

When Sex Offenders Make You **ROAR!!!**

(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. There are certain acts or threats that almost always warrant a Recent Overt Act Referral:

- Arrest for a new sex/sexually motivated offense (e.g. Rape, Child Molestation, Residential Burglary)
- Commission of an act that may not be a sex/sexually motivated offense itself, but it creates a reasonable apprehension of such (e.g. A Pedophile luring children at a swimming pool or on a playground; A Rapist “cruising” for victims)
- A direct threat by the offender to engage in a sex/sexually motivated offense (e.g. “I’m going to rape again if I’m not locked up.”)

In addition, depending on the individual’s pattern of offending and sexual offense cycle, a *combination* of other factors *may* justify a referral. Although not exhaustive, relevant considerations might be:

- Repeatedly places self in high risk situations (e.g. Forming inappropriate relationships; Failure to disclose sex offense history; Contacting minors or persons of similar age/circumstance to the offender’s prior sex/sexually motivated offense conviction(s))
- Substantial and repeated violations of sex offender treatment requirements, up to and including termination
- *Active* sexually deviant or sexually motivated fantasies

- Substantial and repeated violations of crime-related supervision conditions (e.g. Direct/indirect attempts to contact victim(s); Drug/alcohol use)
- Failure to pass polygraph examinations (combined with disclosure)
- Generalized or vague threats to engage in sex/sexually motivated offense behavior (e.g. “I hear voices telling me to molest children.”)

When should a Recent Overt Act be reported? 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, or knowledge of, a sex offender who appears to have committed a Recent Overt Act, can submit a potential case for screening. Law enforcement should contact the assigned Juvenile Rehabilitation Administration (JRA) Parole Officer or Department of Corrections (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 or kmacker@doc1.wa.gov immediately after becoming aware of a potential overt act. The Program Administrator is responsible for reviewing available information and staffing potential civil commitment referrals 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, as this could delay processing and waste valuable time. However, in the event that the person is not under active supervision, contact Senior Counsel ATG, Malcolm Ross, at (206) 389-2011 or 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 or Jennifer.Ritchie@kingcounty.gov for potential overt acts in King County. Cases will be discussed with referring staff and supporting documentation for the Recent Overt Act Referral should be provided, to include police investigation reports, Children’s Administration referrals, offender/victim/witness statements, polygraph assessments, treatment information and violation/hearing reports.

Can a case be re-referred if it was previously declined? 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.