certified Sex Offender Treatment Provider (cSOTP) conducted within 6 months of petition filing. (4 yes, 3 no)
- e. Updated case file from DOC (6 yes, 0 no)
- f. Testimony from individuals identified in Q9 (specify who/which) (8 yes, 0 no)
- g. Updated polygraph (sexual history v. maintenance – note: DOC has a current policy of polygraphs to include assessments every 6 months on supervision, and every 3 months while in treatment) (0 yes, 5 no)
- h. Before the review hearing, the board shall conduct, and the offender may participate in, an examination of the offender, incorporating methodologies that are recognized by experts in the prediction of sexual dangerousness. The board may consider a person's failure to participate in an examination for board decision-making. (2 yes, 4 no)

**12. If updated evaluations are required for the request for relief, who pays for the evaluation by a state approved cSOTP (if agreed to in Q11)?**

- a. The state - 5
- b. The petitioner - 0
- c. The petitioner, but a process for fee waiver based on income/financial status - 3

**13. What, if any, materials should be explicitly included in statute as suggested/optional filings for the request for relief (select all that apply, not mutually exclusive)?**

- a. Letters of support from individual's family, friends, employers, or other associates. (6 yes, 0 no)
- b. Direct letter from the person requesting relief (8 yes, 0 no)
- c. Other successful treatment completion (e.g., non sex-offense specific treatment) (8 yes, 0 no)
- d. Proof of residence and/or employment (8 yes, 0 no)

**14. How should the legislation incorporate No Contact Orders (NCOs)? (select one)**

- a. This is already included in other statutes and not necessary in this bill. - 0

- b. Explicit language that NCOs or other protective orders must remain even if discharge from supervision is granted until or unless a modification to those protective orders is filed with the court. – 8

**15. If relief from supervision is granted, what happens if the individual commits a new offense? (select one)**

- a. If non-sex offense, nothing - 5
- b. For any offense – individual reverts back to lifetime supervision status – 0
- c. For sex-offenses only – individual reverts back to lifetime supervision status – 3
- d. Risk-relevant behaviors (e.g., offenses of interpersonal violence/crimes against person) would revert back to lifetime supervision - 0
- e. If a person is arrested for a sex offense or a violent offense, the ISRB may bring that individual back under their jurisdiction – 5
- f. Any arrest that the ISRB is made aware of would require a review and potential hearing and decision from the ISRB – 2

**16. What is the process for seeking relief from lifetime supervision?**

- a. Individuals must submit a request to decision maker when they become eligible. - 2
- b. ISRB conducts regular review for eligibility and initiates the review process when an individual meets the minimum time requirements. - 4
- c. ISRB monitors and let's individuals know when they will be eligible based on time and the individual can decide whether or not to request a review hearing for relief. - 5
- d. DOC monitors eligibility and when the individual achieves eligibility then DOC forwards the packet to the ISRB for review – 8

**17. Does your organization feel that some form of step-down process should be required?**

- a. Yes - 4
- b. No – 3

\*If yes, then you are saying that whatever current step-down processes that internally occur at DOC already is not enough of a formal process for step-down and an additional step-down process should be included.

**18. Does your organization feel that the step-down process should be based on risk level?**

- a. Yes - 5
- b. No – 3
- c. N/A – 1

## **Appendix C**

Indeterminate Sentence Review Board (ISRB) November 20, 2024,  
Letter to Representative Goodman Re: 2024 SOPB Review on  
Lifetime Supervision/House Bill 2178



November 20, 2024

Representative Roger Goodman  
PO Box 40600  
Olympia, WA 98504

Re: 2024 Sex Offender Policy Board (SOPB) Review on Lifetime Supervision/House Bill 2178

Representative Goodman:

Thank you for the opportunity to address the Indeterminate Sentence Review Board's (ISRB) participation in the 2024 SOPB review of proposed legislation regarding lifetime supervision. During SOPB discussions, the ISRB provided information regarding our current processes, abilities, and data. However, we have remained neutral on any recommendations related to establishing a pathway off of lifetime supervision due to conflict of interest concerns as most individuals currently under ISRB jurisdiction have statutory lifetime supervision requirements.

The ISRB remains supportive of legislation that reflects current research and best practices in the area of sex offender management. We believe we have the experience and infrastructure to successfully evaluate individuals with lifetime supervision obligations if directed by the legislature. We look forward to continuing to work with your office on this issue.

Sincerely,

Jill Getty  
ISRB Board Member/SOPB Representative

## **Appendix D**

Washington Association for the Treatment and Prevention of Sexual Abuse – Perspective for SOPB 2024 Report on HB 2178 and Lifetime Supervision

**Washington Association  
for the Treatment and Prevention of Sexual Abuse**

**Perspective for SOPB 2024 Report on HB 2178 and Lifetime Supervision.**

The 2022 report of the Sex Offender Policy Board (SOPB) recommended several changes to Washington statutes and policies. A number of those recommendations addressed the issue of lifetime supervision for certain sex offenses.

What the 2022 report did not thoroughly address was how lifetime supervision came to be enacted in 2001. In fact, it was intended to fix some of the complicated and expensive legal procedures that came as a result of the civil commitment provisions of the Community Protection Act of 1991. RCW 71.09 had created a program for detaining and treating extremely high-risk persons who had completed their full prison sentence. The result was that persons who had completed their prison terms but were found to present a high risk of reoffense, were placed in a secure treatment facility. But the legal process was lengthy and expensive.

A revision to the previous determinant sentencing procedure, referred to as “determinant plus,” became effective for many sex offenses committed after September 2001. For those imprisoned for those sex offenses, the determination of dangerousness was switched from the civil commitment legal process to the parole board, which was renamed the Indeterminant Sentence Review Board, or ISRB. The ISRB would apply a statistical analysis to determine which persons nearing the completion of their standard prison sentence were too likely to reoffend. They could be returned to prison and typically expected to participate in the prison system’s sex offender treatment program (SOTAP.) If and when they did get released, they would be on Department of Corrections (DOC) and ISRB supervision for the period of the statutory maximum for their offense(s). That usually means a period of LIFE, either in prison or on community supervision.

That approach has worked well. High risk persons were kept in prison until an actuarial analysis showed their risk of reoffense had been mitigated and the ISRB could release them to lifetime supervision.

But many, many more persons who have been convicted of a sex offense, but who are actuarially assessed as much lower risk, effectively became *bycatch* of this system. (I borrow the term *bycatch* from the world of fisheries management. There it means fish or other marine species caught unintentionally while trying to catch another type of fish.) The current system has been effective at retaining in prison or supervising higher risk persons with sex offense convictions. But those with lower risk are also retained in the system. The costs to the state, to those persons, and to their families are well documented in the 2022 SOPB report. Two years ago, the cost to the state to provide lifetime supervision to a low-risk individual was \$2,436 per year. The average estimated costs of lifetime supervision was \$67,934 per individual. I anticipate this year’s report will provide updated figures. Those monies could be better used for victim services or other unmet needs.

As the Sex Offender Policy Board has spent this year addressing this issue, there has emerged a general consensus that the current system of lifetime supervision is overly broad. However, it



has been difficult to reach a unanimous conclusion about just how to make revisions. In 2022 the SOPB did make a unanimous recommendation that persons who successfully complete the terms of a Special Sex Offender Sentencing Alternative (SSOSA) be provided with a pathway off lifetime supervision. (SSOSA defendants have a 4-decade long history of success and very low rates of reoffense.) It appears this year's SOPB may yet be able to agree to recommend those same conclusions.

More broadly, there is little benefit to the community for persons with low risk levels to remain on DOC supervision for life. For example, this would also apply to those with a community notification Level 1 designation. And it would apply to those who, through treatment, lifestyle changes and community support, have reduced their risk level. To continue the restrictions and limitations that come with supervision is to violate one of the core principles of behavioral theory. You want to punish prohibited behavior, but you don't want to continue punishing preferred behavior. This maxim is the application of what is referred to as *negative reinforcement*.

A good illustration of negative reinforcement is what is done in places such as national parks, when bears have learned to frequent campgrounds, looking for food, after visitors have reinforced that behavior by leaving food out and unsecured. In those cases, park rangers employ Karelian Bear Dogs, which are trained to harass bears in areas near people but *stop* their harassment when the bears leave the area and go back to unpopulated areas.

<https://tinyurl.com/jp6z59ja>

For persons who have committed offenses, it is reasonable to apply restrictions that limit them from situations where they could cause future harm. But when they are living pro-social, non-deviant lives we can encourage and reinforce that lifestyle and their reduced risk by metaphorically "calling off the dogs." This year the SOPB has reviewed compelling research that shows that persons who have lived offense-free in the community are less and less likely to reoffend the more time they spend "offense free in the community."

<https://doi.org/10.1177/1079063219871573>

It is reasonable to apply this compelling information to public policy. And throughout this project, it has been my impression that the members of the Sex Offender Policy Board have generally agreed. But we've had difficulty reaching unanimity on just how to do so.

## **Appendix E**

Washington Association of Criminal Defense Lawyers and  
Washington Defense Association Organizational Perspective for  
SOPB 2024 Report on HB 2178 and Lifetime Supervision

## **Washington Association of Criminal Defense Lawyers and Washington Defender Association Organizational Perspective for SOPB 2024 Report on HB 2178 and Lifetime Supervision.**

In 2022, the Sex Offense Policy Board was asked by the legislature to review our current system of placing individuals on lifetime supervision for certain sex crimes, to review relevant research regarding the efficacy of this practice, and to make recommendations on whether to make changes to our current policies. As part of that work the Board heard presentations from DOC, ISRB, and others regarding the growing population subject to Lifetime Supervision and the strain this puts on the system – distracting from focusing resources on those who pose the greatest risk. Those presentations demonstrated that creating a pathway off of Lifetime Supervision is not only a fiscal necessity but a public safety mandate.

In Washington state we have two pathways that individuals can be given supervision for life. The first group is composed of people who have been given a Special Sex Offense Sentencing Alternative (SSOSA) for a Class A sex offense. These individuals serve their sentence largely in the community while participating in sex offender treatment in lieu of a long prison sentence. If the person does not comply with the treatment program, they are revoked and serve a prison sentence adding them to the second group of individuals (below). Successful SSOSA participants are considered low risk to reoffend and but are currently subject to Lifetime Supervision even after successfully completing their treatment program. Prior to 2001, these individuals did not have Lifetime Supervision. Rather, they were given a period of supervision equivalent to the length of their deferred sentence, or three years, whichever was longer. Since the change in 2001, Washington has seen declining participation in the SSOSA program, in large part because it includes lifetime supervision. We agree with the unanimous recommendations made in 2022 that Washington state's policy for individuals granted SSOSA should revert back to the pre-2001 policy and no longer be subject to Lifetime Supervision.

The second group of individuals who are given lifetime supervision are people who are convicted of a Class A sex offense and sent to prison with a determinate plus sentence. These individuals must go before the Indeterminate Sentencing Review Board (ISRB) to be *considered* for release from prison. The vast majority of individuals who are released by the ISRB are identified as low risk to reoffend. Once released, individuals are subject to lifetime supervision by DOC and jurisdiction of the ISRB. The current best practice for sex offender management and treatment is the Risk-Needs-Responsivity (RNR) model – it includes focusing resources where there is the most risk. Rather than subjecting all individuals to lifetime supervision, RNR would advise continued assessment of risk and discharge from supervision for individuals whose time in the community confirms their low risk. Supervision of individuals who are assessed as low risk is not only a waste of state resources, but it can be iatrogenic – therapeutically counterproductive - creating risk where it would not otherwise be by continuing to obstruct the attempt at a fully rehabilitated life. Best practice strongly indicates that individuals who are found to be low risk to reoffend should not stay on supervision for life and those supervision resources should be directed to individuals who are and remain at high-risk to reoffend. We believe that individuals who are identified as low risk to reoffend should be

discharged from supervision after five years so long as they have not committed a disqualifying event, which would restart that clock. This process should be automatic rather than resource-intensive, so as to truly focus our resources on the folks at the other end of the risk spectrum. If the system targets in depth assessments at the point of a person's discharge from supervision, when they are the least risky this would be less likely to get accurate results (low base rate events are the hardest to predict) than assessments earlier in their supervision and we would be less likely to have current data with which to assess risk. If assessments are desired, they should occur as individuals who are high risk gradually reduce their risk with time in the community rather than waiting until the point of discharge.

Furthermore, research indicates that individuals who are initially identified as high-risk to reoffend are not forever high-risk. Within 25 years of release even those deemed highest risk at release will have risk comparable to an average male if they have lived in the community and not reoffended. We believe that individuals who have been living in the community for an extended period of time crime-free should be given the opportunity to have their risk-level reexamined and, if found to be lower-risk to reoffend, should have their conditions reduced commensurate with their risk-level and an eventual path off supervision. If this occurs in a step-down<sup>1</sup> manner, it would allow us to target resources at higher risk thresholds and allow those who have demonstrated good behavior to fully reintegrate in society. Eventually, even an individual who was initially categorized as high-risk to reoffend, should have an opportunity to demonstrate compliance in the community such that they could be discharged from lifetime supervision. Time free in the community has been identified by current research as the most robust predictor of sex offense desistance.

Washington Association of Criminal Defense Lawyers  
Washington Defender Association

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<sup>1</sup> Research provides good ways to assess step-down, but not by re-scoring actuarial. Rather, up dated assessment should start with the actuarial numbers at release and then calculate time-free in the community.

## **Appendix F**

Washington Association of Sheriffs & Police Chiefs (WASPC)'s  
Response to SOPB 2024 Assignment (November 20, 2024, to SOPB  
Chair)



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November 20, 2024

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Washington State Sex Offender Policy Board (SOPB)

Deliver to [sopb@ofm.wa.gov](mailto:sopb@ofm.wa.gov)

**Past President**  
Sheriff Kevin Morris  
Douglas County

**Subject: WASPC Response to SOPB 2024 Assignment**

**Treasurer**  
Chief Damon Simmons  
City of Liberty Lake

The Washington Association of Sheriffs and Police Chiefs (WASPC) recognizes the SOPB's efforts to build a consensus on an amended version of [House Bill 2178](#) (2024) in response to the assignment from Representative Roger Goodman as Chair of the House Community Safety, Justice and Reentry Committee. The SOPB thoroughly discussed components of a process that would provide a mechanism for some individuals to be removed from active lifetime supervision. The SOPB was unable to come to consensus on a version of HB 2178 that all stakeholder groups could agree to.

**Executive Board**

Chief Michelle Bennett  
City of Edmonds

Chief Rebecca Mertzig  
City of Bellingham

Sheriff Clay Myers  
Kittitas County

Per previous testimony, WASPC agrees that there should be some mechanism for individuals sentenced under [RCW 9.94A.507](#) to be removed from active lifetime supervision. WASPC also very strongly believes that details matter. WASPC will continue to engage with Chair Goodman and other stakeholder groups on this topic. In the meantime, please accept the following considerations that we believe are crucial to this process.

Chief Greg Cobb  
Union Gap Police  
Department

Sheriff James Raymond  
Franklin County

Sheriff Brad Thurman  
Cowlitz County

As we reflect on the SOPB's work regarding this assignment, there are four items that we feel worth mentioning here:

Chief Sam White  
Lower Elwha Klallam  
Police Department

Chief John Batiste  
Washington State Patrol

Richard Collodi, SAC  
FBI—Seattle

Steven D. Strachan  
Executive Director

**Addressing risk and offering resources:** More attention and resources need to be directed to this population to mitigate their risk to the community upon release. Resources should be allocated to the Department of Corrections (DOC) to expand in-custody Sex Offender the Treatment Programs (SOTP) and offer SOTP in the community. SOTP in the community will provide individuals who are not eligible for treatment in-custody the opportunity to participate in treatment to address some of their risk factors. Community SOTP should also be offered to those individuals who are eligible for a Special Sex Offender Sentencing Alternative (SSOSA), but due to financial barriers cannot receive that sentencing alternative.

Implementing supervision modalities that are proven useful in decreasing the individual's risk to public safety and addresses their criminogenic needs will have the greatest return on this investment as it relates to both the individuals and community safety. We should all agree that the government can and should do more to assist these individuals while they are under our jurisdiction.

***Leading collaboration among law enforcement professionals to enhance public safety.***

**Ability to change a sentence:** The maximum term of confinement for this offender population is life—rightfully so for the population. The legislature has required, and courts have imposed sentences, ensuring that this population is under the jurisdiction of the Indeterminate Sentence Review Board (ISRB) anytime they are not in full confinement. To make the change sought by Representative Goodman’s request, we believe the Legislature must also lower the maximum term of confinement for these offense types—an unconscionable option. The ISRB does not have the authority to change the sentence imposed by the court and we should not grant them the authority. Victims and survivors of these cases have an expectation that the ISRB will maintain jurisdiction for the remainder of the offending individual’s life—we should not change that. Under no circumstances does WASPC support full discharge from active lifetime supervision for this offender population; however, WASPC remains optimistic that some mechanism could be developed where individuals could earn lower levels of supervision and condition adjustments for the individual as appropriate, including the potential for inactive supervision.

**Supervision Step-down model:** The DOC and the ISRB currently have the ability to lower supervision contact standards and adjust conditions of supervision. Lowering contact standards and decreasing conditions of supervision should be given additional consideration as an alternative to ending supervision. Individuals could earn lower levels of supervision and condition adjustments, including inactive supervision, as they progress through treatment and have successful and productive time in the community. To be clear, WASPC is not proposing re-leveling offenders for the purpose of registration, community notification, address verification, etc.

**Current supervision practices:** During this process we heard concerns from individuals being supervised by the DOC that intensity of supervision was inconsistent and frequent change in assigned Community Corrections Officers made having consistent expectations difficult as every officer enforced supervision rules and conditions differently. This is likely something that can be addressed without legislative action.

Per previous WASPC testimony on this matter, “we can get to support on this proposal, but we need to proceed very deliberately, and with public safety at the forefront of our minds.”

Please note that WASPC will abstain from voting in favor of any recommendations for this and subsequent SOPB assignments. Far too often, WASPC’s support of a concept is manipulated into support for legislation that has not thoroughly been vetted. Details matter and are often not outlined until legislation is proposed. In the past, WASPC’s participation in the process has been misconstrued as support. WASPC will continue to participate in the SOPB and offer law enforcement perspective on matters related to sex offender management, but we will conduct our own process for supporting or opposing legislation separate from any board, committee, or work group.

Thank you for your consideration of WASPC’s feedback. I respectfully request that WASPC’s feedback be included as an appendix in the final SOPB report on this assignment.

Sincerely,



Jamie Weimer, Projects and Programs Manager

Cc: SOPB: Whitney Hunt  
WASPC: Terrina Peterson, James McMahan

# Appendix G

Washington Voices' Position Statement



# POSITION STATEMENT by WA Voices

Based on decades of research, we now know that the risk of sexual reoffense predictably declines as an individual lives offense-free in the community. Eventually the risk of reoffense is indistinguishable from the risk posed by individuals who were never convicted of a sex offense. This predictable decline in risk over time is called DESISTANCE. We believe that the desistance research by Dr. R. Karl Hanson and others should inform our public policy in regards to best practice for the length of supervision.

These results have been confirmed at the national level and at the state level, most recently in 2020 by the Washington State Statistical Center using a sample of over 7,600 individuals convicted of a sex offense in Washington state. Based on the data, risk to public safety is very low after an individual has spent 10 years living offense-free in the community. The desistance trendline showing lower levels of risk over time applied to all risk levels groups regardless of whether the individuals were sentenced to a prison term or not.

The Sex Offense Policy Board (SOPB) first reviewed this research in 2022 when they did a deep dive into the literature. The members of the SOPB were presented with this material again at the August 15, 2024, meeting when Dr. Knoth-Peterson gave a summary of best practices and affirmed the Board's 2022 conclusions.

The research shows that mandatory lifetime community custody is not good public policy and does not align with the Risk-Needs-Responsivity (RNR) approach to supervision. Individuals are most likely to reoffend in the first two years after being released from prison and this is when they need the most support to help create a prosocial, crime-free, lifestyle. Over time, most individuals will require decreasing levels of supervision. Research shows that once individuals have proven that they are capable of living offense-free in the community, continued supervision becomes harmful to the process of reentry and ultimately to the community at large.

Therefore, based on everything we've learned, the best policy is to create a pathway off of lifetime community custody for all individuals based upon their risk to reoffend. The principles of RNR indicate that individuals identified as low-risk to reoffend should be given less time on supervision. Likewise, higher-risk individuals need support over a longer period of time. By differentiating individuals by risk-level, we will be able to concentrate our limited resources on those individuals who need the most support.

Because we have two distinct sentencing schemes that place individuals on lifetime supervision, we need to create two distinct pathways to discharge individuals from supervision—one pathway for individuals given a Special Sex Offender Sentencing Alternative (SSOSA) and another for individuals sentenced to total confinement under the authority of the Indeterminate Sentencing Review Board (ISRB).

Individuals given a SSOSA sentence are assessed to be low risk to reoffend. Therefore, we are in full support of the 2022 SOPB recommendations and the language used in HB 2178 to create a pathway off of lifetime community custody for people on SSOSA. In short, the laws governing SSOSA sentences should revert back to the pre-2001 policy whereby individuals are subject to supervision equal to the length of their suspended sentence, or three years, whichever is longer. After completing supervision, and barring actions resulting in revocation, an individual granted a SSSA sentence shall be discharged from supervision by their sentencing court. This change will encourage defendants to accept responsibility for their actions, support treatment efficacy, and increase the number of people using the sentencing alternative.

We must interject here that in order to receive a SSOSA, an individual must be able to prove they have sufficient financial resources. The high financial burden to an individual is one reason that only 14% of individuals who qualify for a SSOSA receive one and a significant reason why we see a large racial disparity in who is granted a SSOSA. Creating a pathway off of lifetime community custody for individuals sentenced to total confinement (under the authority of the ISRB) is important for racial equity and is in alignment with evidence-based best practices. (As an aside, we believe that the legislature should also consider fully funding treatment for people under SSOSA so as to address issues of equity in who is able to receive a SSOSA sentence).

Creating a pathway off of lifetime community custody for people under the ISRB is a bit more complex due to the fact that individuals sent to prison have a broader range of assigned risk-levels. Using RNR principles, we recommend that we modify the language of HB 2178 to create a step-down model for individuals under the authority of the ISRB. This step-down model will place people into DESISTANCE COHORTS based on their risk-level classification. Each Desistance Cohort will have a different minimum term of supervision with higher-risk individuals being given longer terms of community custody.

1. At time of release, the ISRB will place each individual into one of three DESISTANCE COHORTS based upon their assigned risk-level: Desistance Cohort A for individuals identified as low-risk to reoffend; Desistance Cohort B for individuals identified as moderate-risk to reoffend; Desistance Cohort C for individuals designated high-risk to reoffend. The Desistance Cohort is a designation strictly used by the ISRB; it is not used for supervision contact hours, community notification, etc. As for risk-leveling, the ISRB will continue to use a validated, risk-assessment tool to assign individuals their initial risk-level.
2. The maximum length of supervision for any individual, regardless of risk-level, is life. The minimum length of supervision for an individual depends on their initial Desistance Cohort placement.
  - a. The minimum term for an individual initially placed in Desistance Cohort A is 5 years.
  - b. The minimum term for an individual initially placed in Desistance Cohort B is 10 years.
  - c. The minimum term for an individual initially placed in Desistance Cohort C is 15 years.

## **Appendix H**

Citizens Against Government Entrapment (CAGE) – Response to  
SOPB 2024 Assignment

## Citizens Against Government Entrapment, (CAGE)

For seven years, CAGE has been informing community leaders and legislators about irregularities and inconsistencies related to Net Nanny and other stings where there is no contact and no real victim of a crime (solely fictitious victim).

In 2022, Representative Goodman, as Chair of the House Community Safety, Justice, & Reentry Committee, asked the Sex Offense Policy Board (SOPB) to address concerns about non-contact sex offenses and lifetime community supervision.

Since 2022, CAGE has had limited opportunity to directly inform the SOPB members of ongoing concerns and growing evidence that net nanny type stings are of questionable value.

In June of 2023, the Washington State Institute of Public Policy reviewed the stings and found:

*“There is limited research on internet sting operations. It is unclear whether these operations are effective at deterring or reducing crime.”*

## CONCERNS ARISE

Evidence of the irregular implementation and practices in the stings begins with the elimination of the Missing and Exploited Children's Task Force (MECTF) oversight committee, continues through misconduct noted by Capt. Mike Edwards of the Seattle Police Department and Commander of the WA State Internet Crimes Against Children Task Force, and includes recent dismissal or significantly reduced charges for people arrested through sting operations.

Additionally, a lack of specific statutes related to non-contact sex offense crimes - particularly those resulting from sting operations - has led to substantial disparities in prosecution and sentencing from county to county, and even within the counties themselves. This also leads to disparities in community supervision.

Today, it is far easier to convict a person of attempted rape of a child when there is *no child* than when there is a real child victim.

This defies common sense.

## BACKGROUND

Authority to charge non-contact sting-related defendants with attempted rape of a child developed in the following manner.

In 1999, Donald T. Townsend was arrested in a child sex sting operation. No statute existed for non-contact crime with a fictitious victim. An unprecedented interpretation of Washington's statute of attempted rape of a child resulted in Donald Townsend being charged and convicted of a violent sex offense against a person-despite no such person existed. *How is it violent without a real person?*

In 2002 Washington State Supreme Court upheld his conviction - STATE v. TOWNSEND, 147 Wn.2d 666

In 2003, Washington amended 9.68A.090 RCW to allow prosecutors to charge people for communicating with a minor for immoral purposes (CWMIP) if the person "communicates with someone they **believe** to be a minor".

In 2006, the statute was amended again, raising the charge of CWMIP to a class C felony *if the crime was committed by sending an "electronic communication"*. *Had these amendments been implemented prior to Townsend's case, the Supreme Court could most likely have ruled differently.*

## OUTCOME

A person is guilty of a gross misdemeanor if they isolate and say inappropriate things to a minor at a playground, but guilty of a felony with lifetime sentences and lifetime supervision if they talk to an undercover officer on an adult website in an online sting operation.

- **In WA state, sting offenses are the only non-contact, victimless sex offense sentenced under the ISRB.**
- **All other non-contact offenses are given determinate sentences with 3 years of community supervision.**
- Meanwhile, Class B and Class C felonies that are **contact** offenses result in **determinate** sentences (*with a specific end date*) with 3 years of supervision.

Indeterminate sentences under the ISRB are only supposed to be for violent sex acts against a real person, not a fictitious victim.

At the time the ISRB was established, sex stings were ran infrequently and rarely at best. Not in the same way or manner as today. We believe sting cases were overlooked ending up in the ISRB list of crimes. Today's net nanny type of stings, unlike when the ISRB was established, exhibit the fictitious child, (detective), actively participating in grooming and pursuing the defendant to commit the crime of raping them. **True victims of abuse do not aggressively solicit or manipulate their abuser into abusing them, and this tactic would be completely unnecessary if the target was actually interested in children**

Had the creators of the ISRB been aware of how the stings would be conducted, we believe there would have been a carve-out preventing cases with no contact and no person harmed from being given lifetime sentences under the ISRB. Or at a minimum, a new, separate crime specific to sting offenses would have been established.

## **COMMUNITY SUPERVISION**

WA Voices provided the SOPB with a well-written summary of research pertaining to the risk to reoffend, community risk, the timeline and expectations of individuals released back into the community, and the harm that is done by over supervision of those living offense-free within the community.

*“The research shows that mandatory lifetime community custody is not good public policy and does not align with the Risk-Needs-Responsivity (RNR) approach to supervision. Individuals are most likely to reoffend in the first two years after being released from prison and this is when they need the most support to help create a prosocial, crime-free, lifestyle.”*

## **CAGE RECOMMENDATIONS**

- Non-contact, sting offenses should not result in indeterminate sentences.
  - We agree with WA Voices that a step-down pathway off of lifetime supervision should be implemented. (See WA Voices recommendation for details.)
- **CAGE recommends for sting and other cases involving fictitious children where no one is harmed:**
- **Non-contact sex offense crimes with no victim or a fictitious victim, resulting from stings such as Net Nanny, should require a community supervision period of no more than 3 years.**

(See below: comparisons of partial list of states with definitive supervision.)

State Statute/Code Parole MAXIMUM:

<u>STATE</u>	<u>Statute</u>	<u>Community Custody*</u>
California	§ 5-288.4	3 Yrs
Colorado	CRS 18-2-101	3 Yrs
Connecticut	§ 53a-90ae	5 Yrs
DC	§ 22-3010.02	5 Yrs
Georgia	§ 16-4-1	2 Yrs **
Idaho	§ 18-1509A	3 Yrs
Illinois	§ 720 ILCS 5/11-6.6	30 Mos
Maine	§ 17-A §259	2 Yrs ***
Kentucky	UNK	3 Yrs
Nebraska	§ 28-833	12 Mos
Nevada	§ 193.330 & §201.195	3 Yrs
North Dakota	§ 12.1-20-05.1	3 Yrs
Oregon ORS	167.057	3 Yrs
Texas	§ 33.021	3 Yrs
<b>Washington</b>	<b>§ 9A.28.020 ROC1 &amp; 2</b>	<b>Lifetime</b>
Wyoming	§ 6-2-318	5 Yrs ****

\* *Many of these include, "up to "x" years*

\*\* 2 Years (good behavior begins discharge consideration)

\*\*\* Probation begins with 2 years left on sentence

\*\*\*\* Up to 5 years but can be nothing (0) - dependent on court

3. The research shows that time in community offense-free can be used as a proxy for a dynamic risk assessment. Therefore, once an individual under the ISRB has successfully lived in the community for 5 years without a new felony conviction, the process described in Option 2b provided by Dr. Knoth-Peterson will be used.
  - a. For individuals placed into Desistance Cohort A, the ISRB will do an administrative review after five years. During the review, the ISRB can consider input from DOC officials, law enforcement, victims, and prosecuting attorneys. If no concerns are raised concerning community safety, the ISRB will discharge the individual from community custody. If the ISRB has concerns, a hearing will be held. If the ISRB determines the individual continues to present a risk to community safety, they will retain the individual in Desistance Cohort A, thereby extending the minimum term of community custody for an additional two years. At that point, they will repeat the review process.
  - b. For individuals placed into Desistance Cohort B, the ISRB will do an administrative review after five years. During the review, the ISRB can consider input from DOC officials, law enforcement, victims, and prosecuting attorneys. If no concerns are raised, the ISRB shall place the individual into Desistance Cohort A where the individual will begin their 5-year minimum term in Desistance Cohort A. If the ISRB has concerns, a hearing will be held. If the ISRB determines the individual continues to present a moderate-risk to community safety, they will retain the individual in Desistance Cohort B, thereby extending the minimum term of community custody for an additional two years. At that point, they will repeat the review process.
  - c. For individuals placed into Desistance Cohort C, the ISRB will do an administrative review after five years. During the review, the ISRB can consider input from DOC officials, law enforcement, victims, and prosecuting attorneys. If no concerns are raised, the ISRB shall place the individual into Desistance Cohort B where the individual will begin their 5-year minimum term in Desistance Cohort B. If the ISRB has concerns, a hearing will be held. If the ISRB determines the individual continues to present a high-risk to community safety, they will retain the individual in Desistance Cohort C, thereby extending the minimum term of community custody for an additional three years. At that point, they will repeat the review process.

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