



STATE OF WASHINGTON

**SEX OFFENDER POLICY BOARD**

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**MINUTES**

**Registration and Notification Committee**

**Tuesday, May 11, 2010**

**9:00 a.m. to 12 p.m.**

**Washington Assoc. of Sheriffs and Police Chiefs**

**3060 Willamette Drive N.E.**

**Lacey, WA 98506**

**Members Present:**

Ed Holmes  
Joanna Arlow  
Bev Emery  
Lindsay Palmer  
Maureen Saylor  
Sarah McCulloch  
Kecia Rongen  
Lori Ramsdell-Gilkey  
Carey Sturgeon  
Amy Pearson  
Dawn Larsen

**Staff Present:**

Shoshana Kehoe-Ehlers  
Andi May

**Others Present:**

Nathan Johnson, House Republican Caucus; Krista Goldstine-Cole, Senate Democratic Caucus; Jedd Pelander, Juvenile Rehabilitation Administration.

**I. Call to Order**

Committee Chairs Kecia Rongen and Lindsay Palmer called the meeting to order at 9:03 p.m.

**II. Revise and Adopt Agenda**

The agenda was adopted in its original form.

**III. Approval of Minutes**

**MOTION # 24: MOVED TO APPROVE THE MARCH 9, 2010 MINUTES AS AMENDED.**

MOVED: Amy Pearson

SECONDED: Maureen Saylor

PASSED: Unanimously

**IV. Case Law Update**

Joanna Arlow presented two recent Washington State cases dealing with sex offender law.

**State v. David Lee Brosius, Court of Appeals, Div. II, Case No. 38635-6-II (2010):**

This case was born out of last year's State v. Ramos case. The Court held in Brosius that the Legislature provided JRA and DSHS with sufficient guidelines in assessing the risk of an offender that provides part of the basis for determining an offender's risk level.

There was some discussion about proposing that the Board draft guidelines for law enforcement to use when leveling.

**State v. Michael Peterson, Washington State Supreme Court, Case No. 89089-9 (May 6, 2010):**

The Court held in this case that Failure to Register is an "alternative means" crime and does not only apply to those offenders with permanent residences. The jury does not have to reach a unanimous decision as to how the offender committed the FTR offense. However, in this case, it was moot, because the offender failed report for over 30 days, violating all timelines listed in the statute. SSB 6414 clarifies the timelines for registration.

This case does not appear to require any revision of the FTR statute.

## V. Workgroup Reports

Workgroups updated the Committee on their progress.

- **Juvenile**

Workgroup Chair Ms. Rongen reported what the workgroup accomplished during its last meeting. The workgroup reviewed the proposals of the juvenile section of the 2009 SOPB Report to the Legislature. While SSB 6414 included a few juvenile proposals, several proposals were not adopted, in part due to some Legislators' concerns that these proposals were not unanimously supported by the Board.

The workgroup prioritized what proposals it would like to work on this year with other stakeholders.

- Review proposals from last year
- Identify stakeholders who need to be educated about proposals
- Perform additional research, if necessary, regarding the recommendations.
- Identify services for families who need juvenile sex offenders to transition back into the home. (Obtain the number of juveniles who are leaving JRA without parole services.)

The workgroup then went on to discuss how to accomplish these goals. The following points were made:

- Workgroup members are open to drafting a separate statute that will emphasize the differences between juvenile and adult offenders.
- Ms. Rongen updated the workgroup on the need to validate a juvenile risk assessment tool.
- The workgroup discussed the pros and cons of automatic termination from registration versus revising the eligibility for relief from registration criteria and process. WASPC will discuss this with their membership and executive board.
- The risk assessment and leveling workgroup are discussing a leveling new model at this time. The juvenile workgroup will consider it after it has been formalized.

- **Risk Assessment and Leveling**

Workgroup Chair Bev Emery reported that this workgroup is discussing a proposal on how to best level sex offenders based on their risk. The proposal thus far is regardless as to where an offender comes from; DOC's End of Sentence Review Committee (ESRC) will initially level all sex offenders. Law enforcement would still have the final say. However, departures from the ESRC level will be tracked. Offender Watch has a tool to track these departure notices

and examine them. The SOPB or another entity would then act in cases where there have been a disproportionate number of departures. WASPC likes having ESRC designated as the sole body that first levels the offender, regardless where they originated.

The goal is also for law enforcement to level based on DOC's statewide risk assessment training.

This proposal will also include looking at the reassessment of sex offenders and create policy around county-to-county movements.

Chief Holmes will present this proposal to WASPC in May.

Committee members requested that this workgroup consider the following:

- Look at whether a centralized leveling body could initially determine who will need to register. Law enforcement determines this now.
- Should there be a process for determining whether someone needs to register if their records are lost or destroyed (from natural disasters).

- **Community Notification**

Workgroup Chair Lindsay Palmer presented two handouts. On May 5, 2010, the SOPB Community Notification and Education workgroup met with the education sub committee of the AG's Youth Internet Safety Task Force. The purpose of this meeting was to exchange insights, observations and information about the work of prevention.

Ms. Palmer explained that schools would find it helpful if a multidisciplinary team addressed notification in schools. The school principal could tap into this team and figure out what the needs are for a particular juvenile sex offender; what to advise teachers; what would be an appropriate environment for this juvenile; and how to protect potential victims.

This workgroup also discussed the "sexting" issue. They would like to identify some appropriate language regarding the issue of "sexting" that could be included in EELERS, as well as educate juveniles about this issue.

- **Legislative**

This workgroup will meet with members of the SOPB Legislative Ad Hoc Committee to determine the workgroup's purpose and scope.

## VI. Developing a Policy Proposal for “Sexting”

The Committee discussed how to address the recent application of the crime *Possession/Sending Depictions of Minor Engaged in Sexually Explicit Conduct* as it relates to minors sending sexually inappropriate photos to their peers via cell phones or computers.

The Committee reviewed proposed statutory language offered by Sara McCulloch and Lisa Johnson of the King County Prosecuting Attorney’s Office. It captures the juvenile who took the picture of him or herself; but not the juvenile who receives a photo from a friend, who passes it to a friend of a friend, etc. Ms. McCulloch went on to report that KCPA has backed off looking at a legislative fix on “sexting”, and instead encouraging fellow prosecutors not to file these types of cases against juveniles. There was discussion about the reasoning behind this.

The Committee reviewed the Colorado SOMB’s approach to this issue. They encourage each jurisdiction to develop a protocol to address this.

Several members expressed strong concern about requiring a juvenile convicted with this offense to also be required to register, specifically because it dilutes the purpose and effectiveness of the registry. Several alternatives were discussed as to how to address the crime of “sexting”, including:

- Only classifying it as a sex offense if the offender has a prior sex offense.
- Review Washington State’s Harassment statute for model language.
- Consider alternative methods of resolving this in the court system, such as a stipulated order of continuance, diversion, or deferred prosecution. Conditions may include requiring the offender an opportunity to participate in counseling or undergo some type of education about “sexting”.

Prosecutors and members of WAPA will continue to discuss this issue and try to present an informal position on this issue before the next Board meeting August.

## VII. Improving Homeless/Transient Sex Offender Law

The Committee continued developing a legislative proposal to address the problems posed with the registration of homeless and transient sex offenders.

Legislative staff in attendance explained the policy behind SHB 2534’s response to the homelessness/transient sex offender issue raised in State v. Flowers. Understanding that this may be a temporary fix, the Legislature is open to other proposals from the Board.

The Committee members then went on to discuss effective ways to register and monitor the whereabouts of homeless and transient sex offenders. The following points were made:

- The committee first discussed the need to identify what is trying to be accomplished with registration of these offenders. Is it trying to prevent offenders from claiming they are homeless when they are not homeless to avoid the notification requirement; or is it just to track where they are on any given day?
- The following proposal was made in response to how to approach this issue. First, create the rule; and then, second, require some form of community notification.
- The discussion then went on to defining homelessness.
  - Members agreed to review ESHB 2497's (Concerning the victimization of homeless persons) three-prong definition, the GAU statute's definition, and SORNA's definition/factors.
  - Other states define "residency", not "homelessness".
  - Define "residency" as living at a place at least four days per week.
  - Prosecutors have standards for what shelters qualify as residences.
  - Defining a "fixed residence" is a separate issue from "homelessness". Defining "fixed residence" will assist in defining "homelessness"
  - There was a proposal that an offender provide a "primary residence" as opposed to "dual residences" b/c law enforcement has to double up their resources to verify both addresses.
  - When defining residence, the Committee needs to consider that juveniles often have two residences due to parents being separated or divorced.

**VIII. Review 2010 Committee Workplan**

The Committee briefly reviewed the status of this year's workplan.

**IX. New Business**

**X. Public Comments**

There were no comments made by the public.

**XI. Adjournment**

Co-Chair Lindsay Palmer adjourned the meeting at 11:45 a.m.

**APPROVED AND ADOPTED BY THE REGISTRATION AND COMMUNITY NOTIFICATION COMMITTEE.**

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Kecia Rongen/Lindsay Palmer  
Committee Co-Chairs

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Date

Shoshana Kehoe-Ehlers

Date