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Sex Offender Policy Board

Chapter 261, Laws of 2015 Findings and Recommendations by the Sex Offender Policy Board

(SSB 5154 Section 16)

December 2015

Sex Offender Policy Board

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EXECUTIVE SUMMARY

The Washington State Sex Offender Policy Board (SOPB) was created to advise the Governor and the Legislature as necessary on issues relating to sex offender management. RCW 9.94A.8673 authorizes the Governor or a legislative committee to request the SOPB be convened to "undertake projects to assist policymakers in making informed judgments about issues relating to sex offender policy."

In the 2015 legislative session, Governor Inslee signed into law Chapter 261, Laws of 2015 (SSB 5154) on May 14, 2015. Section 16 of this law required the SOPB to make findings and recommendations regarding the following:

(a) Disclosure to the public of information compiled and submitted for the purposes of sex offender and kidnapping offender registries that is currently held by public agencies, including the relationship between Chapter 42.56 RCW and RCW 4.24.550;

(b) Any other best practices adopted by or under consideration in other states regarding public disclosure of information compiled and submitted for the purposes of sex offender and kidnapping offender registries;

(c) Ability of registered sex offenders and kidnapping offenders to petition for review of their assigned risk level classification and whether such a review process should be conducted according to a uniform statewide standard; and

(d) The guidelines established under RCW 4.24.5501 addressing sex offender community notification, including whether and how public access to the guidelines can be improved.

After collecting information, reviewing available literature and discussing over several months' time, the SOPB submits the following recommendations:

SECTION 16(A) RECOMMENDATIONS

A) RCW 4.24.550 be amended to include the following sentence:

> *"Sex offender and kidnapping offender registration information is exempt from public disclosure under chapter 42.56 RCW."*

B) RCW 42.56.130 be amended to include the following sentence:

> *"Information compiled and submitted for the purposes of sex offender and kidnapping offender registration pursuant to RCW 4.24.550 and 9A.44.130, or the statewide registered kidnapping and sex offender website pursuant to RCW 4.24.550, regardless of whether the information is held by a law enforcement agency, the statewide unified sex offender notification and registration program under RCW 36.28A.040, the central registry of sex offenders and kidnapping offenders under RCW 43.43.540, or another public agency."*

Section 16(c) Recommendation

A) Development of recommended process and criteria for an offender's request for risk level classification review.

B) Availability to petition for review of assigned risk level classification.

C) Survey of jurisdictions to assess which counties have an established process to review a sex or kidnapping offender's request for risk level classification review

Section 16(d) Recommendation

The SOPB recommends the Legislature take no action on this topic.

INTRODUCTION

In 2015, the Legislature passed Chapter 261, Laws of 2015 (SSB 5154). Section 16 of this bill required the Sex Offender Policy Board (SOPB) to make findings and recommendations regarding the following:

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(b) Any other best practices adopted by or under consideration in other states regarding public disclosure of information compiled and submitted for the purposes of sex offender and kidnapping offender registries;

(c) Ability of registered sex offenders and kidnapping offenders to petition for review of their assigned risk level classification and whether such a review process should be conducted according to a uniform statewide standard; and

(d) The guidelines established under RCW 4.24.5501 addressing sex offender community notification, including whether and how public access to the guidelines can be improved.

Back in 2009, the SOPB reviewed twenty years of research to adopt several key findings critical to the development of an effective sex offender management system.[1] These key findings included, in part, that:

- Washington state's current system supports public safety by setting community notification standards using a risk-based analysis instead of an offense-based method. The system is built on the premise that the community and sex offender response system partner to achieve public safety.
- Empirically validated risk tools are one of the most effective ways to determine an offender's risk to re-offend. The use of standardized dynamic factors can also be helpful in risk level assignment.
- Youths who have sexually offended are different from adults who commit sex offenses, in part, because of ongoing brain and neurological development. Sex and kidnapping offender laws regarding juveniles and public policy should reflect their unique amenability to treatment and vulnerability to collateral consequences due to their ongoing development.
- The key to ensuring public safety is to make well-informed decisions based on the best available research.

These findings are relevant to the examination of disclosure of sex and kidnapping offender registration information to the public. The work herein builds on the SOPBs previous research and findings.

[1] 2009 Annual Report to the Legislature, Sex Offender Policy Board, p. 8.

SEC. 16(a) DISCLOSURE TO THE PUBLIC OF INFORMATION COMPILED AND SUBMITTED FOR THE PURPOSES OF SEX OFFENDER AND KIDNAPPING OFFENDER REGISTRIES THAT IS CURRENTLY HELD BY PUBLIC AGENCIES, INCLUDING THE RELATIONSHIP BETWEEN CHAPTER 42.56 RCW AND RCW 4.24.550

In 1990, when Washington state enacted the Community Protection Act and became the first jurisdiction to authorize the release of sex offender information to the public, it was predicated on the premise that sex offenders had a high likelihood to re-offend and that increased distribution of personal information kept the public safe. It was also believed that widespread distribution of sex offender registration information would create a deterrent effect; offenders who were known by the community would be on notice that people were watching their behavior and would be less likely to re-offend.

However, studies have not definitively shown that community notification has a decreased effect on recidivism and there is little correlation to either general or specific deterrence.[2] Instead, much of the recent literature indicates that destabilization of the offender may make reintegration more challenging and therefore, possibly increasing the likelihood of re-offense.

Discussions within the literature regarding the disclosure of sex offender registration information are ordinarily found within articles related to "community notification". However, the concept of community notification can often be different than releasing information pursuant to an individualized request. Community notification generally refers to disclosure of information both "passively" and "actively". Passive notification ordinarily refers to publishing information on the Internet or maintaining lists of offenders for those who request it. Active notification requires an entity, usually law enforcement, to affirmatively notify communities, daycare and schools, among other organizations, about the existence of the offender in their geographic location.[3] Affirmative notification can include community meetings, bulletins and/or press releases. Community notification often does not refer specifically to public disclosure in response to public requests. The SOPB could find no literature that was specifically limited to disclosure pursuant to individual requests therefore, we reviewed articles related to notification or disclosure of sex offender information generally.

Currently, Washington has limited their Internet publication of information to eligible, convicted sex and kidnapping offenders who have been assessed as a level II or level III risk, while other states have variations on the information that they publish via the Internet.

Generally, the disclosure of sex offender registration information to the public is found within the community notification provisions of a state's adopted Sex Offender Registration and Notification Act Laws (SORNA). Some also refer to the community notification portion of sex offender laws as "Megan's Laws" named after Megan Kanka, a girl in New Jersey who was raped and killed in 1994 by her neighbor, a convicted sex offender. States have various ways of distributing convicted sex

[2] Drake, E.K., and Steve Aos. "Does Sex Offender Registration and Notification Reduce Crime? A Systematic Review of the Research Literature," Washington State Institute for Public Policy (2009).
[3] Locke, Christina, and Bill F. Chamberlin. "Safe From Sex Offenders Legislating Internet Publication of Sex Offender Registries." *The Urban Lawyer* 39 (2007):1-18.

offender registration information under the notification provisions. These methods are ordinarily referred to as "community notification" which can include community meetings, flyer distributions, and Internet publication of registrant information. Thus, authors often look at the entire system of registration and notification or "community notification" generally, instead of Internet public disclosure specifically.

Literature Review on Disclosure of Registration Information

The result of a review of current literature on public disclosure of sex and kidnapping registration information is that evidence shows widespread disclosure has a negative impact on offenders. Sex offenders experience physical assault and injury,[4] harassment[5] and even death[6] as a result of disclosure of information. Widespread public disclosure of sex offender information also triggers consequences such as unemployment, housing challenges, which in turn can result in an enhanced risk of recidivism.[7] In a study of female sex offenders in two states, every respondent reported at least one negative effect of being identified by the public registry.[8]

Other articles cite that it is not just offenders who are affected by the disclosure of their identities and their personal information. The offenders significant others, children, and families are also significantly impacted by disclosure. In an in-depth study of offenders and their experiences with community notification, among other things, the study found that most offenders surveyed either experienced the loss of housing or employment or the ongoing fear of those things.[9] Offenders expressed that there is a large amount of stress on their families which strains the network of supportive relationships and, in turn, successful re-integration.[10]

The stigma of registration and long-lasting punishment of complying with registry requirements is particularly challenging for juveniles.[11] Registration and notification burdens are felt for a longer period of time and in ways more onerous for juveniles than their adult counterparts.[12] While studies have found that youth offender brains are still developing and are more amenable to treatment, they

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[4] Turner, Chrisandrea, L. "Convicted Sex Offenders vs. Our Children, Whose Interests Deserve the Greater Protection?" *Ky. LJ 86* (1997): *477*.

[5] Lasher, Michael P. & Robert J. McGrath. "The impact of community notification on sex offender registration: A qualitative review of the research literature." *International Journal of Offender Therapy and Comparative Criminology,* 56 no. 1 (2012): 6-28.

[6] Martin, Jonathan, & O'Hagan, Maureen, "Killings of 2 Bellingham Sex Offenders May Be Vigilante, Policy Say" Seattle Times, August 30, 2005. *See also*, Pandell, Lexi, "The Vigilante of Clallam County," The Atlantic, Dec. 4, 2013.

[7] Periman, Deborah. Revisiting Alaska's Sex Offender Registration and Public Notification Statute, Alaska Justice Forum 25(1-2):2-5. (Spring 2008-Summer 2008).

[8] Vandiver, Donna M., Kelly Cheeseman Dial, and Robert M. Worley. "A Qualitative Assessment of Registered Female Sex Offenders Judicial Processing Experiences and Perceived Effects of a Public Registry." *Criminal Justice Review* 33, no. 2 (2008): 177-198.

[9] Zevitz, Richard G., and M. A. Farkas. "Sex offender community notification: Managing high risk criminals or exacting further vengeance." *Pogrebin, M eds* (2004): 114-123.

[10] *Id*.

[11] Carpenter, Catherine L. "Against Juvenile Sex Offender Registration," Available at SSRN 2319139 (2013).

[12] *Id*. At 771.

can also experience profound damage to their self-esteem and feel isolated as a result of registration and notification.[13]

There is evidence to suggest that unintended and collateral consequences can have a negative impact on offender behavior and stability. Instability and inability to re-integrate can become a criminogenic factor which in turn, contributes to a higher risk of recidivism[14] and a potential decrease in public safety.

It is clear that the focus of sex and kidnapping offender registration laws is not on the privacy rights of the offender, nor do we argue that policy should be created based on that premise. The Legislature originally recognized a reduced expectation of privacy[15] in offenders' personal information because of the nature of the crime they committed; however, in light of the significant impact of collateral consequences which heightens the risk of re-offense, recent literature prompts further evaluation of any decision which would allow blanket public disclosure of low-risk offender identity or personal information.

Some articles review whether some constitutional level of privacy should be provided for offenders that are deemed a low risk to re-offend.[16] For example, one author observed that Montana has what is described as a "heightened right to privacy" within their state constitution.[17] The author asserted that the right of individual privacy must not be infringed upon without a showing of compelling interest and a strict scrutiny analysis requires that the law be narrowly tailored to serve the compelling state interest. Arguably, because level I offenders are classified at the lowest risk to reoffend, the decision to disclose their information to the public is not narrowly tailored and therefore is unconstitutional. Even though several articles review whether state SORNA laws violate an offender's privacy rights, courts have repeatedly held that there is no *per se* privacy right in the personal information of a sex offender.[18]

The Washington Supreme Court previously looked at the need to limit disclosure of sex offender registration information when determining whether imposing the state's Community Protection Act to a felony sex offense was an ex post facto violation. In *State v. Ward*,[19] the court extensively discussed *limited* public disclosure provisions related to sex offender information. The court was asked to review whether retroactively applying the Community Protection Act to felony sex offenses

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[13] Pittman, Nicole, and Allison Parker. *Raised on the registry: The irreparable harm of placing children on sex offender registries in the US.* 2013. *See also* Freeman-Longo, Robert E. "Revisiting Megan's Law and Sex Offender Registration: Prevention or Problem." *Sexual violence: Policies, practices, and challenges in the United States and Canada* (2002): 223.
[14] Prescott, J.J. "Do Sex Offenders Make Us Less Safe?" *35 Regulation 48* (2012-2013).
[15] Laws of 199 , ch. 3 § 116.
[16] Preble, Johnna. "The Shame Game: Montana's Right to Privacy for Level I Sex Offenders," *Mont. L. Rev. 25* (2014): 297. *See also,* Kabat, Alan, R. "Scarlet letter sex offender databases and community notification sacrificing personal privacy for a symbol's sake," *Am. Crim. L. Rev.* 35 (1988): 333.
[17] Mont. Const. art. II § 10.
[18] Trinkle, Catherine A. "Federal Standards for Sex Offender Registration: Public Disclosure Confronts the Right to Privacy," *Wm. & Mary L. Rev.* 37 (1995): 299. *See also* Turner, Chrisandrea L. "Convicted Sex Offenders vs. Our Children, Whose Interests Deserve the Greater Protection?" *Ky L.J.* 86 (1997): 477.
[19] 123 Wn.2d 488 (1994).

was an ex post facto violation.[20] The court concluded that retroactive application of the statute did not violate either the appellants' equal protection or due process rights under the federal and state constitutions.

A review of the court's analysis in this decision indicates that they considered the statutory framework to be one of "limited disclosure".[21] Their holding concluded:

> "We hold, however, that because the Legislature had limited the disclosure of registration to the public, the statutory registration scheme does not impose additional punishment on registrants."

The court did not review the question of disclosing sex offender registration information pursuant to the Public Disclosure Act (PDA) Chapter 42.17 RCW which was in effect at the time. The court is currently considering the question of disclosing sex and kidnapping offender registration information in relation to the current Public Records Act (PRA) Chapter 42.56 RCW and RCW 4.24.550 in *Doe v. Washington State Patrol.* However, it is unlikely that the case's resolution will depend on an examination of the individual offender's rights and will more likely rest on whether the information in RCW 4.2.450 is subject to a general public records analysis.

Aside from the impact of release of information on the offender's ability to reintegrate, there is little question that the public feels safer when they have access to sex and kidnapping offender registration information. The Washington State Institute for Public Policy performed two studies on public perception; one in 1998 and a follow-up in 2008.[22] Both studies conducted a random digit-dialing survey to measure the respondent's familiarity with, opinion of, and reaction to the law as well as its purposes and importance. The majority of respondents indicated they felt safer knowing about sex offenders in their community and they indicated that Washington's community notification law was important.[23] Fifty-four percent of the respondents thought that community notification makes it easier for citizens to harass, threaten or abuse the released sex offender.[24] Seventy-eight percent of the respondents thought that special care should be taken to prevent such harassment and eighty-four percent of respondents thought that notification would make it harder for offenders to rent a house, find a new job, or establish a new life.[25]

Other articles report similar results, that even if the public does not actively use offender registration information, they feel better when it is available.[26] This perception of public safety due to large-scale

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[20] *Id. at* 495.
[21] *Id.* at 499.
[22] Phillips, Dretha M. *Community Notification as Viewed by Washington's Citizens.* Olympia, WA: Washington State Institute for Public Policy, 1998. Lieb, Roxanne and Corey Nunlist. *Community Notification as Viewed by Washington's Citizens: A Ten-Year Follow-U.* Olympia, WA: Washington State Institute for Public Policy 2008.
[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] Boyle, Douglas J., Laura M. Ragusa-Salerno, Andrea Fleisch Marcus, Marian R. Passannante, and Susan Furrer. "Public knowledge and use of sexual offender internet registries: Results from a random digit dialing telephone survey." *Journal of Interpersonal Violence* (2013): 0886260513511698. *See also,* McCartan, Kieran.

disclosure has been criticized in recent years. Community notification laws were originally enacted based on the premise that sex offenders have a high recidivism rate and jeopardize general public safety.[27] However, there is some question as to whether blanket disclosure of sex offender information actually perpetuates a false sense of security.[28] Recent literature indicates that while "stranger danger" is an important theme to educate around, education efforts should be more focused on those family members and friends who are alone with their children.[29]

A one-size-fits-all approach to disclosure of sex offender information is not only ill-advised but may cause harm. Although the SOPB realizes advocating for disclosing less offender information, rather than more information, will likely be challenging,[30] members believe that there is an important balance that should be stricken between record availability and the offender's ability to re-integrate to help ensure a safer public. Thoughtful consideration of reviewing disclosure policy falls in line with many states that are re-examining certain provisions within their sex offender registration and notification laws.[31]

See Appendix A for literature review completed for the SOPB.

Public Information Compiled for Sex and Kidnapping Registry Offenses and the Relationship Between Chapter 42.56 and RCW 4.24.550

Consideration related to public disclosure of sex and kidnapping registration information in Washington is unique because of how many different governmental agencies handle related information and each agency's independent obligations to comply with the Public Records Act. There are various forms of sex and kidnapping offender registration information that reside within multiple agencies. This information is required by different statutes, most notably RCW 9A.44.130, which pertains to registration of sex offenders and kidnapping offenders.

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 he or she plans to stay, date and place of birth, place of employment, crime for which he or she has been convicted, date and place of conviction, social security number,

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"From a lack of engagement and mistrust to partnership? Public attitudes to the disclosure of sex offender information." *International Journal of Police Science & Management* 15, no. 3 (2013): 219-236.

[27] Laws of 1990, ch. 3 § 116, Laws of 1994,ch. 129 §1, Laws of 1997, ch. 113 §1,

[28] Amyot, Vanessa. "Sex Offender Registries: Labelling Folk Devils," *Crim. L. Q.* 55 (2009):188. *See also* Prescott, J.J. "Do Sex Offender Registries Make Us Less Safe?" *Regulation* 35 (2012): 48.

[29] Yung, Corey Rayburn. "Ticking Sex-Offender Bomb, The" *J. Gender Race & Just.* 15 (2012): 81.

[30] Logan, Wayne. "Megan's Law as a Case Study in Political Stasis," *Syracuse L. Rev.* 61 (2011): 371.

[31] Mather, Kate and Kim, Victoria. "California eases Jessica's Law Restrictions on Some Sex Offenders," Los Angeles Times, March 26, 2015. Retrieved at: http://www.latimes.com/local/crime/la-me-jessica-law-20150327-story.html, Neyfackh, Leon. *California's Sane New Approach to Sex Offenders And Why No Other State is Following Its Example*, www.slate.com (April 2, 2015). Retrieved at: http://www.slate.com/articles/news_and_politics/crime/2015/04/california_s_sane_new_approach_to_sex_offenders_and_why_no_one_is_following.html Schwartz, Robert G. "Time to Revisit Sex Offender Registration Laws," *29 Crim. Just. 43* (2014-2015).

photograph, and fingerprints.[32] The registrant must also provide the sheriff with an accurate accounting of where he or she stayed during the week if he or she lacks a fixed residence.[33] If a person subject to registration requirements applies to change his or her name pursuant to RCW 4.24.130, he or she must provide the sheriff with a copy of the application.[34]

The county sheriff is required to send this registration information, photographs, fingerprints, risk level notification, and any change of address to the Washington State Patrol (WSP).[35] The WSP is required to maintain a central registry of sex offenders and kidnapping offenders who are required to register pursuant to RCW 9A.44.130.[36] WSP acts as a repository for the sex offender registration forms submitted by the county sheriffs for retention and enters the registration data from these "source documents" into the database.[37] These documents also include the offender's current risk level classification; it is unknown whether the WSP maintains any documents in support of the classification decision such as the completed classification tool or records related to discretionary leveling decisions. WSP asserts that the State Patrol Database only includes the offender's name, residential address, date of birth, crime for which he or she was convicted, date of conviction, and county of registry.[38]

In addition to this legislative mandate, RCW 4.24.550 requires the Washington Association of Sheriffs and Police Chiefs (WASPC) to, subject to funding, maintain a statewide registered kidnapping and sex offender website that is available to the public.[39] The website is required to post information regarding: all level II and level III offenders, level I offenders who are out of registration compliance, and all kidnapping offenders.[40] Although WASPC stresses that they are not generally a state agency subject to the PRA, they agree that pursuant to specific legislative mandate, they maintain a defined public database with the information in the database constituting a public record.[41]

Although law enforcement agencies are primarily responsible for maintaining registration information, many other public agencies are responsible for the initial risk classification and notifications. Other agencies that may maintain sex offender registration information include, but are not limited to, the Department of Social and Health Services, the Juvenile Justice & Rehabilitation Administration, the Department of Corrections, the Special Commitment Center at the Department of Social and Health Services, as well as other agencies that may provide services to

[32] RCW 9A.44.130(2)(a).
[33] RCW 9A.44.130(5)(b).
[34] RCW 9A.44.130(6).
[35] RCW 43.43.540(1).
[36] RCW 43.43.540(2).
[37] Brief of Appellant Washington State Patrol at 1, John Doe A, et al v. Washington State Patrol et al, No. 90413-8.
[38] Washington State Patrol's Answer to Amicus Brief at 1-2, John Doe A, et al v. Washington State Patrol et al, No. 90413-8.
[39] RCW 4.24.550(5)(a).
[40] *Id.*
[41] Brief in Response Washington Association of Sheriffs & Police Chiefs ("WASPC") at 8, John Doe A, et al v. Washington State Patrol et al, No. 90413-8.

offenders that require the use of sex offender information. As governmental entities, these agencies are all subject to the PRA.

In addition to each individual agency's requirement to comply with the PRA, the release of information regarding sex and kidnapping offenders is governed by RCW 4.24.550. It authorizes public agencies to release certain offender information under certain circumstances. The statute does not specifically prohibit disclosure of offender information and in fact asserts that information under the section should *not* be considered confidential except otherwise provided for by law.[42] However, it also sets forth narrowly tailored criteria for the release of offender information based on who is releasing it and what information is to be released. Release of information pursuant to RCW 4.24.550 is dependent on the offender's risk level.

It is important to note that the public policy behind the PRA is to allow citizens to maintain control over their government, while the public policy related to release of sex and kidnapping offender information is to further public safety. The actual legal relationship between Chapter 42.56 RCW and RCW 4.24.550 may be decided by the Supreme Court when they issue their decision on *Doe*. Until then, observations can be made based on examination of these statutes together and how other states treat disclosure of registration of information.

The PRA requires a government agency to respond to a request for information within five days. Within that timeframe, an office or agency must either provide the record, an Internet link to the information, or an acknowledgement of the request with a predicted time frame of when the agency can respond or deny the request.[43] Although RCW 42.56.060 protects agencies, officials, public employees or custodians from a cause of action related to loss or damage based upon the release of a record if they acted in good faith in an attempt to comply with the chapter, the PRA has strict monetary penalties for delay or non-disclosure of records.

By contrast, RCW 4.24.550(7) provides immunity from civil liability to public officials, public employees, a public agency as defined in RCW 4.24.470 or units of local government and its employees as provided in RCW 36.28A.010 unless they act with gross negligence or in bad faith. It also includes a statement of non-liability for failure to release information under the section.

The contrast between the approaches of the two statutes becomes apparent when an agency receives a request for sex offender records. If an agency is asked to comply with the disclosure requirements of both Chapter 42.56 RCW and RCW 4.24.550, it is clear that the most prudent route for an agency to take is to liberally disclose records because there is a strict monetary penalty for non-disclosure under the PRA, and immunity of disclosure or non-disclosure of a record is provided for under RCW 4.24.550. There is little incentive to adhere to the guidelines of RCW 4.24.550, as the agency is liable for potentially large financial penalties under Chapter 42.56 RCW if it withholds a document that is considered public.

See Appendix B for full analysis on relationship between Chapter 42.56 and RCW 4.24.550.

[42] RCW 4.24.550(9).
[43] RCW 42.56.520.

Findings

- **Washington's comprehensive statutory scheme controlling the release of information to the public regarding sex offenders contained in RCW 4.24.550 has worked well since its inception in 1990 with the passage of the Community Protection Act.**

The limitations on public disclosure of sex offender registration information contained in RCW 4.24.550 have proven an appropriate balance of the public's right and need to know about higher risk sex offenders in the community with the legitimate needs to protect the privacy of sex offenders, their families and their victims and to foster reintegration of offenders into the community while protecting community safety.

The Washington State Legislature mandates that the registration records of level I sex offenders-those deemed to be the lowest risk to the community-shall only be released to the public under limited circumstances, namely when release of the records is necessary and relevant. The public agency determines which records are exempt from public disclosure by applying RCW 4.24.550, which serves as an "other statute" under the PRA.

RCW 4.24.550 states that an "agency may disclose, upon request, relevant, necessary, and accurate information" about any sex offender, but that the "extent of the 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, expects to reside, or is regularly found; and (c) the needs of the affected community members for information to enhance their individual and collective safety."

RCW 4.24.550 balances this limitation on the release of information for level I sex offenders in response to public requests with two mandatory disclosures relevant to level I offenders. First, under section 3(a), local law enforcement must share information with other appropriate law enforcement agencies and any public or private schools that the offender attends. Second, under section 5(a), law enforcement shall create a public website posting all level III and level II sex offenders, plus all level I offenders who are out of compliance with the registration requirements.

Sex offender registration information about level I offenders may also be disclosed under two specific provisions of RCW 4.24.550. Law enforcement may release information regarding any offender, including level I offenders, to any victim or witness to the offense and to any individual community member who lives near the residence where the offender resides, expects to reside, or is regularly found. In addition, in 2015 the Legislature enacted SB 5154 which expanded the information about level I offenders that may be released to include any individual who requests information regarding a specific offender. This provision has only been in effect since July 24, 2015.

- **RCW 4.24.550 should be considered an "other statute" under RCW 42.56.070. Washington's Public Records Act requires agencies to produce public records upon request "unless the record falls within the specific exemptions of this chapter, or any other statute which exempts or prohibits disclosure of specific information or records." See RCW 42.56.070.**

RCW 42.56.070 is clear in that it exempts from the PRA certain records that are exempt or prohibited from disclosure by "other statutes." On its face, RCW 4.24.550 governs the "public disclosure" of information regarding sex offenders upon the request of community members. [See RCW 4.24.550(2) ("the extent of the 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, expects to reside, or is regularly found; and (c) the needs of the affected community members for information to enhance their individual and collective safety.") and RCW 4.24.550(3) (" ... local law enforcement agencies shall consider the following guidelines in determining the extent of a public disclosure .... ")].

The Legislature intended RCW 4.24.550 to limit public disclosure regarding some of the information gathered under RCW 9A.44.130. The legislative history of RCW 4.24.550 supports this reading. The statute was first crafted with public disclosure laws in mind, with the Legislature specifically remarking that RCW 4.24.550 was necessary to correct the "reduced willingness to release information that could be appropriately released under the public disclosure laws." Laws of 1990, Chapter 3, § 116. Not reading RCW 4.24.550 as an "other statue" would undermine the entire risk-based system Washington has adopted for community notification and registration information release.

- **Release of level I sex offender information would be the equivalent to broad based community notification which is generally reserved for the higher risk sex offenders in our state. This would functionally eliminate our tiered risk level approach to community notification which the Legislature and many other stakeholders have worked diligently over the last 20 plus years to develop, implement and improve.**

The SOPB assumes that if the Legislature were to allow the widespread dissemination of information obtained regarding sex offenders under RCW 9A.44.130 that this would lead to the establishment of an online searchable data base and effectively lead to widespread community notification of all offenders. The original requestor of this information in the John Doe v. Washington State Patrol, et al. case currently pending before the Washington Supreme Court, has evidenced the intent to post the results of the PRA request on a website available to, and searchable by, the general public. This person has already posted registration records she obtained from Franklin County in 2013 to her public Google+ website.

The creation of a searchable online database would render our risk-based system of community notification and sex offender management effectively replaced by universal community notification. The research tells us that this would dilute the effectiveness of community notification and make it much more difficult for the public to identify those individuals who pose an actual increased risk to them and their friends and families.

- **The widespread dissemination of level I offender information would have a deleterious effect on victims who are often related to offenders or otherwise connected with offenders. This would particularly impact the level I offenders who have not been subject to community notification or the widespread dissemination of their sex offender registration information.**

If RCW 4.24.550 and RCW 42.56.070 were read to allow the widespread dissemination of level I sex offender registration information that is not currently available to the general public the potential impact on the victims of those offenses could and likely would be profound. In the past RCW 4.24.550 has always been read as an "other" statue under the PRA and information regarding offenders set at a level I, and information regarding their victims, has not previously been widely disseminated.

If not conducted carefully, the sudden and widespread dissemination of this information can inadvertently reveal the identity of the victim, particularly in cases where the offender and the victim are in the same family or when information is distributed in the neighborhood where the offender's victim lives. Indeed, there are reports that victims' identities have been disclosed as a result of community notification (CSOM, 2001). The sudden dissemination of this information without the controls now in place through the community notification process would pose a great risk to those victims.

A landmark study about the effect of sexual assault on victims found that the "fear of others knowing" that they had been sexually assaulted ranked top among victim concerns that influenced their decision to report or not report the assault (Kilpatrick, Edmonds & Seymour, 1992).

To prevent the inadvertent disclosure of victim identity, a number of jurisdictions across the country have developed protocols to guide criminal justice officials in implementing a notification program. In Wisconsin, for example, the state has guidelines on how to conduct notification that address the danger that a victim's privacy may be violated through notification and "underscore the grave desire that the situation be avoided" (Zevitz and Farkas, 2000). The WASPC Model Policy also addresses these concerns.

If information regarding sex offenders were to be released wholesale in a way that did not include these protections, the impact on the victims of these crimes could be extremely serious.

- **The social science research reviewed by the SOPB indicates that widespread dissemination of information collected for all sexual offenders often has the unintended consequence of creating obstacles to community reentry that may actually undermine, rather than enhance, public safety.**

Widespread disclosure of information on all sex offenders, regardless of their level of risk to the general public, dilutes the efficacy of notification and undermines public safety and rehabilitation. Offenders and their families face grave mental, emotional, physical, and economic consequences as a result of being "outed" as a registered sex offender.

The harms caused by the widespread dissemination of sex offender registration records go far beyond that caused by public availability of conviction records. At the outset, conviction records (such as court records or records obtained under Chapter 10.97 RCW) do not contain all of the information available in sex offender registration records, such as exact residential addresses, current employers or schools, treatment information and photographs.

It should be noted that in recent years Washington has witnessed a double homicide of sex offenders whose locations were determined based upon registry information that then included the

full residential address. Washington has since ended the practice of publishing the last two digits of the residential address, but widespread dissemination of this information under the PRA would likely include this sensitive and dangerous information.

- **The widespread dissemination of level I offender information would have even greater collateral consequences for low-risk juvenile offenders and their families. Juvenile sex offenders already have many challenges in re-integrating into society and this would be another obstacle. The release of their information would likely negatively impact a variety of known risk factors, which may ultimately increase their risk for participating in future criminal behavior.**

Adult and juvenile sex offenders are different. Based on a review of the growing body of literature about the collateral consequences of sex offender registration and community notification for juvenile offenders, there is a significant potential for harm to level 1 juvenile sex offenders if their information is made available to the general public. The impacts are even more impactful for juveniles than the adult population, based on where they are at in their formative developmental years as demonstrated though neurological and social science (July 2009, Dr. Terry Lee, Adolescent Brain Development PowerPoint Presentation) (2005, Roper vs. Simmons, United States Supreme Court ruling).

Widespread dissemination of information collected on level 1 juvenile sex offenders, which is the outcome of releasing their information via public disclosure, would have varied and harsh consequences for these youth which may last a lifetime. The anticipated impacts include but are not limited to:

- Additional barriers to admission in school programs at all levels impacting employability,
- Increased victimization and bullying by both peers and adults leading to social isolation,
- Significant barriers to the development of normal social/peer relationships which may lead them to develop relationships with anti-social peers,
- Additional barriers to employment which may lead to increased homelessness and general delinquency,
- Additional barriers to obtain housing, resulting in increased homelessness,
- Lasting social stigma impacting their ability to develop normal peer relationships and be socialized in a pro-social manner,
- Inability to experience normal adolescent development, increasing risk for future delinquent behavior,
- Inability to maintain family relationships or experience normal intimate relationships.

It is of paramount importance to note that youth who have committed sex offenses have extremely low re-offense rates according to both national and in-state data. A meta-analysis demonstrates sexual recidivism rates that range from 3 percent to 14 percent (2006, Reitzel, L., Carbonell. The Effectiveness of Sexual Offender Treatment as Measured by Recidivism). Additionally, evaluations completed by the Washington State Institute for Public Policy (WSIPP) indicated sexual recidivism

rates at ten percent and nine percent in two separate evaluations with five year follow-ups that included both misdemeanor and felony sexual re-offenses (1998, WSIPP. Sex Offenses in WA State: 1998 Update. Document No. 98-08-1101, and 2008, R.Barnowski. Assessing the Risk of Juvenile Sex Offenders Using the Intensive Parole Sex Offender Domain. Olympia: WSIPP, Document No. 08-05-1101). The recidivism rates for the WSIPP studies include all levels of juvenile sex offenders from the lowest level 1s to the highest risk level 3s. It is reasonable to assume that if we the analysis only looked at level 1 offenders, the rates would be even lower.

It is important to know that there is a significant number of the level 1 juvenile offender population with adjudicated sex offense behavior that occurred at very young ages, with the highest frequency occurring between the ages of 12-15 years of age (2009, Washington State Sex Offender Policy Board, Annual Report to the Legislature). Because of their early age linked to their sexual behavior, and absence of paraphilic interests, treatment interventions are often more successful with juveniles than their adult counterparts (2006 Hunter, John. Understanding Diversity in Juvenile Sexual Offenders: Implications for Assessment, Treatment, and Legal Management).

The SOPB felt so strongly that there are inherent differences between the juvenile and adult sex offender populations, that members recommended the creation of separate statutes to address these differences both related to juvenile community notification and registration (2009, Washington State Sex Offender Policy Board, Annual Report to the Legislature).

- **Widespread dissemination of sex offender registration information would undermine the legal rationale for upholding the constitutionality of sex offender registration and notification adopted by the Washington Supreme Court.**

When the Washington Supreme Court examined whether sex offender registration constituted ex post facto punishment, the court found it did not, on the very basis that "[t]he Legislature placed significant limits on (1) whether an agency may disclose registrant information, (2) what the agency may disclose, and (3) where it may disclose the information." State v. Ward, 123 Wn.2d 488, 502-04, 869 P.2d 1062 (1994) (finding also that disclosure was tied to risk and "the geographic scope of dissemination must rationally relate to the threat posed"). In so holding, this court relied on legislative history instructing that release be made to public agencies "and under limited circumstances, the general public" which protected sex offenders from a "badge of infamy" through the limited disclosure of registration information. ld. ("We hold, however, that because the Legislature has limited the disclosure of registration information to the public, the statutory registration scheme does not impose additional punishment on registrants.").

The widespread dissemination of this information would seem to undermine this rationale completely, and could lead to the court revisiting its holding that the current scheme of sex offender registration and community notification meets the constitutional tests of the Washington constitution.

The Supreme Court noted in Ward, "the Legislature has broad discretion to determine what the public interest demands and what measures are necessary to secure and protect that interest" and in the case of sex offender records, determined that "disclosure would serve no legitimate purpose" if not for the careful structure established under RCW 4.24.550. Ward, 123 Wn.2d at 502. 516. The court holding in Ward was clearly written with an awareness of the competing considerations of the

PRA, and clearly considered RCW 4.24.550 an "other statute" that was exempt from PRA disclosure. It is impossible to read the holding in the Ward case as anything other than an implicit finding that the provisions of RCW 4.24.550 are an exception to the PRA.

Recommendations

A) RCW 4.24.550 be amended to include the following sentence:

"Sex offender and kidnapping offender registration information is exempt from public disclosure under chapter 42.56 RCW."

B) RCW 42.56.130 be amended to include the following sentence:

"Information compiled and submitted for the purposes of sex offender and kidnapping offender registration pursuant to RCW 4.24.550 and 9A.44.130, or the statewide registered kidnapping and sex offender website pursuant to RCW 4.24.550, regardless of whether the information is held by a law enforcement agency, the statewide unified sex offender notification and registration program under RCW 36.28A.040, the central registry of sex offenders and kidnapping offenders under RCW 43.43.540, or another public agency."

SEC. 16(b) ANY OTHER BEST PRACTICES ADOPTED BY OR UNDER CONSIDERATION IN OTHER STATES REGARDING PUBLIC DISCLOSURE OF INFORMATION COMPILED AND SUBMITTED FOR THE PURPOSES OF SEX OFFENDER AND KIDNAPPING OFFENDER REGISTRIES

The phrase "best practice" within the context of public disclosure of sex and kidnapping offender information may be a misnomer. Sex offender registration and community notification are different systems with different goals. Many states have adopted an offense-based registration system which conditions registration, and sometimes notification, only on the commitment of a specific sex or violent offense – not on any assessment of risk. Instead, Washington state relies on risk level classification to determine how to distribute sex and kidnapping registration information.[44]

Instead of limiting the state survey to only states that have adopted a risk-based registration and notification system, the SOPB has surveyed all states to find good and common practices related to public disclosure of sex offender information. We found five areas related to the release of information which could be considered in Washington state.

- Clear identification the relationship between the state's public records act statutes and sex offender registration and notification act statutes.
- Limited availability or disclosure of sex offender registration information based on risk level.
- Distinguishing differences between public-facing information and offender information gathered for the purposes of registration.
- Clear definition in statute of the specific information to be disclosed, included, exempted, or deemed confidential.
- Creation of criminal and/or civil penalties specifically for misuse of registration information, not just for using the information in relation to the commission of a crime against an offender.

Six states clearly identify the relationship between the state's public records act and the state's sex offender registration and notification laws. States establish this relationship in several ways. Usually, it's either by clearly identifying an exemption to the state public records act within the SORNA statute, an affirmative statement that the SORNA statutes exclusively govern disclosure of sex offender registration information, or that the SORNA statutes are not subject to the state's public records act.

Louisiana and Alabama affirmatively state that collection and dissemination of registration information is governed by their SORNA statutes.[45] New Hampshire and West Virginia exempts the information located within their SORNA provisions from their respective public records acts.[46] Both Kansas and Florida SORNA laws reference their state's public records acts and clarify that the

[44] RCW 4.24.550.
[45] La. Rev. Stat. Ann. § 15:548 and Ala. Code §15-20A-42.
[46] N.H. Rev. Stat. Ann. §651-B:7 and W. Va. Code §15-12-5.

information within the state SORNA law is subject to public records laws.[47] By clearly identifying which provision governs disclosure of sex offender information, whether it is the state SORNA law or the state public records law, it leaves no room for doubt if there is a conflict. This lack of clarity is what led to the legal issues in the Washington Supreme Court case *Doe v. Washington State Patrol*.[48]

Seven states limit blanket availability of information based on risk level. Montana distinguishes not only between disseminating information based on risk level but also, they have chosen to disclose more registration information if the offense was committed against a child.[49] Massachusetts publishes level 2 and level 3 offender information on the Internet but has specific guidelines written by the Sex Offender Registry Board related to any public disclosure of level 1 information.[50] Nevada publishes tier 2 and 3 offenders on the Internet and maintains tier 0-1 in its central repository which is limited to law enforcement agencies and the courts.[51]

In Rhode Island, information is disclosed freely about level 2 or level 3 offenders unless they are juveniles[52] and restricts dissemination of information of non-public registration information without the written consent of the person. Connecticut has a Risk Assessment Board which recommends which level of offenders should be available through the Internet as does New Jersey which has an Internet Registry Advisory Council. New Jersey also maintains guidelines for law enforcement related to the implementation of SORNA laws, including disclosure of information to the public.[53] Iowa takes the extraordinary step of considering all sex offender registry records which are not specifically publicly available via the Internet or sheriff's office to be confidential.[54]

Most states require more personal information from a registrant for law enforcement purposes than they allow to be public-facing or publicly disclosed. Some states accomplish this by maintaining separate databases for law enforcement information versus publicly accessible data.[55] Other states accomplish this by defining which information is "public" or "relevant". A few states have combined methods of disclosure limiting some information for law enforcement, listing some information on the Internet and making more information available pursuant to individual request.[56] Three states, Oregon, Pennsylvania and Wisconsin, provide victim-specific access to non-public offender information.[57]

Low-risk offenders (level 0 or 1) and juveniles are commonly excluded from web publication and/or disclosure other than for law enforcement purposes. Some of these determinations are made as a

[47] Fla. Stat. §775.21.
[48] No. 90413-8.
[49] Mont. Code Ann. §46-23-508.
[50] Mass. Gen. Laws §178J(b).
[51] Nev. Rev. Stat. §179B.280-290.
[52] R.I. Gen. Laws §11-37.1-14(4).
[53] N.J. Rev. Stat. 2C:7-6 and Kan. Stat. Ann. §22-4907.
[54] Iowa Code §692A.121(14).
[55] Ala. Code §15-20A-7 & 8(b), Ariz. Rev. Stat. §13-3823, Ca. Penal Code §290.46, Idaho Code Ann. §18-8305, Iowa Code 692A.121, Mich. Comp. Laws §28.730, N.C. Gen. Stat. §14-208.14, §14-208.15, and §14-208.29.
[56] Me. Rev. Stat. Ann. Tit. §11281(7)(c), Mass. Gen. Laws §178J, NY Code 168.
[57] Or. Rev. Stat. §181.843, 42 Pa. C. S. §9799.26, Wis. Stat. §301.46.

result of registration laws which limit registration requirements for juveniles, other determinations are made on an individual basis or pursuant to a policy decision about notification.

Several states clearly define which information is to be disclosed publicly or limited to law enforcement or official purposes. For example, Connecticut defines the word "registry" to identify the information held in the central, public database but restricts dissemination of certain information held in the registry.[58] Delaware defines "searchable records,"[59] Montana defines "Public Criminal Justice Information,"[60] and Tennessee defines "relevant and necessary information."[61] Other states such as Hawaii,[62]Iowa,[63]and Utah[64] specifically define aspects of records or the website. While this practice seems basic, it can clear up confusion about which records are intended to be publicly accessible, instead of referring vaguely to "website", "database" or "registration information".

Most states have some type of enhanced penalty for using registration information to commit a crime. However, California, Florida, Idaho, Indiana, Illinois, Mississippi, Nevada and Virginia have more severe criminal penalties for misuse of information. Illinois defines and criminalizes "unauthorized release of information." In Virginia, use of registry information which is not authorized is prohibited and unlawful. The use of information to intimidate or harass is a class 1 misdemeanor.[65]

California and Nevada allows for a civil action for damages which are incurred as a result of someone misusing website information. California has the most comprehensive set of criminal penalties and civil recourse for misuse of website information. If someone uses registry information to commit a misdemeanor, they become liable for an additional $10,000 to $50,000 fine. If they commit a felony, they are subject to an additional five year imprisonment. The state also allows an aggrieved person or the Attorney General to bring a civil action for misuse.[66]

Findings

- A number of states limit the disclosure of sex offender registration information for juvenile offenders. Washington has no such limitations in our current statutory scheme.
- A number of states use a system similar to Washington, where the disclosure of sex offender registration information is largely limited to high risk and moderate risk offenders, and low-risk offenders' information is not disclosed except in certain narrow circumstances.
- Some states allow the crime victims to have greater access to sex offender registration information than other members of the public. Washington law likewise gives victims and

[58] Conn. Gen. Stat. §54-255(a).
[59]Del. Code Ann. Tit. 11 §4120.
[60] Mont. Code Ann. §44-5-103.
[61] Tenn. Code Ann. §40-39-206(d)(1)-(15).
[62] Haw. Rev. Stat. §846-3(3)(b).
[63] Chapter 692A Code of Iowa.
[64] Utah Code Ann. §77-41-110.
[65] Va. Code Ann. §9.1-918.
[66] Ca. Penal Code §290.46.

witnesses greater access to this information than the general public.

- Some states have made exceptions to their disclosure rules to allow legitimate academic and social science research to be done using personal identifiers for research purposes only.

Recommendations

SEC. 16(c) ABILITY OF REGISTERED SEX OFFENDERS AND KIDNAPPING OFFENDERS TO PETITION FOR REVIEW OF THEIR ASSIGNED RISK LEVEL CLASSIFICATION AND WHETHER SUCH A REVIEW PROCESS SHOULD BE CONDUCTED ACCORDING TO A UNIFORM STATEWIDE STANDARD

Several changes occurred in the statutes that govern the sex offender registration and notification system in Washington state with the passage of Chapter 261, Laws of 2015 (SSB 5154). One change included RCW 4.24.550(6)(d) which was enacted and read as follows, "Agencies may develop a process to allow an offender to petition for review of the offender's assigned risk level classification. The timing, frequency, and process for review are at the sole discretion of the agency."

This statutory change provides clear authority to local law enforcement to develop a review process and leaves each entity with discretion as to what their process includes and to the standards they will use in their review. As a result of this change, the SOPB was directed by the Legislature to look more closely at this issue and make findings and recommendations.

To assist in the review, the SOPB examined the current risk level review processes that are in place across the state within ten counties (provided by Washington Association of Sheriffs and Police Chiefs SOPB representative). Each of the counties reviewed have local risk level committees that are generally responsible for reviewing requests for risk level reduction. These committees are the same entities that complete the risk level assignment for offenders with a registration requirement in their county. The process established in most of the counties reviewed was substantially similar, though there were some differences in criteria used by counties in their review process.

Findings

As a result of Chapter 261, Laws of 2015, agencies now have clear authority and discretion regarding whether or not to develop a review process and discretion regarding the process that they will use if they choose to adopt such a practice. The SOPB finds the following:

- **Availability of a review process assists in maintaining a consistent approach to sex offender management.**

A sex or kidnapping offender's risk of re-offense in the community may change as the offender successfully integrates into the community. An established process to review an offender's request for risk level reduction facilitates the successful outcome of those offenders who pose a lower risk to the community than when they were first registered and is helpful in ensuring the most accurate registry of offenders in the community.

- **Criteria for risk level determination should be based in research and linked to risk to the community.**

Research-based Decision Making - The SOPB believes that risk level determinations should be grounded in research/evidence whenever possible. Using review criteria that have been reviewed and are supported by the literature is important to ensure the best predictive value of these assessments and reduce potential harm to the community.

Recommendations

The SOPB supports the concept of each county having an established process to review the risk classification level when requested by an offender registered in their jurisdiction. After considerable discussion and debate, the SOPB makes the following recommendations:

A) Development of recommended process and criteria for an offender's request for risk level classification review.

The SOPB's review of ten counties' processes and criteria for an offender's request for risk level classification reduction led the SOPB to believe that counties may benefit from research and recommendations for best practices in this area. As a result, the SOPB recommends that the Legislature provide funding to develop best practices for the process and criteria for the review of a sex or kidnapping offender's request for risk level classification review.

The board is not recommending any statutory change to RCW 4.24.550(6)(d).

B) Availability to petition for review of assigned risk level classification.

The SOPB recommends that each county sheriff have an established process to accept and review a sex or kidnapping offender's request for risk level classification review and use criteria to reduce or increase that level that are supported by current research as much as practicable.

C) Integration of review process into the sex offender guidelines for sex offender registration, community notification and strategies for sex offender management created pursuant to RCW 4.24.5501.

The SOPB recommends that the Washington Association of Sheriffs and Police Chiefs amend its model policy created pursuant to RCW 4.24.5501 to recommend that each county have an established process to review the risk classification level when requested by an offender registered in their jurisdiction. Furthermore, the SOPB recommends that the model policy incorporates or references the best practices referenced above, once developed.

D) Survey of jurisdictions to assess which counties have an established a process to review a sex or kidnapping offender's request for risk level classification review.

While many jurisdictions have created processes to consider requests from offenders to reduce their community notification risk level, the statute has not explicitly authorized this process until the passage of Chapter 261, Laws of 2015. The SOPB recommends that the Washington Association of Sheriffs and Police Chiefs conduct a survey of Washington law enforcement agencies that manage sex or kidnapping offenders to assess which counties have an established process to review a sex or kidnapping offender's request for risk level classification review, and share the results of such survey with the SOPB.

SEC. 16(d) THE GUIDELINES ESTABLISHED UNDER RCW 4.24.5501 ADDRESSING SEX OFFENDER COMMUNITY NOTIFICATION, INCLUDING WHETHER AND HOW PUBLIC ACCESS TO THE GUIDELINES CAN BE IMPROVED

The guidelines established under RCW 4.24.5501 serve as a resource to law enforcement agencies and does not serve in and of itself as a mandatory policy in any law enforcement agency in this state. Though they may use information from the guidelines, law enforcement agencies establish their own policies, which may or may not be consistent with the guidelines.

Findings

While the guidelines are not a policy, it is a document that has been made easily available to the public since its original adoption and continues to be made easily available to the public via the following online locations:

- http://www.waspc.org/sex-offender-information
- http://www.waspc.org/model-policies
- http://sheriffalerts.com/cap_safety_1.php?office=54528

Actual policies adopted by law enforcement agencies are available upon request at each law enforcement agency.

Recommendations

The SOPB recommends the Legislature take no action on this topic.

APPENDIX A

SEX OFFENDER POLICY BOARD

Literature Review on Disclosing Registry Information to the Public

General Bibliography

September 25, 2015

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Introduction

In 1990, Washington state became the first jurisdiction to authorize the release of sex offender information to the public. Since then, several amendments related to the disclosure of sex offender information have been enacted. Currently, Washington has limited their internet publication of information to those eligible convicted sex and kidnapping offenders who have been assessed as a Level II or Level III risk, while other states have variations on the information that they publish via the internet.

Generally, the disclosure of sex offender registration information to the public is found within the community notification provisions of a state's adopted Sex Offender Registration and Notification Act Laws (SORNA). Some also refer to the community notification portion of sex offender laws as "Megan's Laws" named after Megan Kanka, a girl in New Jersey who was raped and killed in 1994 by her neighbor, a convicted sex offender. States have various ways of distributing convicted sex offender registration information under the notification provisions. These methods are ordinarily referred to generally as "community notification" which can include community meetings, flyer distributions, and internet publication of registrant information. Thus, authors often look at the entire system of registration and notification or "community notification" generally, instead of internet public disclosure specifically.

This literature review attempts to identify the universe in which authors have discussed various aspects of public disclosure of sex offender information to the public, privacy-related issues, and the collateral consequences based on the disclosure of information.

Methodology

To obtain information relevant to public disclosure of sex offender information, multiple sources were consulted including government publications, journal articles, news articles, and law review articles. Main databases consulted include: HeinOnline, SSRN.com, Sage Publications, and Google Scholar. Articles submitted by the Sex Offender Policy Board members were reviewed and generally included. The original bibliography from the 2009 Report to the Legislature was included.

Generally, the summarized articles represent those which identifiably contributed to the discussion of issues surrounding public disclosure of sex offender information. Other articles referenced in the general bibliography were reviewed and either did not add additional value to the enumerated section or were too stale to be considered in light of today's discussion. Other resources which were not reviewed in full, those in which the abstract was reviewed only, are listed at the bottom of the general biography. Articles which included *some* disclosure discussion but were specifically focused on recidivism, juveniles, or other topics were not summarized. Articles which were available for public view are linked within the citation.

Organization of Material

The organization of this review includes six sections: 1) Public perception of community notification laws, 2) Comparative reviews of state practices related to community notification, 3) Treatment of sex offender laws by the courts and case law, 4) Offender privacy vs. the public's right-

to-know, 5) Collateral consequences and reintegration issues, 6) Notification as a false sense of security, and 7) Political Climate and Trends.

Generally, when asked about whether or not community notification, and/or public disclosure of sex offender information is important, the public responds affirmatively. In Washington state, residents polled have an awareness of the sex offender registry and believe it is valuable and makes offenders behave better.

In Washington state, disclosure of sex offender information follows what is called a "police-discretion" model. Although a sex offender is given a risk level assessment upon release, local sheriff's offices may re-assess the offender when they come to register. Disclosure of registry information is often non-standard and the bounds are unclear. Law enforcement agencies are immune from civil liability for disclosure of information or non-disclosure of information. Although some other states have similar provisions, many employ different models and different standards of disclosure.

The U.S. Supreme Court has decided several cases related to sex offender registration and notification laws. Most notably, their decision in *State v. Doe*, set the tone for other states to determine that registration and notification laws were not punitive and therefore, could be applied retroactively. Other varied challenges have been successful, although none, to date, have held that an offender has a privacy right in light of the goals of disclosure to advance public safety.

Many articles reviewed discuss an offender's right to privacy and assert, at the very least, that Level or Tier I offender information should not be disclosed because of they are at low risk to re-offend and therefore the state's compelling interest to notify the public does not outweigh the offender's right to privacy. Further, several articles suggest that laws should be reviewed to tailor the disclosure more appropriately to the level of risk due to fear of harassment and proven cases of vigilantism.

Why does reviewing the level of public disclosure of sex offender information important? Because the collateral consequences of having the information available by internet and other means results in actual harassment, barriers to employment, barriers to housing and stress and fear in the offender's social network which are key to successful reintegration.

Finally, the political climate is one of increased legislation and disclosure, not less. Strengthening sex offender registration and notification laws are politically attractive to legislators and the political cost to change direction is too great although the empirical evidence does not show that community notification reduces recidivism. The only change to lessen restrictions in recent years came in a California this year when the California Supreme Court ruled that residency restrictions as applied in San Diego were unconstitutional.

I. Perception of the Public Related to Community Notification Laws

Boyle, Douglas J., Laura M. Ragusa-Salerno, Andrea Fleisch Marcus, Marian R. Passannante, and Susan Furrer. "Public knowledge and use of sexual offender internet registries: Results from a random digit dialing telephone survey." ***Journal of Interpersonal Violence*** **(2013): 0886260513511698.**

This study performed a review of approximately 1,000 New Jersey residents to determine public awareness, and use of, the New Jersey Sex Offender Internet Registry (NJSOIR). They reported that roughly 51% reported that knowledge of the site and that 17% had accessed the site. Of those who accessed the site, 68% reported that they took some preventative measures based on the information. The study concluded that the results suggest an intervention would increase the public awareness of the registries and provide specific preventative measures the public can take.

McCartan, Kieran. "From a lack of engagement and mistrust to partnership? Public attitudes to the disclosure of sex offender information." ***International Journal of Police Science & Management*** **15, no. 3 (2013): 219-236.**

A review of focus groups in the UK about the limited public disclosure of sex offender information. The results produced three interconnected themes: 1) community attitudes to sexual abuse and sexual offenders, 2) attitudes to the structure of, regulation and functionality of the limited disclosure scheme; and 3) resentment surrounding applicant background checks and confidentiality. Participants were conflicted over the usefulness of, and need for, the public disclosure of sex offender information. In practice, the participants took one of two positions in respect to sex offender disclosure, those who wanted full disclosure and those who wanted no disclosure.

Phillips, Dretha M. ***Community notification as viewed by Washington's citizens*****. Olympia, WA: Washington State Institute for Public Policy, 1998. Retrieved from:** http://www.wsipp.wa.gov/ReportFile/1281/Wsipp_Community-Notification-as-Viewed-by-Washingtons-Citizens_Full-Report.pdf

In 1998, the author conducted a random digit-dialing of 400 Washington state residents in urban and rural areas regarding the state's community notification law. Nearly 80 percent of the respondents were familiar with the community notification law although only one-third were aware of released sex offenders living in their communities. More than six in ten residents agreed that community notification makes released sex offenders behave better than if no one in the community knew about them.

The vast majority of those surveyed felt safer knowing about sex offenders living in their communities. While about half of the respondents thought community notification makes it easy for citizens to take the law into their own hands and harass, threaten, or abuse the released sex offender, more than two out of three surveyed thought special care should be taken to prevent such harassment. Overall, more than eight out of ten respondents indicated Washington's community notification law is very important.

Lieb, Roxanne and Corey Nunlist. "Community notification as Viewed by Washington's Citizens" A 10-Year Follow-Up. Olympia, WA: Washington State Institute for Public Policy (2008). Retrieved from: http://www.wsipp.wa.gov/ReportFile/1010/Wsipp_Community-Notification-as-Viewed-by-Washingtons-Citizens-A-10-Year-Follow-Up_Full-Report.pdf

In 2007, the author conducted a follow-up survey of 643 Washington state residents using random digit dialing to determine the respondent's familiarity with, opinion of, and reaction to the law, as well as its purposes and importance. 81 percent of the respondents were familiar with the community notification law. Thirteen percent more respondents in 2007, than in 1998, were aware of one sex offender living nearby. Sixty-eight percent reported that they learned more about sex offenses and sex offenders because of community notification. Sixty-three percent of respondents agreed with the statement that community notification make sex offenders behave better. Seventy-eight percent of respondents indicated they felt safer knowing about convicted sex offenders living in their communities. Sixty percent disagreed with the statement "Alerting the community to the highest risk sex offenders will make citizens pay less attention to the risks posed by other sex offenders, such as those who may be known and trusted by the victim."

Regarding potential harassment of sex offenders fifty-four percent of respondents thought community notification makes it easier for citizens to take harass, threaten or abuse the released sex offender. 78 percent thought special care should be taken to prevent such harassment. Eighty-four percent of respondents thought that notification could make it more difficult for a sex offender to rent a house, find a job, or establish a new life. Respondents were evenly split when asked if they favor or opposed changing the law so that juveniles could be removed from community notification at a judge's discretion. 80 percent of respondent's indicated that Washington's community notification law is very important.

II. Comparative Reviews of State Practices Related to Community Notification and Registries and a Review of Washington's Progression of Disclosure

Lieb, Roxanne & Milloy, Cheryl. "Washington State's Community Notification Law: 15 Years of Change," Washington State Institute for Public Policy. (2006). Retrieved from: http://www.wsipp.wa.gov/ReportFile/936/Wsipp_Washington-States-Community-Notification-Law-15-Years-of-Change_Full-Report.pdf

In 1990, Washington state became the first state to authorize the release of information regarding sex offenders to the public. Since that time the law was amended several times to expand its application and to increase citizen access to information. In 2002, the Legislature directed the Washington Association of Sheriffs and Police Chiefs (WASPC) to create a statewide internet website and post information related to sex offenders assessed as a Level III risk. It was intended for the public to easily access information including name, relevant criminal convictions, address by the hundred block designation, physical description, and photograph. The site was also to provide mapping capabilities so the public could search for the released sex offender.

In 2003, the Legislature expanded the internet publication of information to Level II offenders. In 2005, the Legislature again expanded disclosure of sex offender information to include

kidnapping offenders, reporting relevant information to schools the offender planned to attend and establishing "community protection zones."

Locke, Christina and Chamberlin, Dr. Bill F. "Safe From Sex Offenders Legislating Internet Publication of Sex Offender Registries," *39 Urb. Law I* (2007).

The purpose of the article was to examine the statutory provisions of every state and the District of Columbia regarding the use of the Internet as a tool to administering Megan's Law. The article discusses different types of community notification and characterizes them as "active" and "passive." Internet distribution is considered "passive" notification. In 2006, the federal government created the Dru Sjodin National Sex Offender Website and all states, as of 2007, allow computer users access to individual profiles of sex offenders. State statutes which required internet dissemination often specified six types of data: 1) types of offenders, 2) registry information updates, 3) website security, 4) user registration requirements, 5) disclaimer requirements, and 6) provisions for publicizing the website.

Also at the time of publication, twenty-five states and the District of Columbia restrict the Internet to specific types of offenders. In twenty-one states, Megan's Law statutes indicate that all sex offenders could be subject to having their personal information made available to the public via the Internet. A federal law passed in 2006 required that all state website display warnings of penalties for unlawful use of registry information.

Wieder, Nori. "Sealing the Record: An Analysis of Jurisdictional Variations of Juvenile Sex Offender Record and Sealing Laws," *24 Health Matrix 377* (2014).

The author reviews four models that states follow regarding juvenile sex offender record sealing laws. Approximately one-quarter of states allow all juvenile records to be sealed. Another quarter of states prohibit all juvenile sex offender records from being sealed. The majority of states allow sex offender records to be sealed but leave the decision to the judge on a case-by-case basis. A minority of states permit some sex offenses to be sealed but exclude the records of the most heinous sex offenses from being sealed. Three states fail to address whether a juvenile is permitted to have his record sealed or not. The paper compares competing jurisdictions policies on sealing juvenile sex offender records.

III. Treatment of Sex Offender Law by the Courts and Case Law

Mancini, Christina & Mears, Daniel P. "U.S. Supreme Court Decisions and Sex Offender Legislation: Evidence or Evidence-Based Policy?" *103 J. Crim. L. & Criminology 1115* (2013).

The goal of the study was to supplement scholarship on the Court's role in contributing to evidence-based crime and criminal justice policy as it relates to sex crime laws. The article reviews to what extent the Supreme Court makes reference to scholarly work in its decisions and how the Court uses and interprets research and the larger body of scholarship related to sexual offending. It reviews Sex Offender Laws nationally and cases that have impacted the laws. The study found that while the Court does include empirical research within its decisions it found substantial variation in their interpretation of the work. The conclusion offers that a further review of how judges review

and use social science research, and an examination of the treatment of the research in lower court decisions may be helpful.

"Sex Offender Registration and Notification in the United States: Current Case Law and Issues," U.S. Department of Justice, (SMART) (September 2014). Retrieved at: http://www.smart.gov/caselaw/handbook_sept2014.pdf

This article is the regular review by the SMART office on recent case law and issues surrounding SORNA implementation federally and statewide. It provides detailed information related to all of the federal databases which hold sex offender information and discusses unique situations related to military registration, Bureau of Indian Affairs and Immigration and Customs Enforcement. In 2003, the U.S. Supreme Court decided *State v. Doe*, which held that registration and notification, under the specific facts considered, were not punitive and therefore could be retroactively imposed. Several states have issued opinions that follow the holding in *Doe* to retroactively apply their sex offender laws. The article reviews other successful and unsuccessful legal challenges including six successful state challenges that have held that the retroactive application of the registration and notification laws violate their state constitutions, the unsuccessful challenge of need for a jury determination of the registration requirement under *Apprendi*, ineffective assistance of counsel challenges, and others.

IV. Offender Privacy vs. Public's Right-To-Know

Kabat, Alan R. "Scarlet Letter Sex Offender Databases and Community Notification Sacrificing Personal Privacy For a Symbol's Sake," *35 Am. Crim. L. Rev. 333* (Winter 1998).

As a part of the review in assessing the issues related to the "Right to Privacy" contrasting with community notification, the author reviews some foundational law related to privacy and criminal offenders along with state-level responses to the issue. The author reviews right to privacy jurisprudence with a discussion of *Griswold v. Connecticut, Katz v. United States, Paul v. Davis ,* and *Whalen v. Roe*. Although the author concedes that there is no *per se* right of privacy for sex offenders, he argues that they should be afforded some constitutional level of privacy. The article reviewed the state of the notification laws and public disclosure in 1998 when there was limited availability of records and internet publication. Although the fundamental principles of the article are sound, the article is dated which makes much of the information stale.

Preble, Johnna. "The Shame Game: Montana's Right to Privacy for Level I Sex Offenders." *75 Mont. L. Rev. 297* (2014).

In Montana, there is a "heightened right to privacy" as the author describes it due to their state constitutional privacy provision found in Article II Section 10 which states "The right of individual privacy is essential to the well-being of a free society and shall not be infringed upon without the showing of a compelling state interest." The author argues that because Level I offenders are low risk to re-offend as their definition that the burden placed on them to register for the public is outweighed by their right to privacy.

Strict scrutiny analysis requires the law to be narrowly tailored to serve a compelling state interest. Montana's courts decided issues related to *ex post facto* application and a different state

constitutional provision that requires a full restoration of rights after termination of state supervision for any offense against the state in *State v. Mount,* 78 P.3d 829 (Mont. 2003). The court found that the state's sex offender registration laws were to be nonpunitive in nature and that although Mount's right to privacy was implicated by having to register, the state had a compelling interest to protect the public. The court also decided *State v. Brooks,* 289 P.3d 105 (2012) which held that it was not a violation of the violent offender's (not sex offender's) rights to require him to register because the laws are even more narrowly tailored for violent offenders because they generally require registration for less time. The author argues that when the legislature intentionally created different level of offenders, based on their risk of re-offense, it indicates that they should not all be treated the same way.

Trinkle, Catherine A. "Federal Standards for Sex Offender Registration: Public Disclosure Confronts the Right to Privacy*," 37 Wm. & Mary L. Rev. 299* (1995).
http://scholarship.law.wm.edu/wmlr/vol37/iss1/11**.**

This article reviews the Federal Registration Act and an analysis of its constitutionality in relation to the strict standard burden when it comes to a right to privacy. It opines that the statute has a low threshold for triggering release of public disclosure information and should be reviewed to narrow the list of offenders subject to privacy right amendments to the greatest possible degree. The Act should also allow offenders to petition for release from duty to register upon an adequate showing of rehabilitation. (p. 334-335).

Turner, Chrisandrea L. "Convicted Sex Offenders vs. Our Children, Whose Interests Deserve the Greater Protection?" *86 Ky. L. J. 477* (1997-1998).

This note looks at registration and community notification laws, the four basic models for community notification laws, arguments in favor of community notification laws, successful and unsuccessful constitutional challenges, and public policy arguments against the laws. It comments that the "police-discretion" model, which Washington state is considered to be, provides very little guidance as to the quantity of information to be released, the manner in which the police are to release it or the circumstances which call for its release. Abuse by law-enforcement is a possibility and immunity from civil liability damages unless acting in gross negligence or bad faith allows for inconsistent dissemination.

The author explains that there are two major limitations on the right to privacy that make it difficult for convicted sex offenders to successfully argue against disclosure. "The first is that the facts must truly be private to avoid publication and matters of public record are not private facts. The right of privacy will not be infringed when the publication concerns a matter of legitimate public interest. If a court considers the information provided by the convicted sex offender a matter of public record, then a right-to-privacy claim will be defeated." This article also highlights the risk of vigilantism and reviewed several incidents from Washington state as an example.

Weiss, Debra L. "The Sex Offender Registration and Community Notification Acts Does Disclosure Violate an Offender's Right to Privacy?" *20 Hamline L. Rev. 557* (Winter 1996).

The article reviews the development of the right to privacy through various Supreme Court cases. It also reviews jurisprudence that imposed limitations on privacy as a fundamental right. The

article explores case law surrounding privacy and confidentiality and discusses the *Nolley* test which reviews the right to privacy versus governmental interests. The article discusses sex offender registration and notification laws at the time, in 1996, and looks at many models including what is described as *The Police Discretion Model: Washington.* The author explores different states' privacy challenges to Megan's Law including an examination of Washington's *State v. Ward* which found that the release of information must be supported by the evidence that the offender poses a threat to the community because disclosure is to prevent future harm, not punish past offenses and that the information be relevant and necessary to the protection of the community, based on the degree of harm the offender poses to the community. Finally the article reviews the negative impacts of Notification Measures on the Community and the Offender including real estate values, stigma to the offender, and vigilantism. Several of the examples of vigilantism are cited from Washington state.

V. Collateral Consequences and Reintegration Issues

Carpenter, Catherine L. "Against Juvenile Sex Offender Registration," ***82 U. Cin. L. Rev. 747*** **(2013-2014).**

This article reviews the competing goals of the juvenile justice system compared with treatment of juvenile sex offenders. It discusses the stigma of registration and the long-lasting punishment of complying with registry requirements. The article looks at the difference between the practical reality of juvenile offenses vs. adult offenses (e.g. Romeo and Juliet offenses requiring the same registry consequences as an adult's child molestation offense). The prevailing and fundamental policies of child registration and public notification run counter to the prevailing and fundamental policies of rehabilitation and confidentiality of the justice system. The author maps the argument of 'Cruel and Unusual Punishment' under the Eighth Amendment for child registration.

Lasher, M. & McGrath R.J. "The impact of community notification on sex offender reintegration: A qualitative review of the research literature." ***International Journal of Offender Therapy and Comparative Crimonology*****, 56(1) 6-28 (2012).**

In a review of eight individual surveys on SORN's impact on sexual offenders subject to it, the authors found that 8 percent of sex offenders reported physical assault or injury, 14 percent reported property damage, 20 percent report being threatened or harassed, 30 percent reported job loss, 19% reported loss of housing, 16 percent reported a family member or roommate being harassed or assaulted and 40-60 percent reported negative psychological consequences.

Periman, Deborah. ***Revisiting Alaska's Sex Offender Registration and Public Notification Statute,*** **Alaska Justice Forum 25(1-2): 2-5. (Spring 2008-Summer 2008). Retrieved at:** http://justice.uaa.alaska.edu/forum/25/1-2springsummer2008/c_asora.html

Alaska's registry is an offense-based system and was one of relatively few states to require Internet dissemination of registration information for all offenders. The author argues that the Sex Offender Registration and Notification Laws rest were created on the premise that the registration and notification systems advance public safety but empirical research does not support the premise (citing Tewksbury & Lees, 2007). Instead of making the public safer, the system triggers consequences such as unemployment, instability and enhanced risk of recidivism. The Alaska

Supreme Court in *Doe v. State*, 92 P.3d 398, 410 (Alaska 2004) noted the "potentially destructive practical consequences that flow from registration and widespread governmental distribution of disclosed information" are grave.

Vandiver, Donna M., Kelly Cheeseman Dial, and Robert M. Worley. "A Qualitative Assessment of Registered Female Sex Offenders Judicial Processing Experiences and Perceived Effects of a Public Registry." ***Criminal Justice Review*** **33, no. 2 (2008): 177-198.**

The study reviewed the effect the sex offender registry had on female sex offenders in two states. It talked to female offenders from Illinois and Texas and found that every respondent reported at least one negative effect as a result of being identified on the public registry.

Yoder, Steven. ***Collateral Damage: Harsh Sex Offender Laws May Put Whole Families at Risk,*** **AlJazeera America, August 27, 2015. Retrieved at:** http://america.aljazeera.com/articles/2015/8/27/harsh-sex-offender-laws-may-put-whole-families-at-risk.html

The author looks at some individual sex offenders and the actual collateral consequences to their families, this includes the inability to live together as a family based on the residency requirements and the ability to find affordable housing, a recount of a report published in 2009 which studied 600 families and found significant impacts on housing and harassment of offenders and their kids, and the isolation of feeling like when a member of family is on the registry, the whole family is.

Zevitz, Richard G., and M. A. Farkas. "Sex offender community notification: Managing high risk criminals or exacting further vengeance." ***Pogrebin, M eds*** **(2004): 114-123.**

An in-depth study of Level III sex offender's experiences within Wisconsin's community notification law. They interviewed thirty Level III offenders in thirteen counties about their face-to-face registration experience, and about their experiences with the community notification and the impact it had on their lives and the lives of their families. The study found that while a handful of interviewees claimed that some registration requirements serve as a safeguard for them, most offenders either experienced the loss of employment and housing or the ongoing fear of such things. Offenders expressed that there is a large amount of stress on their families which the authors say strains the network of supportive relationships and in turn, successful integration.

VI. Sex Offender Notification as a False Sense of Security

Amyot, Vanessa. "Sex Offender Registries: Labelling Folk Devils," ***55 Crim. L. Q. 188*** **(2009-2010).**

The article reviews the origin of sex offender laws in the United States and Canada and registry and notification requirements in federally and locally in Canada. The author explores the critiques of notification laws which include: a false sense of security for the community, fear of harassment and vigilantism, and their overall effectiveness. The article reviews different challenges to registry and notification provisions under Canadian law. Finally, the author reviews the political context in which these laws were passed by equating it to the theory of "moral panic" explored by

Stanley Cohen in 1972. A moral panic begins with a perceived threat to society, which is amplified by the media who create and circulate stereotypical "folk devils" as serious threats to society. These highly politicized crime issues create a political environment which often exaggerates the threat and makes policy that does not allow governments to tailor their responses to the issue. The article explores alternatives to sex offender registries which include changing the one-size-fits-all approach, restorative justice approach focusing on offender reintegration, and public education.

Prescott, J.J. "Do Sex Offender Registries Make Us Less Safe?"** ***35 Regulation 48 **(2012-2013).**

The author describes how "SORN" laws, which include sex offender registration and notification became the norm without any systematic study of their consequences. He posits that an "avalanche of evidence" suggests that notification may be criminogenic. He also suggests that the logic offered by most SORN advocates ignores the potentially significant, yet unintended, consequences which can have an impact on facets of an offender's behavior."

Yung, Corey Rayburn. "The Ticking Sex-Offender Bomb," ***15 J. Gender Race & Just. 81*** **(2012).**

The article compares the War on Sex Offender rhetoric to the War on Terrorism and laws based on the notion that the offender is a ticking time bomb poised to re-offend. The author explores the stranger danger myth, sex-offender recidivism myths, lumping of all types of offenders together (Sex-Offender Homogenity), and the power of rhetoric in framing the issue within the media and even in court decisions. The author briefly reviews the framework related to state and federal sex-offender laws and their general restrictions, along with exceptions carved out through case law (See *Smith v. Doe, United States v. Husted, United States v. Pitts, United States v. Comstock, Lambert v. California).* The author concludes that what is needed is a reorientation of genuine concern society has about certain forms of sexual violence. Instead of focusing on strangers who commit a small percentage of child molestations, people can learn to turn toward family members and friends who are alone with their children.

VII. Political Climate and Trends

Carpenter, Catherine L, and Beverlin, Amy E. "The Evolution of Unconstitutionality in Sex Offender Registration Laws,"** ***63 Hastings, L.J. 1071 **(2011-2012).**

This is a comprehensive 65 page article on registration and notification and their effects on offenders. It reviews the trend for the demand for more personal information to be submitted to registries and expanding notification requirements. "Today, however, these controlling principles have been replaced by a new paradigm: Residents of any community are entitled to great amounts of information about all sex offenders without regard to their likelihood of re-offense." (See Indiana's Registration Scheme which makes information on all sex offenders available to the general public without restriction regardless of risk). The author reviews how the trend of accessibility of offender information, while attempting to start cautiously, has ended in disclosure of detailed information by website. Along with a review of residency restrictions, GPS monitoring, the article reviews the subsequent challenges to the laws with commentary on potential future outcomes. The Article concludes by offering that "…ramped-up registration schemes, designed to appease a fearful public,

are no longer rationally connected to their regulatory purpose, thus transforming the legislation into criminal penalties cloaked in civil rhetoric." (p.63).

Haskins, Shelly. ***Is Alabama's Sex Offender Registry Necessary or Pointless?*** **April 7, 2015. Retrieved at:** http://www.al.com/opinion/index.ssf/2015/04/are_sex_offender_registries_ef.html

The author consults three different opinions about the usefulness of registries in light of the California opinion on unconstitutional residency restrictions. The Executive Director of the National Children's Advocacy Center said that he agrees that registries haven't proven to be effective in fighting child sex abuse; the Madison County Chief Deputy said the registry is a useful law-enforcement tool and for peace-of-mind of citizens, and an advocate for sex offender reform says that the registry doesn't work because it promotes stranger-danger while a child is more likely to be abused by a family member or friend.

Logan, Wayne. "Megan's Law as a Case Study in Political Stasis," ***61 Syracuse L. Rev. 371*** **(2011).**

The author opened the article with an examination of Washington's Community Protection Act of 1990, citing the law as "hugely significant." It noted the community notification provision which had an intent section that discussed a sex offender's reduced expectation of privacy because of the public's interest in public safety and in the effective operation of government. It speaks to the national laws and comments on the state of Adam Walsh Act (AWA) state compliance at the time. The article also reviews the political attractiveness and catalysts that make sex-offender legislation possible. The politics of dehumanizing the offender and personalizing the effects of sex offender crimes feed the political backdrop of decision making. The author concludes that the above-factors, along with some other considerations lead to political stasis when it comes to these laws. The political cost associated with change is too great, and the lack of desire to question the status quo with empirical data proves to reinforce the stasis.

Mather, Kate and Kim, Victoria. "California eases Jessica's Law Restrictions on Some Sex Offenders," Los Angeles Times, March 26, 2015. Retrieved at: http://www.latimes.com/local/crime/la-me-jessica-law-20150327-story.html

The article recounted the decision by the California Supreme Court which ruled the sex offender residency restrictions as applied in San Diego County unconstitutional. It recounted some of the outraged responses by advocates of Jessica's Law and criticized what was characterized as a unilateral move by the Department of Public Safety (DPS) to apply the ruling statewide as "puzzling." DPS would review approximately 6,000 cases to determine whether their cases should be modified and whether the residency restrictions had a nexus to the parolee's offense, criminal history, and/or future criminality.

Neyfackh, Leon. ***California's Sane New Approach to Sex Offenders And Why No Other State is Following Its Example*****,** www.slate.com **(April 2, 2015). Retrieved at:** http://www.slate.com/articles/news_and_politics/crime/2015/04/california_s_sane_new_approach_to_sex_offenders_and_why_no_one_is_following.html

This article interviews an author in response to the actions that California's Department of Public Safety took to allow some sex offenders to live within 2,000 feet of schools and parks, pursuant to a California Supreme Court decision which found the residency restrictions unconstitutional as applied in San Diego. The subject of the article discusses that discussion related to changing these laws has mostly remained in academia and the legal community vs. legislative bodies, that stranger danger is an insignificant problem related to sexual offending, and that this is the first time she can remember that states have been more lenient vs. more punitive toward sex offenders.

Rodriguez, Rachel. "The Sex Offender Under the Bridge Has Megan's Law Run Amok?" 62 *Rutgers L. Rev. 1023* (Summer 2010).

This note focuses on reforming Megan's Laws to achieve sex effective sex offender management and deterrence, while simultaneously minimizing the potential for constitutional challenges. The article generally looks at the history of Megan's laws, growing trends towards stricter sex offender restrictions, collateral consequences and some constitutional related to the provisions. The article looks at some effectiveness studies and ultimately argues that laws should be more tailored to target only truly predatory offenders. The article did not focus on internet notification or public disclosure of records so the review is not detailed.

Schwartz, Robert G. "Time to Revisit Sex Offender Registration Laws," *29 Crim. Just. 43* (2014-2015).

The article is a review of unintended consequences and constitutional challenges to sweeping registration laws with a specific focus on the disparate impacts on juveniles. The author explores the opinions of several courts which have found provisions of their sex offender laws unconstitutional including a trial court ruling which found Pennsylvania's SORNA implementation retrospectively and prospectively as applied to juveniles (*In the Interest of J.et al.,* CP-67—JV—0000726-2010, York Court of Common Pleas, filed Nov. 4, 2013) and Ohio's Supreme Court ruling that struck the state's automatic, lifetime registration notification requirements for public registry of juveniles as violative of due process and cruel and unusual punishment. (*In re C.P. 967 N.E. 2d 729 (Ohio 2012)).* The author concludes that the current state of SORNA, which includes lifetime registration for juveniles, contradicts the also current research which establishes that 'juveniles are different."

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APPENDIX B

SEX OFFENDER POLICY BOARD

Analysis on Relationship Between Chapter 42.56 RCW and RCW 4.24.550

October 16, 2015

Contents

Introduction

In 2015, the legislature passed SSB 5154 Sec. 16, which tasked the Sex Offender Policy Board (SOPB) with reviewing the public disclosure of information compiled and maintained for sex offender and kidnapping offender registries. Because this information is currently held by public agencies, it necessarily requires an analysis of the relationship between chapter 42.56 RCW and RCW 4.24.550.

This paper accomplishes several tasks: it identifies certain offender information held by agencies that is either considered "public" or is specifically addressed by RCW 4.24.550; it briefly reviews the legal principles governing public disclosure of offender information, including Chapter 42.56 RCW and RCW 4.24.550, and it presents some of the legal arguments from *Doe v. Washington State Patrol*[1], currently pending in the Washington State Supreme Court, which involves the Public Records Act as it applies to sex offender information held by specific public agencies. Finally, it contextualizes the Board's legislative assignment within this legal and policy framework.

Sex and Kidnapping Offender Registration Information Held by "Public Agencies"

There are various forms of sex offender information, which reside in multiple locations. This information is required by different statutes, most notably RCW 9A.44.130, which pertains to registration of sex offenders and kidnapping offenders.

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 he or she plans to stay, date and place of birth, place of employment, crime for which he or she has been convicted, date and place of conviction, social security number, photograph, and fingerprints.[2] The registrant must also provide the sheriff with an accurate accounting of where he or she stayed during the week during if he or she lacks a fixed residence.[3] If a person subject to registration requirements applies to change his or her name pursuant to RCW 4.24.130, he or she must provide the sheriff with a copy of the application.[4]

The county sheriff is required to send this registration information, photographs, fingerprints, risk level notification, and any change of address to the Washington State Patrol (WSP).[5] The WSP is required to maintain a central registry of sex offenders and kidnapping offenders who are required to register pursuant to RCW 9A.44.130.[6] WSP acts as a repository for the sex offender registration forms submitted by the county sheriffs for retention and enters the registration data from these "source documents" into the database.[7] These documents also include the offender's current risk level classification; it is unknown whether the WSP maintains any

[1] Laws of 2015, ch. 261 § 16.
[2] RCW 9A.44.130(2)(a).
[3] RCW 9A.44.130(5)(b).
[4] RCW 9A.44.130(6).
[5] RCW 43.43.540(1).
[6] RCW 43.43.540(2).
[7] Brief of Appellant Washington State Patrol at 1, John Doe A, et al v. Washington State Patrol et al, No. 90413-8.

documents in support of the classification decision such as the completed classification tool or records related to discretionary leveling decisions. WSP asserts that the State Patrol Database only includes the offender's name, residential address, date of birth, crime for which he or she was convicted, date of conviction, and county of registry.[8] The amount of information available to law enforcement is not simply what is shown on the website, it includes all related information and documentation maintained by law enforcement and it is unclear what is encompassed in the "source documents" referenced by WSP.

In addition to this legislative mandate, RCW 4.24.550 requires the Washington Association of Sheriffs and Police Chiefs (WASPC) to, subject to funding, maintain a statewide registered kidnapping and sex offender web site that is available to the public.[9] The website is required to post information regarding: all Level II and Level III offenders, Level I offenders who are out of registration compliance, and all kidnapping offenders.[10] Although WASPC stresses that they are not generally a state agency subject to the Public Records Act, they agree that pursuant to specific legislative mandate, they maintain a defined public database with the information in the database constituting a public record.[11]

Although law enforcement agencies are primarily responsible for maintaining registration information, many other public agencies are responsible for initial risk classification and notifications. Other agencies that may maintain sex offender registration information include, but are not limited to, the Department of Social and Health Services, the Juvenile Rehabilitation Administration, the Department of Corrections, the Special Commitment Center, as well as other agencies that may provide services to offenders, which require the use of sex offender information. As governmental entities, these agencies are subject to the provisions of the Public Records Act.

Washington's Public Records Act (Chap. 42.56 RCW)

The Public Records Act began as "The Public Disclosure Act" in 1972 when voters adopted Initiative 276, which required documents that were maintained by city, county, and state government, and all special purpose districts, to be made available to the public. In 2006, the statutes were recodified from Ch. 42.17 RCW to Ch. 42.56 RCW and are now referred to as the Public Records Act (PRA). Construction of the chapter shall be as follows:

> …This chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy and to insure the public interest will be fully protected. In the event of conflict between the provisions of this chapter and any other act, the provisions of this chapter shall govern.

[8] Washington State Patrol's Answer to Amicus Brief at 1-2, John Doe A, et al v. Washington State Patrol et al, No. 90413-8.
[9] RCW 4.24.550(5)(a).
[10] *Id.*
[11] Brief in Response Washington Association of Sheriffs & Police Chiefs ("WASPC") at 8, John Doe A, et al v. Washington State Patrol et al, No. 90413-8.

RCW 42.56.030. Primary exemptions to the statute are found in RCW 42.56.230-42.56.480. RCW 42.56.070(1) provides, in part,

> Each agency, in accordance with published rules, shall make available for public inspection and copying all public records, unless the record falls within the specific exemptions of *subsection(6) of this section, this chapter, or other statute which exempts or prohibits disclosure of specific information or records.

Washington state courts continue to liberally construe Chap. 42.56 RCW, having decided several cases that reinforce the broad application of disclosure of records and limit the exemptions. In Cowles Publishing Co. v. Spokane,[12] the court held that the "investigative records" exception to the PDA does not provide a categorical exemption from disclosure to police investigative records where the suspect is arrested and referred to the prosecutor. The court has also found that documents related to an investigation of allegations made against school employees did not fall within the investigative records exemption of the PRA[13] and the identifying details of a port employee who was under an investigation was unlawfully redacted from the investigative report.[14] The court in Koenig v. Thurston County[15] held that certain documents held by the prosecutor's office, specifically Special Sex Offender Sentencing Alternative (SSOSA) evaluations and victim impact statements are not exempt from disclosure under the investigative records exemption under the PRA.

By contrast, the Supreme Court has ruled that a juvenile's Special Sex Offender Disposition Alternative (SSODA) evaluation did not belong in the official juvenile court file and was therefore not subject to disclosure.[16] This case did not address any issues directly related to the Public Records Act; however, the court based its opinion on an examination of RCW 13.50.050(3), which requires that all records of a juvenile offender must be kept confidential unless they are a part of the official court file or meet another statutory exemption. This spirit of open disclosure contained in the Public Records Act is not always compatible with the need for certain information to be confidential. For this reason, the PRA provides that the disclosure of information may be limited by "other statutes."[17]

Release of Offender Information to the Public under RCW 4.24.550

RCW 4.24.550, pertaining to the release of information regarding sex and kidnapping offenders, authorizes public agencies to release offender information under certain circumstances. The statute does not specifically prohibit disclosure of offender information and in fact asserts that information under the section should not be considered confidential except otherwise provided for

[12] 139 Wn.2d 472 (1999),
[13] *Predisik v. Spokane School District No. 81*, 182 Wn.2d 896 (2015).
[14] *West v. Port of Olympia*, 183 Wn. App. 306 (2014).
[15] 175 Wn.2d 837 (2012).
[16] *State v. A.G.S.,* 182 Wn.2d 275 (2014).
[17] See RCW 2.64.111, RCW 2.64.11, RCW 5.60.060, RCW 5.60.070, RCW 7.68.140, RCW 9A.82.170, RCW 10.77.210, among others.

by law.[18] However, it also sets forth narrowly tailored criteria for the release of offender information based on who is releasing it and what information is to be released. The plain language of RCW 4.24.550, as well as case law, suggests that it was intended to provide disclosure guidelines to those who create, receive and maintain sex and kidnapping registration information.

Web site disclosure of sex and kidnapping offender information

The criteria to disclose information on the publicly accessible web site maintained by WASPC is statutorily defined by RCW 4.24.550(5)(a). It requires information related to level III, level II, level I non-compliant offenders, and kidnapping offenders who are required to register pursuant to RCW 9A.44.130 to be available to the public via the web site. The published information includes name, relevant criminal convictions, address by hundred block, physical description and photo.

Public agency disclosure of sex and kidnapping offender information

Pursuant to RCW 4.24.550(1): public agencies are authorized to release information to the public regarding sex and kidnapping offenders only when the agency determines that disclosure is relevant and necessary to protect the public and counteract the danger created by the particular offender in addition to the information which is released via the web site. The plain language of this provision indicates that a public agency is authorized to release information, other than what is available on the web site, only after this individualized assessment is made.

RCW 4.24.550(2) further limits the extent of the public disclosure of the "relevant and necessary" information, providing that such disclosure shall be rationally related to risk level, locations where the offender resides or is regularly found, and the needs of affected community members to enhance safety.

Local law enforcement disclosure of offender information

The extent of disclosure of offender information made by local law enforcement, aside from the information available via the public web site, is predicated on the agencies' consideration of risk level of the offender. The statute provides guidelines for dissemination of information based on risk level and other considerations.[19] The county sheriff with whom a level III offender is registered is required to publish a legal notice, advertising or a news release that conforms to the guidelines specified in RCW 4.24.5501.

Judicial Interpretation of RCW 4.24.550

In State v. Ward,[20] the court extensively discussed the limited public disclosure provisions related to sex offender information. The court was asked to review whether retroactively applying the Community Protection Act to felony sex offenses was an ex post facto violation.[21] The court

[18] RCW 4.24.550(9).
[19] RCW 4.24.550(3).
[20] 123 Wn.2d 488 (1994).
[21] *Id. at* 495.

concluded that retroactive application of the statute did not violate either the appellants' equal protection or due process rights under the federal and state constitutions.

A review of the court's analysis in this decision indicates that they considered the statutory framework to be one of "limited disclosure".[22] Their holding concluded:

> "We hold, however, that because the Legislature had limited the disclosure of registration to the public, the statutory registration scheme does not impose additional punishment on registrants."

In the decision, the court analyzes the detailed process laid out in RCW 4.24.500, which involves individualized determinations for release of data. To illustrate the importance of an individualized determination, the court uses the example of releasing a social security number of an offender, which may be unnecessary in many cases, but critical where a potential employer must discover the offender's identity and criminal background.[23] The court also discusses determinations of disclosure based on geography as an example of how limited disclosure furthers the Legislature's primary goal of protecting the public while not rising to the level of being an affirmative disability or restraint to the offender.[24] The court's contemplation of these individualized determinations of disclosure in Ward, and its reliance on them for the holding in the case, suggests that disclosure of such information has been limited by the legislature the court's active contemplation of limiting disclosure under RCW 4.24.550.[25]

Legal Issues and Arguments Presented in *Doe v. Washington State Patrol et al*

Another case that addresses the disclosure of offender information, Doe v. Washington State Patrol et al,[26] is pending before the Washington State Supreme Court. Although it would be inappropriate to speculate as to the outcome of a pending case, the case requires discussion, as the legislature has required the Board to make findings and recommendations based on the current state of the law.

The factual basis of Doe is a public records request, directed to WSP and WASPC, for electronic copies of sex offender registration forms for level I sex offenders whose last names begin with "A" and sex offender registration "files" for offenders whose last names begin with "B".[27] The requestor later changed her request, asking for a copy of WSP's database.[28] WSP and WASPC were willing to release the information, as they have routinely released downloads of the database in

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[22] *Id.* at 499.
[23] *Id.* at 503.
[24] *Id.* at 500.
[25] A discussion of *State v. Ward*, appears in both the Appellant and Amicus Briefs submitted in John Doe A, et al v. Washington State Patrol et al, No. 90413-8.
[26] No 90413-8.
[27] Brief for The Washington Association of Criminal Defense Lawyers as Amici Curiae Supporting Plaintiffs/Respondents at 2, John Doe A, et al v. Washington State Patrol et al, No. 90413-8. *See also* Brief of Appellant Washington State Patrol at 6, John Doe A, et al v. Washington State Patrol et al, No. 90413-8.
[28] Brief of Appellant Washington State Patrol at 6, John Doe A, et al v. Washington State Patrol et al, No. 90413-8.

response to public response requests.[29] After being informed of the pending requests, the subjects of the records filed a request for certification as a class and moved for a blanket, permanent injunction against the release. The injunction was granted by the Superior Court, and is the basis for the appeal.

WSP argues that the requested information is subject to disclosure under the PRA and that the more narrow release provisions contained in RCW 4.24.550 do not apply. Of relevance to this question is whether RCW 4.24.550 is considered an "other" statute under the Public Records Act. The PRA provides that the operation of "other statutes" can prevent release of information otherwise available through the PRA.[30] WSP and WASPC both assert that RCW 4.24.550 should not be considered an "other statute," which would prevent disclosure of the requested information.[31]

The WSP specifically argues that the affirmative community notification provisions outlined in RCW 4.24.550 do not alleviate its duty to provide public records under Chap. 42.56 RCW. WSP also argues that if the legislature intended to prohibit disclosure, it would have affirmatively prohibited public disclosure as it did for gang databases and the felony firearms database.[32] WSP also asserts that RCW 4.24.550 is an immunity statute for community notification, not an exemption to the Public Records Act.[33]

Alternatively, the Washington Association of Criminal Defense Lawyers (WACDL) argued in its amicus brief that RCW 4.24.550 is an "other statute," such that an agency must follow the standards it sets forth before releasing offender information.[34] WACDL also argues that if RCW 4.24.550 is not the authority regarding the release of sex and kidnapping offender registration information but rather the PRA, the practical effect would contravene the policy underlying the Community Notification Act.[35] Allowing release of all registration records allows any person to distribute and disseminate the information freely and makes superfluous the narrowly tailored criteria for release.

Whereas the pending case of Doe focuses on the case information related to level I offenders and database information maintained by WSP, it is unclear in other instances which records are maintained and disclosed. The amount of information available to law enforcement is not simply what is shown on the website, it includes all related information and documentation maintained by law enforcement and it is unclear what is encompassed in the "source documents" referenced by WSP.

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[29] *Id.*.
[30] RCW 42.56.070(1).
[31] Brief of Appellant at p. 8-9.
[32] *Id.* at p.11.
[33] *Id.* at pps. 13-17.
[34] Brief for The Washington Association of Criminal Defense Lawyers as Amici Curiae Supporting Plaintiffs/Respondents at 8, John Doe A, et al v. Washington State Patrol et al, No. 90413-8.
[35] *Id.* at 3.

The Relationship Between Ch. 42.56 RCW and RCW 4.24.550

It is important to note that the policy behind the Public Records Act is to allow citizens to maintain control over their government, while the public policy related to release of sex and kidnapping offender information is to further public safety. The actual legal relationship between Ch. 42.56 RCW and RCW 4.24.550 may be decided by the Supreme Court when they issue their decision on Doe. Until then, observations can be made based on examination of these statutes together and how other states treat disclosure of registration of information.

Liability and Immunity for Disclosure of Offender Information

The Public Records Act requires a government agency to respond to a request for information within five days. Within that timeframe, an office or agency must either provide the record, an internet link to the information, or an acknowledgement of the request with a predicted time frame of when the agency can respond or deny the request[36]. Although RCW 42.56.060 protects agencies, officials, public employees or custodians from a cause of action related to loss or damage based upon the release of a record if they acted in good faith in an attempt to comply with the chapter,[37] the act has strict penalties for delay or non-disclosure of records.

By contrast, RCW 4.24.550(7) provides immunity from civil liability to public officials, public employees, a public agency as defined in RCW 4.24.470 or units of local government and its employees as provided in RCW 36.28A.010 unless they act with gross negligence or in bad faith. It also includes a statement of non-liability for failure to release information under the section.[38]

The contrast between the approaches of the two statutes becomes apparent when an agency receives a request for offender records. If an agency is asked to comply with the disclosure requirements of both Ch. 42.56 RCW and RCW 4.24.550, it is clear that the most prudent route for an agency to take is to liberally disclose records because there is a strict monetary penalty for non-disclosure under the Public Records Act, and immunity of disclosure or non-disclosure of a record is provided for under RCW 4.24.550. There is little incentive to adhere to the guidelines of RCW 4.24.550, as the agency is liable for potentially large financial penalties under Ch. 42.56 RCW if it withholds a document that is considered public.

[36] RCW 42.56.520.
[37] RCW 42.56.060.
[38] RCW 4.24.550(8).