

End of Sentence Review - Sexually Violent Predator Civil Commitment



October 5, 2015



Just over twenty five years ago, the Community Protection Act was unanimously passed into law, which provided a type of protection that made Washington State the national model for addressing sexual violence and sexual predators. Multiple states have since followed our state's lead.

The 1990 Community Protection Act was enacted in response to two violent sex crimes that created public outrage and concern statewide. First, a young woman named Diane Ballasiotes was abducted and murdered in a downtown parking garage by a dangerous psychopath named Gene Raymond Kane, who had walked away from a work release, where he was placed after serving a 13-year sentence for attacking two women. One year later, in May 1987, a 7-year old boy was riding a bike in his Tacoma neighborhood when he was abducted, raped, sexually mutilated, strangled and left to die in the woods by Earl K. Shriner, who had been released from prison 2 years earlier after serving a 10-year sentence for kidnapping and assaulting two teenage girls. He had a 24-year history of killing, sexual assault, and kidnapping. Prior to his discharge, prison officials learned that he intended to torture children after he was released and desperately tried to have him detained under WA State's mental health civil commitment law; however, the State was unable to demonstrate a required Recent Overt Act to prove dangerousness and thus had no option but to release him.

The unanimously passed Community Protection Act **increased sentences** for all sex offenses, implemented **sex offender registration and community notification** requirements, and developed the nation's first **Sexually Violent Predator civil commitment** laws.



Community Protection Act of 1990

- Mandated state agencies with jurisdiction over the release of sex offenders to review all sex offender cases prior to the offender's release from confinement.
- Mandated the sharing of necessary and relevant information regarding sex offenders.
- Created the authority to civilly commit Sexually Violent Predators at the end of their term of total confinement.
- Enacted Sex Offender Registration and Community Notification.



Significant Changes Since 1990

- 1995 - Sex Offender Registration for offenders who are under federal jurisdiction and those found Not Guilty by Reason of Insanity; Recent Overt Acts.
- 1997 - Risk Level Classification and Notification Process refined; Registration for kidnapping offenses.
- 2001 - Indeterminate Sentence Review Board (ISRB) Determinate Plus Sentencing (Community Custody Board cases).



DOC Law Enforcement Notification / Civil Commitment Program

- End of Sentence Review Committee (ESRC), ESR Records Unit and Law Enforcement Notification (LEN) processes include compiling records and information, preparing LEN bulletins, scoring sex offender risk assessments for the ESRC, overseeing transition and release of sex offenders who are required to register and those identified for civil commitment consideration under RCW 71.09, and completing LEN 30 days prior to offender release from DOC confinement.
- Joint Forensic Unit operations, to include information gathering, assignment and review of forensic psychological evaluations (FPE) for offenders who are under civil commitment consideration.
- Sexually Violent Predator (SVP) civil commitment processes, to include referrals for offenders under DOC jurisdiction, Recent Overt Act screenings and referrals, and conditional release and supervision of Sexually Violent Predators to a Less Restrictive Alternative (LRA) from the DSHS Special Commitment Center.
- DOC liaison regarding commitment, release and supervision of DOC offenders with mental illness at WSH.



End of Sentence Review Committee (ESRC)

- An administrative review committee established as a result of the 1990 Community Protection Act
- The ESRC is comprised of representatives of WA State agencies who have jurisdiction over the release of sex offenders or are significantly impacted by their release, to include the Department of Corrections (DOC), Indeterminate Sentence Review Board, (ISRB), local law enforcement agencies, and the Department of Social and Health Services (DSHS): Special Commitment Center (SCC), Juvenile Rehabilitation Administration (JRA), Developmental Disabilities Administration, Victim/Witness, and Mental Health Division (MHD) Institutions consisting of Western State Hospital (WSH), Eastern State Hospital (ESH), and Child Study and Treatment Center (CSTC).

- 
- The ESRC is tasked with:
 - Assigning sex offender notification risk levels,
 - Assessing available release plans, and
 - Making appropriate referrals, including civil commitment

 - ESRC reviews all offenders releasing from WA State confinement who have been adjudicated, convicted, or found not guilty by reason of insanity of or found incompetent to stand trial for:
 - A current sex offense or kidnapping/unlawful imprisonment offense that requires registration per RCW 9A.44.130.
 - A current sexually violent offense as defined in RCW 71.09.020(17).
 - Any other current offense with sexual elements/motivation, when the offender has a prior sexually violent offense.

 - ESRC also reviews adults and juveniles with an offense requiring registration prior to their release from confinement and/or transfer to WA State under a reciprocal Interstate Compact agreement, as well as youth under the jurisdiction of a juvenile court for a sex offense.



ESRC:

- Reviews actuarial risk assessments for registerable sex offenders to determine the level of notification
- Recommends conditions of supervision to the Indeterminate Sentence Review Board that may mitigate the offender's risk in the community if released for offenders sentenced under RCW 9.94A.712 (Community Custody Board)
- Recommends notification to non-law enforcement agencies, such as DSHS Children's Administration and Aging & Disability Services Administration
- Recommends referral to DOC programs, including the Victim Services and Offender Re-entry and Community Safety Programs



How is the offender's Notification Level Determined

- Between 1990 and 1997, there was not a consistent method used by state agencies and law enforcement to determine notification levels for registerable sex offenders.
 - During this time, the Department of Corrections issued either a Teletype, a Law Enforcement Alert or a Special Bulletin to notify law enforcement of a registerable offender's release from confinement.
- During 1997 a consistent method to determine sex offender notification levels was developed.



Risk Level Classifications

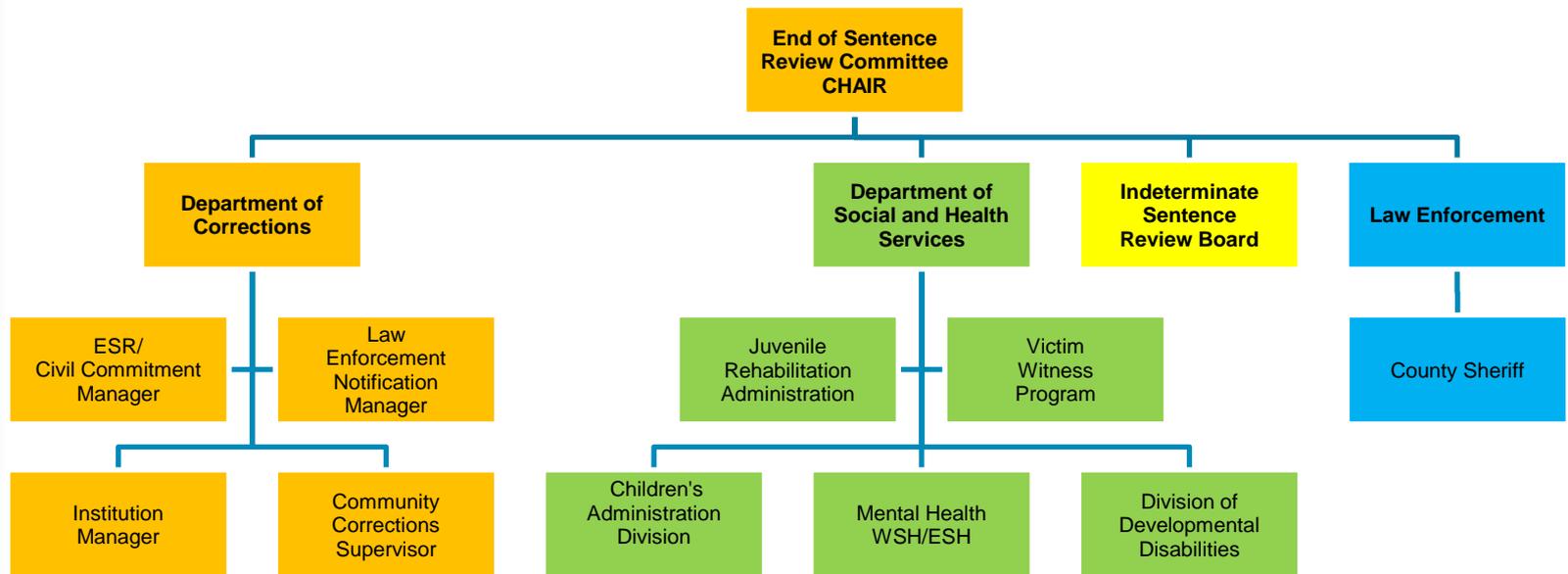
- **Level I:** Those offenders whose risk assessment indicates a low risk of sexual re-offense within the community at large. Information is shared with law enforcement agencies. Upon request, law enforcement may disclose the relevant and necessary information to community members.
- **Level II:** Those offenders whose risk assessment indicates a moderate risk of sexual re-offense within the community at large. Information is shared with law enforcement agencies. Law Enforcement discloses the relevant and necessary information to schools, businesses and organizations that serve primarily children, women, or vulnerable adults, and neighbors/community groups near the offender's residence.
- **Level III:** Those offenders whose risk assessment indicates a high risk of sexual re-offense within the community at large. For offenders classified as a risk Level III, in addition to the disclosures as a Level II, law enforcement may also disclose relevant and necessary information to the public at large.



Law Enforcement Alerts

- For offenders who are required to register for a Kidnapping, Unlawful Imprisonment or Prostitution offense, a LEA will be submitted to notify law enforcement of the offender's pending release.
- LEAs are also submitted for offenders who are releasing for a current offense that has sexual elements but no sexual motivation finding by the Court, such as Assault 2nd or Murder 1st Degree.

End of Sentence Review Committee



The End of Sentence Review Sexually Violent Predator Subcommittee includes the above committee members with the addition of representatives from the King County Prosecuting Attorney's Office and the Washington State Office of the Attorney General SVP Units.



Committee/Subcommittee Reviews

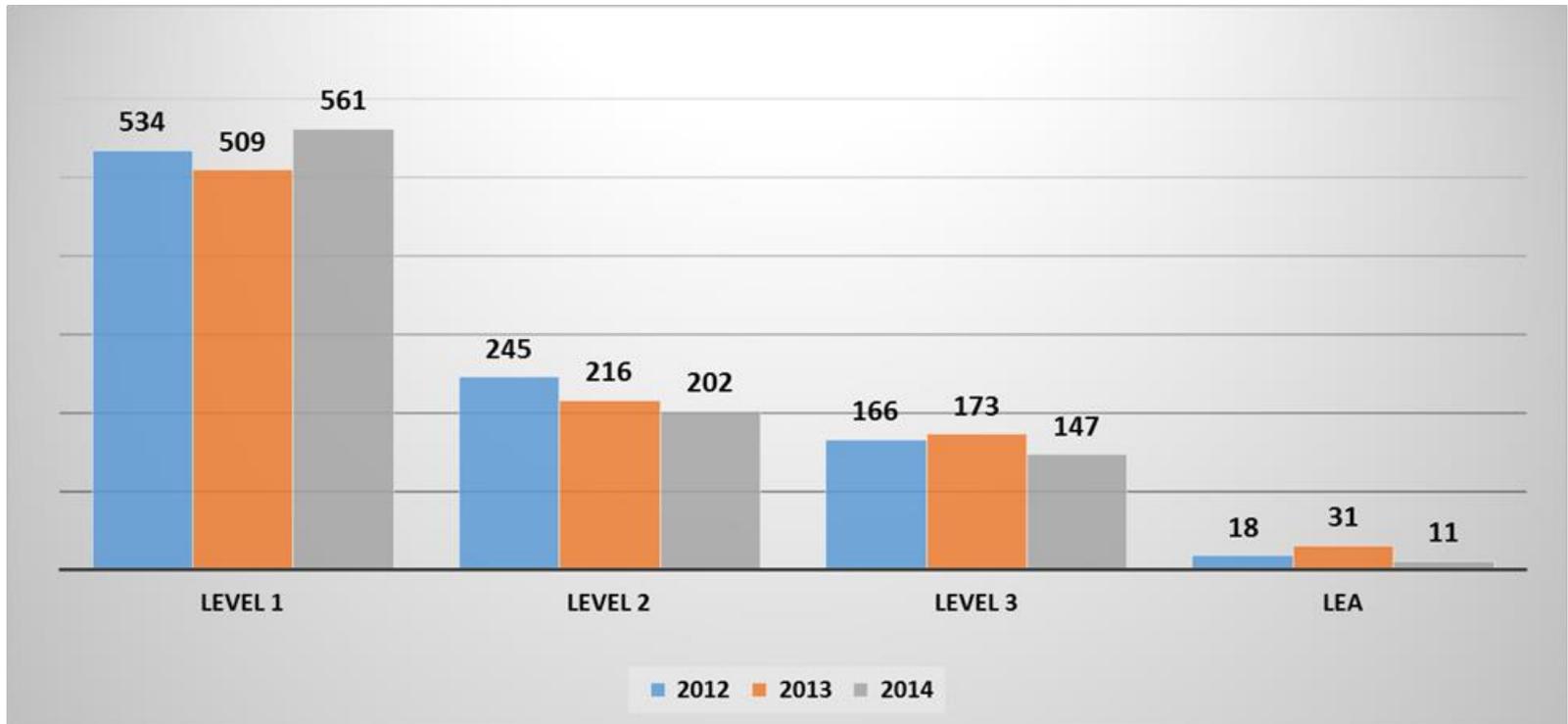
- Committee members are provided with a summary of the offender's history along with a packet of supporting documents.
- Committee members review and discuss the provided file material, make any scoring adjustments, and vote by a simple majority. If the vote results in a tie, the ESR Chair reviews the case and determines the final outcome.



ESRC Decisions

- ESRC makes a registration/notification risk level recommendation to law enforcement prior to the offender's release. Local law enforcement has the authority to set the final risk level classification as deemed appropriate for the community.
- The appropriate agency staff (such as DOC Law Enforcement Notification or Juvenile Rehabilitation) complete the notification to appropriate agencies and upload the file material, scoring tools and bulletin to Offender Watch.

ESRC Decisions



2012

- Mitigated: 198
- Aggravated: 81
- Referred to Sub: 32
- Reviewed by Sub: 32
 - Refer for FPE: 21

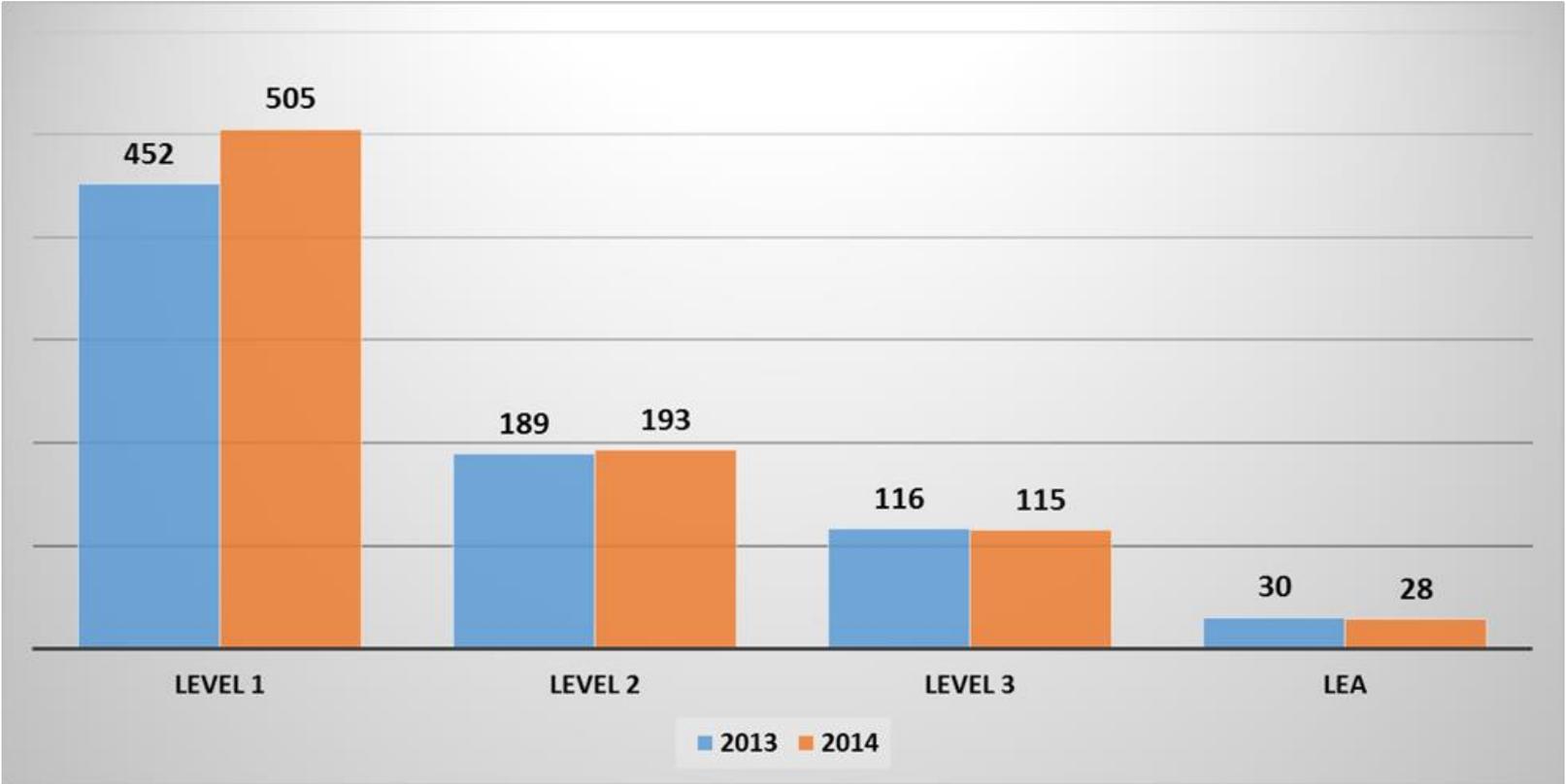
2013

- Mitigated: 200
- Aggravated: 77
- Referred to Sub: 22
- Reviewed by Sub: 26
 - Refer for FPE: 16

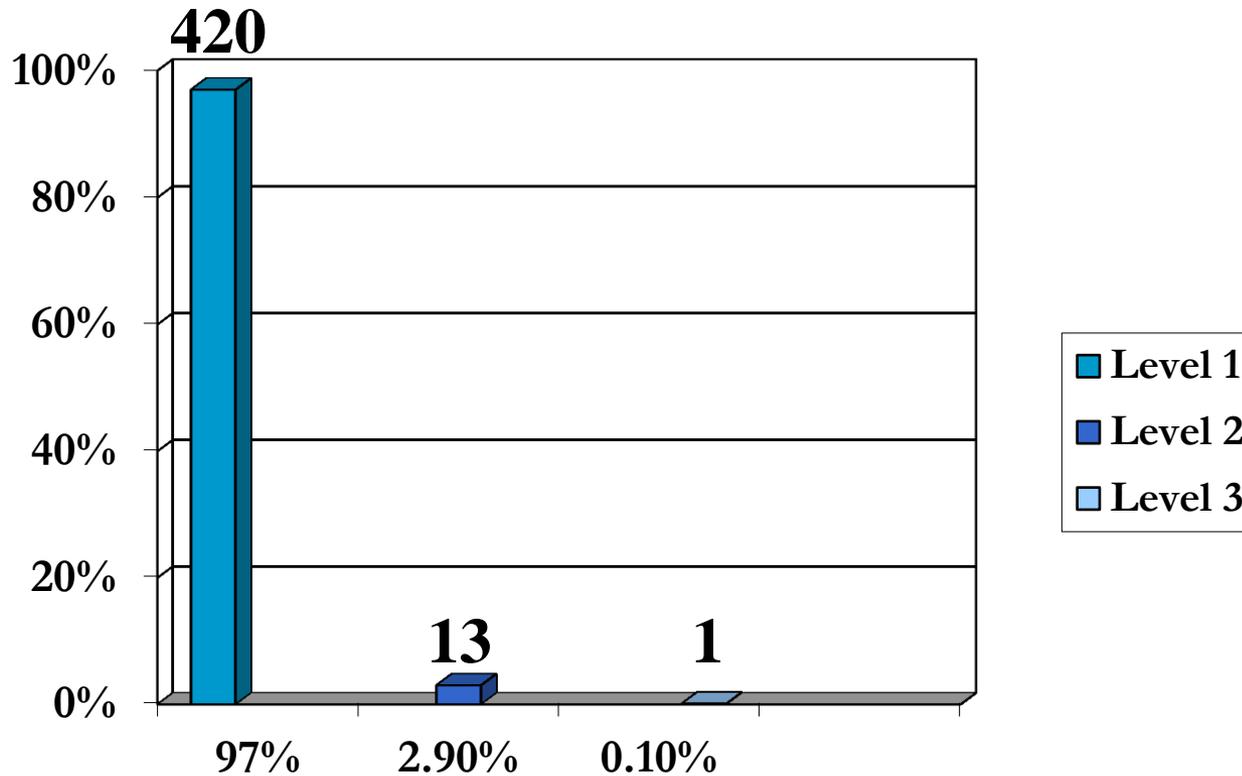
2014

- Mitigated: 222
- Aggravated: 63
- Referred to Sub: 11
- Reviewed by Sub: 17
 - Refer for FPE: 16

DOC Notifications

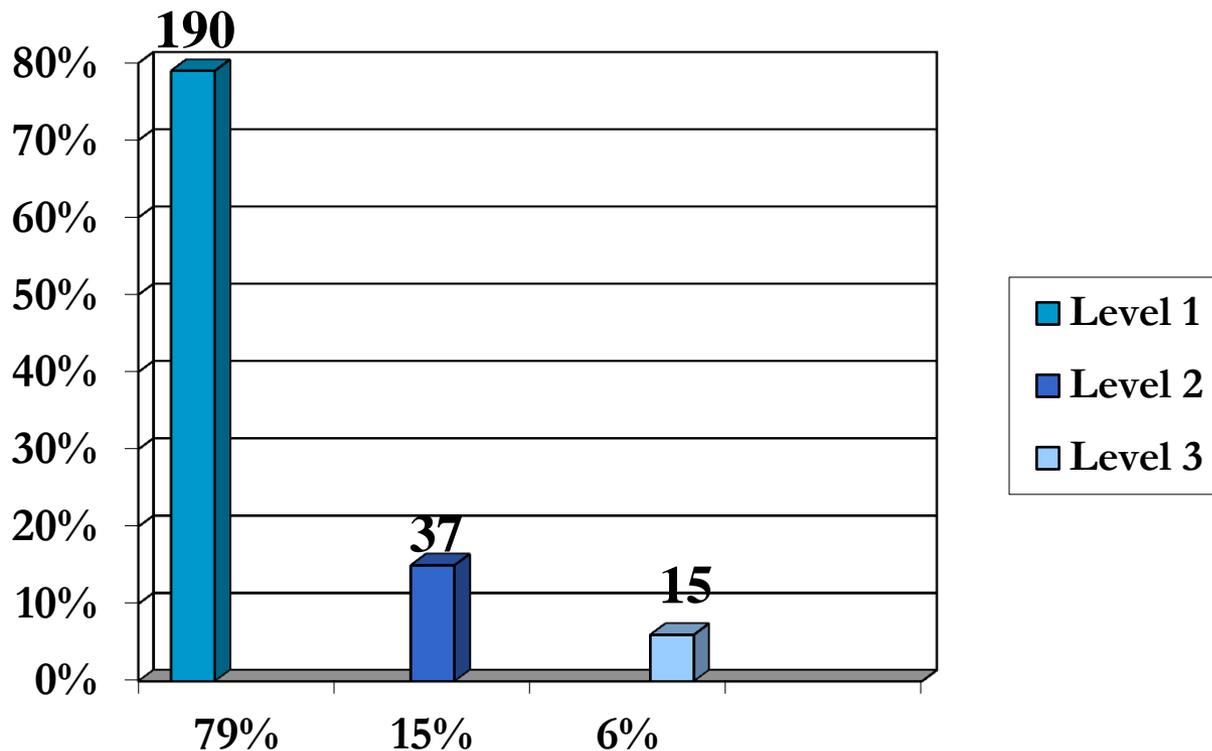


*Community Notification Levels for Juvenile Court Youth December 2012-August 2015



***Law enforcement has final authority on community notification level.
Data from ESRC Juvenile Sub Database.**

*Community Notification Levels for Juvenile Rehabilitation Youth, SFY 2013/2014



***Law enforcement has final authority on community notification level.
Data from JR ACT system 7-01-2012 to 6-30-2014**



Sex Offender Civil Commitment

- Requires *proof beyond a reasonable doubt* that an individual is a Sexually Violent Predator (SVP):
 1. Has been convicted or charged with a sexually violent offense per RCW 71.09.020,
 2. Suffers from a mental abnormality or personality disorder, AND
 3. As a result of the mental abnormality or personality disorder, the person is likely to engage in **predatory acts of sexual violence** if not confined in a secure facility.
- *Predatory means acts directed towards strangers or individuals with whom a relationship has been established or promoted for the primary purpose of victimization or persons of casual acquaintance with whom no substantial relationship exists.



Civil Commitment Referrals

- **ESR SVP Subcommittee (most common)**
- **Prosecutor “Self Referral”**
- **Recent Overt Act Referral**

- Must be made prior to offender release. Once released from confinement, a new SVO or Recent Overt Act is required.
- If ESR SVP Subcommittee determines that offender appears to meet civil commitment criteria, a Forensic Psychological Evaluation will be ordered.
- If the evaluator concludes offender meets criteria, the case will be referred by the agency with jurisdiction over the releasing offender to the appropriate prosecuting authority.
- Prosecutor reviews the referral and supporting file material and determines whether or not to file a probable cause petition for civil commitment.
 - If prosecutor declines to file a petition, offender will be released to the community.
 - If prosecutor files a petition, offender transported to the appropriate county jail pending a probable cause hearing, typically held within 72 hours of the filing date.



RECENT OVERT ACT

Referrals



The Washington State civil commitment statute (RCW 71.09) allows a judge or jury to determine whether an individual who appears to meet the definition of a **Sexually Violent Predator** should be released to the community following their confinement period or whether they should be placed in a secure DSHS-operated facility for control, care, and treatment. This statute also provides a means of protection when an individual who has previously been convicted or charged with a crime of sexual violence and has since been released from confinement for that offense, subsequently commits a **Recent Overt Act** in the community.



Under RCW 71.09.020:

- A **Sexually Violent Predator** is “Any person who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility.”
- A **Recent Overt Act** is “Any act, threat, or combination thereof that has either caused harm of a sexually violent nature or creates a reasonable apprehension of such harm in the mind of an objective person who knows of the history and mental condition of the person engaging in the act or behaviors.”



Recent Overt Act Behaviors:

- Sex offenders present unique challenges with differing offense cycles, triggers, and concerning behaviors. As a result, every case must be screened for referral on its own merits, with threat to public safety firmly in mind. Certain acts or threats that almost always warrant a ROA referral:
 - Arrest for a new sex/sexually motivated offense (Rape, Child Molestation, Residential Burglary)
 - Commission of an act that may not be a sex/sexually motivated offense itself, but creates a reasonable apprehension of such (A Pedophile luring children at a swimming pool or playground; A Rapist “cruising” for victims)
 - A direct threat by the offender to engage in a sex/sexually motivated offense (“I hear voices telling me to molest children” or “I’m going to rape again if I’m not locked up.”)

- 
- Depending on the pattern of offending and sexual offense cycle, a *combination* of other factors may justify a ROA referral:
 - Repeatedly placing self in high risk situations (Forming inappropriate relationships; Failure to disclose sex offense history; Contacting minors or persons of similar age/circumstance as prior sex/sexually motivated offense conviction(s))
 - Substantial, repeated violations of sex offender treatment requirements, including termination
 - Active sexually deviant/motivated fantasies
 - Substantial/repeated violations of crime-related supervision conditions (Attempted contact with minors/sex offense victims; Drug/alcohol use)
 - Failed polygraphs (combined with disclosure)
 - Generalized or vague threats to engage in sex/sexually motivated offense behavior



When should referrals be made?

- Substantial preparation is required to review and file a civil commitment petition under RCW 71.09, including records processing and the retention of a qualified forensic evaluator. It is important for civil commitment prosecutors to have an opportunity to review and respond to referrals prior to an offender's release from custody for violation and/or new criminal behavior. Therefore, overt acts should always be referred at the first possible moment. **A late referral could prevent the filing of a case.**

How should referrals be made?

- Any agency with jurisdiction over/knowledge of a sex offender who appears to have committed a Recent Overt Act can submit a referral for screening.
 - Law enforcement should contact the assigned JRA Parole Officer or DOC Community Corrections Officer if the individual is on active supervision.
 - DOC staff should contact the Law Enforcement Notification/Civil Commitment Program Administrator, Kim Acker, at 253-983-7159 kmacker@doc1.wa.gov immediately after becoming aware of a potential overt act. Available info will be reviewed and potential civil commitment referrals will be staffed with the WA State Office of the Attorney General (AGO) or the King County Prosecuting Attorney's Office (KCPAO) Sexually Violent Predator Units. DOC staff are asked to not contact them directly.
 - If the person is not under active supervision, contact Senior Counsel ATG, Malcolm Ross, at (206) 389-2011 MalcolmR@ATG.WA.GOV for potential overt acts occurring in any county other than King, and Senior Deputy Prosecuting Attorney, Jennifer Ritchie, at (206) 477-1077 Jennifer.Ritchie@kingcounty.gov for overt acts in King County.

- 
- Supporting documentation for a ROAR should be immediately provided to the appropriate civil commitment prosecutor per their request in order to expedite processing, including police investigation reports, CPS referrals, offender or victim/witness statements, polygraphs, treatment info and violation/hearing reports.
 - Recent Overt Acts often operate on the “camel’s back principle” – one more straw can make a huge difference. Unless a case was declined due to the lack of a qualifying “predicate” Sexually Violent Offense, it is appropriate to continue referring a case for new acts or threats in the community.



CONTACT INFORMATION

- **Kim Acker, Department of Corrections**

LEN/Civil Commitment Program Administrator

kmacker@DOC1.WA.GOV

(253) 983-7159; (360) 584-5857 cell

- **Jeff Patnode, Juvenile Rehabilitation**

Program Administrator for Youth that Have Sexually Offended

patnoJA@dshs.wa.gov

(360) 902-7952

- **Jennifer Williams, Department of Corrections**

LEN/Civil Commitment Program Specialist

jjwilliams@DOC1.WA.GOV

(253) 983-7167; (360) 280-8113 cell

- **Terrina Peterson, Department of Corrections**

End of Sentence Review Records Supervisor

tdpeterson@DOC1.WA.GOV

(360) 725-8653