

SEX OFFENDER POLICY BOARD

List and Description of Information Compiled and Submitted for
the Purpose of Sex Offender and Kidnapping Registries Currently
Held By Public Agencies

September 30, 2015

INTRODUCTION

In 2015, the legislature passed SSB 5154 Sec. 16, which tasked the Sex Offender Policy Board (SOPB) with reviewing and making findings regarding disclosure to the public of information compiled and submitted for the purposes of sex offender and kidnapping offender registries that are currently held by public agencies.

The information submitted within this document has been collected by researching statutes, agencies' policies and guidelines as well as talking with members of the Sex Offender Policy Board, which in their representative capacities, work with several the agencies which collect and compile such data.

There are multiple agencies which are involved with sex and kidnapping offender registry information. While much of the information is subject to disclosure either via publication through RCW 4.24.550 or through court records, the information related to assessing risk classification is the most difficult to quantify. A juvenile or an adult offender will be initially classified and assigned a risk level at different stages of processing. After the initial classification, there are also opportunities to review and change that classification by different agencies. A petition process for reclassification often exists in different jurisdictions.

It is difficult to accurately describe the type of information that may be compiled related to risk assessment classification. At the most basic level there is a risk assessment tool and the corresponding assigned risk level. A more complex risk classification or re-classification could include supporting documentation such as letters of recommendation, proof of housing, other information that would provide a basis for aggravating or mitigating factors. Arguably, even though the agency does not create the source documents it becomes a part of the determination of the risk level assignment. Each agency and jurisdiction can have a different process requiring different supporting documents and different ways to document the risk level assignment. Examples have been included below for illustrative purposes; it is unlikely they represent a comprehensive list of material relevant to the classification and re-classification process.

Finally, offenders are required to register with the appropriate local law enforcement agency in person. They must give, or confirm, their name, aliases, residence, date and place of birth, place of employment, date and place of crime convicted, social security number, crime convicted of, photograph and fingerprints. If the offender lacks a fixed residence they must provide an accounting of their whereabouts for the reporting period. They must also provide a copy of an application of a name change when applicable.

I. Department of Social and Health Services, Juvenile Rehabilitation Administration (JRA)

The Juvenile Rehabilitation (JRA) is responsible for establishing a risk level for youth who have sexually offended (YSO).¹ Sex Offender Treatment Coordinators must make a determination of risk level within 30 days of intake.² Coordinators make this determination based on any relevant information, most which is found in a juvenile offender's case file. If a youth scores as a Level III risk, the counselor will present the youth at the Risk Level Classification Committee (RLCC) no later than 60 days for the initial determination.³

The RLCC is considered a formal subcommittee of the End of Sentence Review Committee (ESRC) in accordance with RCW 72.09.345.⁴ In addition to reviewing the Coordinators' Level III determinations, the RLCC is tasked with updating the initial risk determination prior to YSOs release, transfer, or pursuant to interstate compact. The RLCC also may review a YSO to determine whether they meet the criteria of being a Sexually Violent Predator (SVP) pursuant to Chap. 71.09 RCW.

The RLCC must follow the Department of Corrections ESRC "Rules of Order." Information reviewed by the committee may include a treatment report, case file, any information used for scoring, a list of court documents, police reports, diagnostic reports and other materials. The committee makes records of their determinations which include memorializing the risk level, risk level tool scores, any aggravating or mitigating which contribute to a departure from the tool's classification.

Once the RLCC reviews and approves the risk level classification recommendations and before release, they issue a Notification of Sex Offender Release Form⁵ and must be documented in the Automated Client Tracking (ACT) System. JRA must pre-register YSOs prior to discharge from residential custody or release to parole.⁶ They forward fingerprint cards, a recent photograph, and DSHS form #09-746A to the Sheriff prior to release. If the YSO is being transferred to a minimum security facility, the case file, in addition to information described above, is forwarded to the facility. JRA must also notify the chief of police of the city, sheriff and/or tribal law enforcement 35 days before discharge from residential obligation, release to parole or authorized leave and the use a "bulletin," which includes, at a minimum, the YSO's identity, criminal history and risk level classification.⁷

The bulletin is also distributed to approved private schools, and/or the chair of the common school district board of directors in certain circumstances.⁸ Minimum-security facilities

¹¹ Washington State Juvenile Justice & Rehabilitation Administration, Policy 3.52 (40). Authorized by RCW 4.24.550, 4.24.5501, 13.40.217, and 72.09.345.

² Id at 1.1.

³ Id at 1.1.1.

⁴ Id at 2, See RCW 72.09.345.

⁵ Id at 5.1.1, DSHS Form 00-747A

⁶ JRA Policy 9-400(3).

⁷ JRA Policy 9-400(5).

⁸ JRA Policy 9-400(10).

must provide written notification of a YSOs criminal history to schools if they attend school,⁹ to their employer,¹⁰ a volunteer project supervisor,¹¹ and treatment providers.¹² JRA must also notify the Division of Developmental Disabilities (DDD) of the release of a YSO who is known to be eligible for DDD services within 30 days of release.¹³ It is likely that the information referred to DDD would be related to the offender's case file, although other information related to sex or kidnapping registration information could be released.

JRA has several policies related to the release of information. JRA Policy 9, dated May 1, 2009, section 19 states: "JRA may provide additional notification information on youth with sex and kidnapping offenses if JRA determines it is relevant and necessary for community protection." It also states that information released under this section requires the approval of the JRA Division Director or designee pursuant to Policy 29, titled Confidentiality and Release of Juvenile Records and Operation Records."

JRA Policy 5.40(29) titled "Managing JR Juvenile and Operations Records," establishes guidelines related to confidentiality and authorized release of juvenile records and Juvenile Rehabilitation (JR) operations records. JR will not release original juvenile or JR operations records unless approved by the JR Records Administrator, on-site review of original records is allowed.¹⁴ JR must release records or information for youth who have been convicted of a sexual offense that requires registration pursuant to RCW 72.09.345 and 4.24.550.¹⁵ Pursuant to RCW 13.50, client records maintained by JR are confidential. Request for juvenile records are not considered public records requests.¹⁶ Client records may not be released without appropriate authorization or upon receipt of a valid court order in accordance with RCW 13.50 and 70.02.030.¹⁷

Client identifying or other confidential information in operations records must be redacted prior to release per RCW 42.56.¹⁸ Some juvenile records, other than the JR Case File, may not be exempt from public disclosure such as ACT system information, correspondence, e-mail, or personal notes that may be released if client-identifying information and other confidential information is redacted.¹⁹

⁹ JRA Policy 9-400(11), see DSHS Form 20-228 and Form 20-228A.

¹⁰ JRA Policy 9-400(12), see DSHS Form 20-229A

¹¹ JRA Policy 9-400(13), see DSHS Form 20-230

¹² JRA Policy 9-400(14), see DSHS Form 20-229B

¹³ JRA Policy 9-400(4).

¹⁴ JRA Policy 5.40(29)1.3.

¹⁵ JRA Policy 5.40(29)6.

¹⁶ JRA Policy 5.40(29)11.

¹⁷ JRA Policy 5.40(29)13.

¹⁸ JRA Policy 5.40(29)30.

¹⁹ JRA Policy 5.40(29)32.1.

II. Department of Corrections, End of Sentence Review Committee (ESRC)

The End of Sentence Review Committee (ESRC) is responsible for reviewing all sex and registrable kidnapping offenders releasing from state prisons, mental hospitals or juvenile rehabilitation facilities. This includes offenders that have been convicted of sex offenses, have been found not guilty by reason of insanity, been found legally incompetent to stand trial, have been convicted of sexually motivated offenses, and have been convicted of kidnapping/unlawful imprisonment offenses.

The committee uses the Washington State Sex Offender Risk Level Classification Revised 1999 Instrument²⁰ to assess adult offenders. They make recommendations about individuals who appear to meet civil commitment criteria pursuant to RCW 71.09 as a sexually violent predator. Law Enforcement Notification (LEN) Specialists prepare a detailed report on all cases requiring review by the ESRC. They make recommendations for additional conditions of supervision if relevant. They conduct actuarial risk assessments using tools such as the STATIC-99 or MnSOST-R which are included in the report.

The specialists prepare Law Enforcement Alerts (LEAs) on certain cases where the offender is required to register due to a Kidnapping or Unlawful Imprisonment conviction involving a minor, not the child of the offender and sometimes on offenses that are not sex offenses per statute but involved sexual elements. The reports and reviews are shared with several criminal justice agencies before release.

III. Law Enforcement Agencies

A. County Sheriff's Departments

REGISTRATION DOCUMENTS

An offender who is required to register pursuant to RCW 9A.44.130 must, in some format, provide to the county sheriff: name, any aliases used, accurate residential residence or if lacking a fixed residence, where they plan to stay, date and place of birth, place of employment, crime for which they have been convicted, date and place of conviction, social security number, photograph and fingerprints.²¹ The registrant must also provide the Sheriff with an accurate accounting of where he or she stayed during the week during their weekly report if they lack a fixed residence.²² If a person subject to registration requirements applies to change their name pursuant to RCW 4.24.130, they must provide the Sheriff with a copy of the application.²³

The Sheriff is required to give notice to the school district and the school principal or institution's department of public safety upon notice that the registered person will be attending or employed by a school or institution of higher learning.²⁴ The notification must include: name,

²⁰ Retrieved at: <http://www.doc.wa.gov/community/sexoffenders/docs/WSSORLCR99.pdf>

²¹ RCW 9A.44.130(2)(a).

²² RCW 9A.44.130(5)(b).

²³ RCW 9A.44.130(6).

²⁴ RCW 9A.44.138.

and any aliases used, complete residential address, date and place of birth, place of employment, crime for which they have been convicted, date and place of conviction, social security number, photograph and risk level classification.²⁵ This information received by the school or institution personnel is considered “confidential” and may not be further disseminated except as provided in RCW 28A.225.330.²⁶ The dissemination of information to school personnel is also restricted based on risk level.²⁷

CLASSIFICATION DOCUMENTS

Risk Level Assessment Documents – The Static99R is the primary risk assessment tool used by law enforcement for adult offenders.²⁸ It may be used for adult females but has not been validated for that population. Law enforcement is to use the Washington State Classification tool for juvenile offenders and may use it for adult female offenders. Other information and aggravating or mitigating factors known to the agency and deemed rationally related to the risk posed by the offender to the community.

Local law enforcement agencies that disseminate information pursuant to RCW 4.24.550 are required to review available risk level classifications, assign risk level classifications to all offenders about whom information will be disseminated, and make a good faith to notify the public and residents within a reasonable period of time after the offender registers.²⁹ If the agency assigns a different notification than what the ERSC or DSHS assigned them, they must submit their reasons supporting the change in classification to the agency.³⁰ This Notice of Departure Form is required if an agency assigns a different risk level classification than the one from the End of Sentence Review Committee.³¹ This notice may include, but is not limited to:

- A determination that the assessment tool was not scored correctly.
- Law enforcement has information that was not a part of the ERSC decision.
- Circumstances are such that the risk assessment tool cutoff scores do not correspond with community safety issues.

RECLASSIFICATION

Agencies *may* develop a process to allow an offender to petition for review of their assigned risk level classification.

The following are examples of different jurisdictions’ request for information when considering “reclassification.”

Island County Request for Reclassification – “Risk Level Reclassification” document, includes the ability to supplement the form with:

²⁵ RCW 9A.44.138(1).

²⁶ RCW 9A.44.138(4).

²⁷ RCW 9A.44.138(2)(a) and (b).

²⁸ Model Policy p. 20.

²⁹ RCW 4.24.550(6).

³⁰ RCW 4.24.550(10).

³¹ RCW 43.43.540 and 4.24.550(1).

- List of any contact with Law Enforcement in the past 5 years.
- Letters of successful completion from any therapists, treatment providers, education, or training programs, etc. complete with contact information.
- 3 personal character reference letters.
- Steady employment with good review letter from employer (copies of W-2's or paystubs)
- Proof of stable housing by providing copy of rent or mortgage statement.
- Current polygraph.
- Any other documentation that would show positive improvement in areas of responsibility.

Lewis County Request for Reclassification

- Evidence of completion of a treatment plan.
- Apprenticeships and job training.
- Letters from 3 personal character references.
- Also includes an application which requires SSN, current and previous addresses, spouse name, children's names, treatment provider's name, phone number and address.

Skagit County Request for Reclassification

- List of any contact with Law Enforcement in the past 5 years.
- Letters of successful completion from any therapists, treatment providers, education, or training programs, etc. complete with contact information.
- 3 personal character reference letters.
- Steady employment with good review letter from employer (copies of W-2's or paystubs)
- Proof of stable housing by providing copy of rent or mortgage statement.
- Current polygraph.
- Any other documentation that would show positive improvement in areas of responsibility.

Thurston County Request for Reclassification

- Offender's personal, financial, and employment history which may include a credit check, letters of support from friends and family and/or a letter of support from an employer.
- Written support of a Washington State Certified Sex Offender Treatment Provider (if Level II applying for reclassification to Level I).
- Allow examination of any computer under offender's control for evidence of illegal images (no idea if there are reports related to this)

COMMUNITY NOTIFICATION MATERIALS

- Media releases
- Any documents available at community/education notification forums

- Offender specific flyers (using door-to-door distribution or defined area mailings)
- Public website

B. Washington State Patrol (WSP)

The Washington State Patrol is required to maintain a central registry of sex offenders and kidnapping offenders that are required to register pursuant to RCW 9A.44.130.³² The county sheriff is required to send registration information, photographs, fingerprints, risk level notification and any change of address to the WSP.³³

The extent of public disclosure of relevant and necessary information shall be rationally related to: (a) the level of risk posed by the offender to the community; (b) the locations where the offender resides; (c) the needs of the affected community members for information to enhance their individual and collective safety.³⁴ Documentation related to these determinations and disclosures should exist somewhere within Local Enforcement Agencies and/or the Washington State Patrol unless they are disclosing information about the website pursuant to RCW 4.24.550(5).

RCW 4.24.550(8) relieves public officials, employees or agencies of liability for failing to release information under the section. RCW 4.24.550(7) relieves elected public officials, public employee, public agencies or units of local government and its employees of civil liability and damages due to discretionary risk classifications or release of relevant and necessary information unless they acted with gross negligence or in bad faith. RCW 4.24.550(10) also states that no information regarding sex and kidnapping offenders who are required to registered should be considered confidential except as may otherwise be provided as law.³⁵

IV. Washington Association of Sheriffs and Police Chiefs (WASPC)

Subject to funding, WASPC is required to create and maintain a statewide registered kidnapping and sex offender web site, which shall be available to the public.³⁶ The website shall post all Level II, Level III, and Level I offenders who are out of registration compliance and all kidnapping offenders.³⁷ Although not considered a “state agency” pursuant to RCW 42.56, WASPC sometimes considers records which they hold, by direction of the legislature, as subject to public disclosure. Sex offender registration information has been previously considered as such. Effective July 24, 2015, any public records request received by WASPC under Chap. 42.56 RCW for sex offender and kidnapping offender registration, records or web site data, must refer the requestor within five days to the appropriate law enforcement agency or agencies for submission of the request.

³² RCW 43.43.540(2).

³³ RCW 43.43.540(1).

³⁴ RCW 4.24.550(2).

³⁵ RCW 4.24.550(9).

³⁶RCW 4.24.550(5)(a).

³⁷ *Id.*

WASPC is an association which provides guidance and model policies related to sex offender registration and notification procedures required of those agencies. They have memorialized this advice in their “Model Policy for Washington State Law Enforcement Adult and Juvenile Sex Offender Registration and Community Notification”³⁸ which is available pursuant to the requirement in RCW 4.24.5501.

V. Other State Agencies

If the offender is in need of services from the State, County or City they are residing in, there may be some need to disclose registry information. For example, if JRA knows that an offender is eligible for DDD services, they must make a referral prior to release. If the offender applies for public housing, they may need to disclose relevant sex offender information. The scope of potential services provided by state agencies where there *may be* a need to disclose registry information, is too large for a timely review within the scope of this project.

³⁸ Last modified July 2015.

List and Description of Information Held by Public Agencies Related to Sex and Kidnapping Offender Registries

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Juvenile Rehabilitation Administration (JRA)

- Juvenile Offender's Case File - offense information, behavioral reports, treatment reports, psychosexual evaluations.
- Sex Offender Risk Assessment Tool(s) and scoring
- Any documents related to the Risk Level Classification Committee including information used for case presentations, minutes and any documents which memorialize risk and/or mitigating or aggravating factors.
- LEN reports which may include information regarding the current offense, sex offense history, other criminal history, psychological history, treatment history, infractions during the current incarceration, employment history, adolescent conduct problems and relationship history.
- Notification "bulletin" which is sent to relevant agencies.
- Documentation kept within ACT related to registry information including classification materials.

DEPARTMENT OF CORRECTIONS

End of Sentence Review Committee (ESRC)

- Case File - offense information, behavioral reports, treatment reports, psychosexual evaluations.
- Sex Offender Risk Assessment Tool(s) and scoring.
- Any documents related to the End of Sentence Review Committee including information used for case presentations, which may include offender's criminal history, sexual deviancy, specific concerns and any previous ESRC actions, minutes and any documents which memorialize risk and/or mitigating or aggravating factors.
- LEN reports which may include information regarding the current offense, sex offense history, other criminal history, psychological history, treatment history, infractions during the current incarceration, employment history, adolescent conduct problems and relationship history.
- Notification "bulletin" which is sent to relevant agencies.
- Documentation kept within ACT related to registry information including classification materials.

COUNTY AGENCIES – LAW ENFORCEMENT

- Any case/offender information forwarded by another agency.
- Documents related to in-person offender registration. This may include forms or other information which reflects the offender's name, aliases, residence, date and place of birth, place of employment, crime committed, date and place crime committed, social security number, photo and fingerprints.
- If an offender lacks a physical address, some documentation which provides an accounting of their whereabouts for the previous week.
- Application of name change if necessary.
- Documents related to risk level classification or re-classification.
- Assessment tool and score.
- Other information related to mitigating or aggravating factors which may include information such as letters of recommendation, proof of housing and/or employment stability, evidence of completion of treatment plan, current polygraph, other information that shows positive improvement.
- Notice of departure form.
- Media releases.
- Any documents available at community/education notification forums that include registration information.
- Offender specific flyers.
- Any information on the public website.

WASHINGTON STATE PATROL

- Any registration information sent by the county sheriff including photographs, fingerprints, risk level notification and any change of address.
- Central registry of sex offenders.

WASHINGTON ASSOCIATION OF SHERIFFS AND POLICE CHIEFS*

**not technically considered a state agency*

- All documents or data submitted to the statewide registered kidnapping and sex offender web site.