

Sex Offender Task Force

Final Report

Recommendations to the Governor and
Legislature of possible enhancements
to current sex offender law.

October 17, 2007

Russ Hauge, Chair

EXECUTIVE SUMMARY

Following the tragic death of young Zina Linnik, Governor Gregoire appointed Kitsap County Prosecutor Russ Hauge to lead a committee of criminal justice professionals to review Washington's approach to sex offender management. The Committee's first job was to report on the way the justice system responded to Terapon Adhahn's 1990 offense and compare that response to what we would expect had he committed that offense in 2007. The Committee reported its findings in our Phase I Report on September 10, 2007. Next, the Governor asked the Committee, based on its findings in Phase I, to make recommendations about what changes may be needed to Washington's sex offender statutes and policies. This Final Report addresses the second charge from the Governor.

In our first report, we detailed how greatly the laws have developed between 1990 and 2007. Current laws and policies governing sex offenders provide far greater control to the judicial system than existed in 1990. Sentences have increased as well as services to victims. "Best Practices" of law enforcement and service providers as well as our research and understanding of sex offenders have also evolved dramatically over that time period. We believe the determinate plus sentencing structure, overseen by the Indeterminate Sentencing Review Board, is currently working well and provides necessary control over convicted sex offenders.

We need to allow the many laws passed in 2006 to work before making any sweeping changes to our current sex offender sentencing system. We are just beginning to see the effects of those laws and early indications are positive. However, we believe some adjustments based on our review of the Terapon Adhahn case would further develop our protection system against sex offenders.

We have identified seven recommendations for further consideration by the Governor and Legislature. All of these recommendations require further discussion and refinement, and all task force members are readily available and willing to assist.

- DNA samples should be collected from all current and future registered sex offenders.
- State funding should be provided to assist local law enforcement in conducting in-person address verification of all registered sex offenders.
- Electronic Monitoring should be used as a tool for monitoring sex offenders in appropriate circumstances.
- Continued services and supports for victims of sexual assault is essential to holding offenders accountable.
- Information about Level I sex offenders should be added to the statewide

notification website if a Level I offender fails to register with law enforcement in a timely manner or gives inaccurate information.

- District and municipal court conviction records should be electronically available to superior courts in an easily accessible format.
- The Sentencing Guidelines Commission should continue discussions about the most appropriate framework for sentencing and community supervision of sex offenders into the future.

BACKGROUND

Our task began as a result of the tragic death of young Zina Linnik. Her alleged killer, Terapon Adhahn, is a known sex offender. He was convicted of a felony sex offense after a violent sexual assault in 1990.

This task force was charged with two jobs. First, we were asked to analyze how the justice system handled Adhahn's 1990 offense and how the justice system might respond differently to a similar incident in 2007. Second, we were asked to recommend any legislative or policy changes that would further enhance public safety.

Our task force was made up of professionals charged with executing our community's response to sex offenses and sex offenders every day. We had law enforcement, prosecutors, defense attorneys, judges, victims' advocates, and sex offender research experts. We met several times over the last two months and heard from the Governor, legislators, members of the public, and family members of Zina Linnik.

We began our task with a review of the facts surrounding the 1990 sex offense conviction, sentencing, and supervision of Terapon Adhahn. Our analysis was reported in September, 2007. In our Phase I Report, we concluded that what we define as "best practices" for responding to sex offenses and to sex offenders have changed substantially in the last 17 years. In 1990, all agencies involved in the official response to this offender's conduct did all that could be expected of them. In 2007, we would expect a different set of responses because we have learned that we can do more to assist victims and control offenders.

Since 1990, Washington's legal system has developed substantial protections for the public. In 2006, the Legislature responded to the threats presented by sex offenders with over 18 different statutes. We believe these laws need time to take effect. While the initial indications are positive, it is too soon to measure the impact of the 2006 changes. However, the law can be adjusted to further enhance community safety.

We believe it is important for the public to understand that there are no "magic bullet" solutions to prevent future sex offenses. This task force would like nothing better than to provide recommendations that would ensure the elimination of all future sex offenses.

Unfortunately, we live in an imperfect world and are not able to prevent all crimes. What we can do is make our best efforts at prevention based on the totality of information and research we currently have available. We believe best practices will continue to evolve here in Washington and nationally. As they do, we strongly urge that all the responsible agencies take note and change practices as necessary.

RECOMMENDATIONS

We present the following recommendations to the Governor and Legislature for consideration. Each of these recommendations requires more thorough development and refinement. All the task force members are standing by to assist in the development of these suggestions.

To keep our discussions focused and manageable, we limited ourselves as much as possible to issues raised by Adhahn's 1990 crime and conviction. For example, the Washington Association of Sexual Assault Programs (WCSAP) is vitally concerned with housing for sex offenders released into the community. The case we studied did not present this issue. Therefore, we make no recommendation as a task force.

Similarly, we discussed at some length requiring sex offenders to register email addresses and websites operated by the offender. Again, this issue was not presented by the Adhahn case. However, we agreed that this information could be useful in some cases. Our local law enforcement representatives—the officials responsible for administering the sex offender registration program (RCW 9A.44.130-135)—indicated a willingness to add this information to the databases they maintain. However, they raised concerns about public expectations. The information could be used as an investigative tool, but local law enforcement is not staffed to monitor and verify all email and website information.

The task force firmly believes it's important to note that any changes to current policy or laws governing sex offenders will have a financial impact on local government and adequate resources need to be provided to offset these impacts. State law mandates full funding for new burdens placed upon the counties and cities. Any and all new programs or expansions to existing programs that become the responsibility of local government must be fully supported in the State budget.

1. DNA samples should be collected from all, current and future, registered sex offenders.

At the time of Adhahn's original 1990 conviction, state law did not mandate that all sex offenders submit a sample to the national DNA database. As stated in our Phase I Report, if Adhahn had committed the initial incest crime today, he would have been required to provide a DNA sample. Submission of a DNA sample from Adhahn in 1990 would likely have led to prosecution for a rape he allegedly committed in 2000.

There are other registered sex offenders who do not currently have DNA in the national database. We believe it is important to capture a DNA sample of all current

registered sex offenders and ensure that all future registered sex offenders have a DNA sample in the database.

Undoubtedly there will be a legal challenge to any requirement that a currently registered sex offender allow a swab of his cheek for a DNA sample. However, this is important enough to warrant meeting any such challenge.

2. State funding should be provided to assist local law enforcement in conducting in-person address verification of all registered sex offenders.

State law requires sex offenders to register with local law enforcement. We believe that public safety can be enhanced by verifying the address registered with the local sheriff's office. The only way to determine if an offender's registered address is legitimate is to verify in-person. This is a labor intensive process for local law enforcement, but we believe this is a best practice. Many local jurisdictions currently verify sex offender addresses in-person, but not all have the resources to do so.

Address verification is currently directed primarily at Level III and Level II offenders. We believe we need to provide local law enforcement with the resources to conduct in-person address verification of Level I offenders as well.

3. Electronic Monitoring should be used as a tool for monitoring sex offenders in appropriate circumstances.

The plan to utilize electronic monitoring on a number of sex offenders currently on active supervision by the Department of Corrections (DOC) received consensus support by the Task Force. We believe DOC should be able to use this tool with sex offenders under community supervision going back to 2001 and not just to June 7, 2006. We understand the DOC has sought legal advice on this issue from the Attorney General's Office. We believe if the advice is that June 7, 2006 is the date that must be used, a legislative fix is needed.

Our discussions also revolved around how to utilize technology to enhance our ability to monitor the much larger population of registered sex offenders. The public—and members of the task force—struggle with the distinction between *registration* and *supervision*. There are currently approximately 3,000 sex offenders in our communities who are subject to active supervision by the Department of Corrections. There are approximately 20,000 sex offenders obliged to register with local sheriffs. Any initiative should rest on a clear explanation of that distinction. As discussed above in recommendation 2, local law enforcement should be supplied with the resources and legal tools to investigate and affirm the registered location of all registered sex offenders.

Electronic monitoring offers some promise as an aid to local law enforcement in performing its duty to register and verify the location of sex offenders released into

the community. We should pay close attention to lessons learned by the DOC as it employs technology to aid in supervising sex offenders. If the results obtained by DOC warrant it, the Legislature should consider funding electronic measures to track the most dangerous sex offenders registered with our sheriffs' offices. For example, we might find it useful to provide the resources to utilize electronic means, including the Global Positioning System (GPS), to verify the location of Level III offenders who lack stable housing. It is too soon to make a determination until more is known from the DOC experience.

4. Services and supports for victims of sexual assault are essential if we are to hold offenders accountable

This case teaches us that the importance of victim services cannot be overstated as a priority. Prevention is of paramount concern, and support was expressed for expanding the ability of rape crisis centers to conduct community prevention programs. The Legislature should also support increased access to child centered services provided by sexual assault programs for victims of child sexual abuse.

Another area discussed and recommended was reviewing and updating child sexual abuse protocols; an example might be broadening the cases addressed by the protocols currently used by law enforcement and child protective services beyond child protective services identified cases. It was recognized that locally designated approaches to multidisciplinary coordination could be stimulated with resources and that all responses should work to ensure the victim is not lost in the process and that offenders are held accountable.

5. Add information about Level I sex offenders to the Statewide Notification Website if a Level I offender fails to timely or accurately maintain his or her registration with law enforcement.

The Washington Association of Sheriffs and Police Chiefs (WASPC) maintain a website with information about offenders registered and living in our communities. Currently, information about Level I offenders is not placed on the website. Failure to register is an indicator of concern to law enforcement. Therefore, we believe if a Level I offender fails to comply with registration requirements, his or her information should be added to the website. We believe this will provide additional incentive to Level I offenders to ensure they are timely and accurately registering with law enforcement.

6. Information about district and municipal court conviction records should be available electronically to superior courts.

We support the current effort by the Administrator for the Courts (AOC) to consolidate the different court databases into one common system. We discussed the fact that more criminal prosecutions are now being conducted in municipal courts, and communication about these convictions is not occurring effectively between those courts and superior courts or DOC. Development is underway on a unified information system and data warehouse that will tie together the district and municipal court (DISCIS), superior court (SCOMIS) and juvenile (JUVIS) information systems. The group agreed that a unified information system is very important so that sex offender prosecutions, sentencing, and offender management can be improved. At a minimum, all municipal courts should be immediately required to utilize the DISCIS system.

7. The Sentencing Guidelines Commission should continue discussions about the most appropriate framework for sentencing and community supervision of sex offenders into the future.

The determinate-plus sentencing system for sex offenders is working well, with the Indeterminate Sentence Review Board (ISRB) making the release decisions, setting some of the conditions, and acting as the hearing board for violation issues.

However, we need to define a critical component of the determinate plus sentencing regime for sex offenders: What will lifetime supervision—a critical but as yet underdeveloped piece of that system—look like? The temptation is to request the Legislature to specify in detail the components of active supervision. However, the task force members recognize that just as we have learned much about adult felony sentencing in general since the adoption of the Sentencing Reform Act (SRA), we continue to learn about how to keep sex offenders under control. Active supervision as a concept must remain flexible in order to accurately reflect the current state of the art and best practices. The current level of cooperation between the ISRB and the DOC must be institutionalized and maintained. It is the consensus view of this task force that the Legislature is not the place to define each and every element of sex offender supervision.

It would be useful to review the current structure and statutory requirements of the ISRB and make any necessary adjustments to align with legislative intent regarding lifetime management strategies for sex offenders. Future recommendations could include empowering the Chair of the ISRB and the Secretary of the DOC to adopt rules through a joint rule making process that outlines the assessment of sex offenders under the Board's jurisdiction and provides the Board authority in determining supervision strategies for sex offender's under its jurisdiction.

There may be utility in adopting a separate sentencing grid for sex offenders organized around the principle of community safety. Even more fundamentally, we need to determine whether the determinate plus sentencing system should be expanded to cover more kinds of sex offenses and sex offenders.

The Sentencing Guidelines Commission (SGC) recently undertook this kind of fundamental analysis of our drug sentencing scheme. The result is a new, workable, system of sentencing that has not added to our prison population. All of the agencies and interest groups involved in sex offender sentencing are represented on the SGC. Indeed, many members of the SGC served on this task force. We suggest that the SGC be charged with a thorough review of all the issues relating to dealing with sex offenses and sex offenders—not just the issues presented by this tragic case. Given a reasonable time, we expect a work product that would build upon the current strengths of the determinate plus sentencing system and provide a greater sense of safety to the people of Washington.

CONCLUSION

Thank you to all the members of the task force who contributed to this process over the past two months.

Tim Drury, Kitsap County Prosecutors Office
Jeri Costa, Indeterminate Sentencing Review Board
Mary Robnett, Pierce County Prosecutors Office
Paul Weisser, Attorney General's Office
Dan Kimball, Thurston County Sheriff
Scott Smith, Chief, Mountlake Terrace Police Department
Evelyn Larsen, Washington Coalition of Sexual Assault Programs
Lydia Guy, Washington Coalition of Sexual Assault Programs
Gordon Godfrey, Superior Court Judge
David S. Marshall, Defenders Association
Ida Ballasioties, Family & Friends of Violent Crimes Victims
Lucy Berliner, Harborview Sexual Assault Center
Dave Boerner, Sentencing Guidelines Commission
Jean Soliz, Sentencing Guidelines Commission
Roxanne Lieb, Washington State Institute for Public Policy

The completion of this committee's two reports was only made possible through the valuable insights and contributions of every member of the task force. We had many thought provoking discussions at each of our meetings. I am grateful for the willingness of every member to adjust his or her schedule on short notice to attend these meetings.