

11/06/03

COMMISSION TO IMPROVE COMMUNITY SAFETY & SEX OFFENDER ACCOUNTABILITY

SUMMARY OF MEETING #2 MONDAY, OCTOBER 27, 2003

Members present: Brian Rines, Joe Fitzpatrick, Charlie Leadbetter, Alan Kelley, Kay Landry, Rep. Chris Greeley, Sen. Pam Hatch (chair), Rep. Sean Faircloth (chair), Donna Strickler, Jennifer Parsons, J. P. DeGrinney, Joan Sturmthal, Jackie Theriault, Butch Asselin, Justice John Atwood

Members absent: Elizabeth Ward Saxl, Mark Dion

Public Hearing

The meeting began with a 2-hour public hearing. Several speakers shared with the commission their concerns of recent events involving persons convicted of sex offenses who now reside in the Augusta area. Concerns ranged from whether offenders receive proper supervision, whether the public receives adequate notice of where offenders are residing when they return to the community and whether state agencies are communicating and coordinating their efforts in the treatment and supervision of offenders.

Commission members asked whether persons testifying believe that mandatory public notification is necessary in all cases. Some indicated that mandatory notification may not be necessary in all cases (i.e., incest victims or other victims who might be further harmed by public notification), but it is essential that someone (law enforcement) take responsibility to determine whether notification should occur. A commission member noted that, although some believe that public notification should not be required in all cases, persons convicted of such crimes as incest still have to register – often for life. It was suggested that notification for certain high-risk offenses be mandatory, while notification for lower risk offenses be discretionary. As the commission discussed at its first meeting, it may be appropriate to redefine “high” and “low” risk and provide more public notification for certain offenders and less for others.

Questions were also raised about residency requirements. If residency requirements were imposed, would a person convicted of a sex offense have to move if a person that the offender was prohibited from living near moved next door? What would be the offender’s responsibility?

One commission member asked if lifetime probation were imposed as a penalty, would the court be given authority to terminate the probation at some time. Would lifetime probation be treated like a life sentence? What if a person received a 5-year sentence of incarceration and lifetime probation – if the person violated the probation and served the 5 years, would there be no more sanctions (probation gone)?

A citizen from Saco explained that her community has a 3-tier response for notification. A first-tier offender's name (low risk) is included in the registry and on a community website. A second-tier offender's name is also included in the registry and on a community website, and law enforcement provides notification to the offender's immediate neighbors. A third-tier offender's name is also included in the registry and on a community website, and law enforcement thoroughly pamphlet neighborhoods where the offender lives and works.

One citizen testified about her young daughter being sexually assaulted and her family's experience in the criminal justice system. Her daughter's offender was convicted of simple assault based on a plea agreement, and he served very little time. In addition to his short sentence, he will never have to register as a sex offender. No one will be put on notice of his past criminal history.

Other persons testifying expressed concerns regarding how the statute broadly defines persons who commit very different crimes as either "sex offenders" or "sexually violent predators," who must register for life. Another person asked whether it is constitutional to impose new registration requirements on persons who were convicted of crimes before the registration requirements first existed. Others testified that those who must register -- especially for life -- face difficulties in finding and keeping jobs and housing. The families of persons who must register also face difficulties in finding housing and becoming part of their communities.

Specific recommendations that persons who testified asked the commission to consider included the following.

- Require lifetime probation for sex offenders.
- Impose residency restrictions or limitations on sex offenders, including prohibiting sex offenders from living within 1 mile of a school or daycare while on probation.
- Decrease the period of time in which a sex offender has to register or update registration with the State Bureau of Identification.
- Require the Department of Corrections or the county jail from which an offender is first released from incarceration to do the initial registration with the State Bureau of Identification.
- Restrict the number of times a sex offender may move, so that the system is less likely to lose track of the offender.
- Refuse to allow sex offenders from other states to come to Maine to live.
- Require law enforcement to give details of sex offenses committed when providing notification and be more consistent in notification procedures.

- Require the Department of Corrections to provide pre-release counseling for sex offenders and better support in transitioning sex offenders from prison to the community (work and housing placements).
- Prohibit plea agreements in certain sex offense cases.
- Increase the sentences for persons who are convicted of sexual assaults.
- Eliminate different labels for persons – call all who commit sex offenses “sex offenders,” notify the public of the crime committed and let people form their own opinions.
- Redefine who is high risk and who is low risk for purposes of registration and notification.
- Allow no “good time” for persons incarcerated for sex offenses.
- Increase the classification of sex offenses (increase penalties).

Mike Ranhoff and Doug Parlin: Polygraphs of sex offenders (post conviction)

Mike Ranhoff, a licensed polygraph examiner and Doug Parlin, the Polygraph Examiner Supervisor of the CID of the State Police spoke to the commission about the use of polygraphs for post-conviction sex offenders. The Department of Public Safety licenses all polygraph examiners in Maine. Polygraph examinations of sex offenders are conducted through therapists in Maine and are used to assist the offender and therapist in treatment. Polygraphs are not used to search out new charges to bring against the offender. There are 3 kinds of tests polygraph examiners use for sex offenders. They include the following.

1. Denial and other specific issue tests. These tests are used to verify the details of the offense for which the offender was convicted and are often administered when the offender denies the crime or the offender’s version of the offense differs from the victim’s version. Specific issue tests are also used to address concerns that may arise during probation (i.e., therapist suspects that offender may be violating condition of probation).
2. Disclosure tests. These tests are used to verify the accuracy and completeness of the offender’s history.
3. Maintenance tests. These tests are used to determine whether a probationer is complying with the conditions of probation, is cooperating with treatment and is not reoffending.

The information collected from these tests is used to develop and modify treatment and supervision. Most importantly, the tests do not stand alone; ideally, the use of polygraphs is part of a collaborative effort by the polygraph examiner, the therapist and the probation officer. Mr. Ranhoff indicated that he would like to see probation officers more involved; at the very least probation officers should receive reports of the examinations and be aware of what is coming out of the testing. Mr. Ranhoff noted that Oregon has the best polygraph program for sex offenders; the court orders an examination immediately following the offender’s release, and all programs are based on therapeutic purposes.

Polygraphs are intended to support the therapists' work with the offenders and to protect the community without attempting to get offenders in more trouble.

The presentation generated discussion on a number of issues. Those mentioned by commission members included the following.

- The scientific community has reached no agreement about whether sex offenders should be subject to polygraph examinations.
- How do other states ensure that polygraphs are used for therapeutic reasons only and not for bringing new prosecutions?
- How do you create an incentive for offenders to be truthful, especially if the offender believes that the probation officer will learn everything from the polygraph?
- Why not just sign a waiver with the therapist – “no new charges”? or if the therapist will report nothing, why is a polygraph necessary?

As a follow-up to some of these issues, Mr. Ranhoff expressed that even if a waiver exists, people do not always tell the entire truth, and testing will help find the truth and help in treatment. Mr. Ranhoff also stressed that the Department of Corrections and the therapist need to agree on what to do with the polygraph examination information once it is received.

Nancy Dentico, Bud Hall, Dan Ouellette: Supervision of sex offenders in the community

Nancy Dentico and Bud Hall, both Sex Offender Specialists (probation officers) and Dan Ouellette, a Regional Correctional Administrator for the Department of Corrections, spoke to the commission about their experience supervising sex offenders in the community. Sex Offender Specialists carry a caseload of approximately 40 probationers (Originally, under the initial grant for Sex Offender Specialists, these probation officers had a caseload of 30.) Contact standards include a minimum of 4 contacts per month – 2 of these must be in person (at the offender's home or the officer's office), and the other 2 may be at the offender's home or with a collateral contact (i.e., therapist). If an offender is identified as an extremely high risk, the officer may see that person 4-5 times per month in that person's home and may carefully watch that person's conduct on a daily basis. The percentage of persons reoffending while on probation appeared to be relatively low as evidenced by Mr. Hall's previous caseload of 43 probationers of which only 5 had full revocations for new criminal conduct. (16 had partial revocations for failure to comply with conditions like attending counseling and failing to abstain from alcohol and drugs, while 6 had partial revocations for contact with children that was noncriminal in nature.)

The first thing a Sex Offender Specialist does when meeting a new probationer is have a 1 to 3 hour meeting to review the conditions of probation, get a sense of where the offender is in terms of remorse and accountability, try to identify whether the offender

has problems that are not addressed by conditions of probation (i.e., alcohol problem but abstaining from alcohol is not a condition of probation), give referrals to counselors in the area and help the offender find housing. If it appears that probation conditions need to be amended, the officer will move to do so immediately. The officer will also visit where the offender is living and identify contacts (i.e., girlfriends, employers, therapists).

Although supervision by Sex Offender Specialists appears to help decrease the recidivism rate, these probation officers can handle only about one half of the sex offender probation population in the State. Adequate supervision of those who are not under the caseload of a Sex Offender Specialist is a concern. Sex Offender Specialists' caseloads are in large part determined by the level of risk of the offender, but assignment is also based on geography and resources. While supervision is a big issue, so is the availability of counseling services. The Sex offender Specialists indicated that there have been improvements in statewide accessibility of quality therapy, and that more therapists are using relapse prevention as a therapy technique.

A commission member asked whether probation officers feel constrained to talk with law enforcement about sex offenders under the probation officers' supervision. The probation officers expressed that they do not feel constrained and talk to law enforcement officers regularly. However, probation officers and law enforcement feel constrained from speaking openly to the public about offenders. Probation officers also recognize that notifying an offender's neighbors is not going to protect the public from sex offenders; if an offender makes the choice to reoffend, he will.

Recommendations made by these presenters for areas that need to be addressed in probation included the following.

- Clarification of contact conditions – currently there is ambiguity in what is meant by “contact with another adult present.” Instead, probation officers would like to see “an approved supervisor who has agreed to be a supervisor and won't enable the offender...”
- Clarification regarding what is meant by “minor.” Probation officers believe the standard “under 18 years of age” is the best approach, at least initially (if appropriate, followed by a plan of supervision for contact with children who are younger).

(The fact that an offender may have a probation condition of no contact with minors but can live at home with his own children is a concern, at least until the offender is in treatment.)

- Set reasonable probation conditions and involve probation officers in the decision making process (with court and DA) for setting those conditions. Some conditions that are automatic (i.e., “no alcohol” may not be necessary in a case where there was no indication that alcohol was involved in the offense – a condition of “not drinking excessively” may be more appropriate.) A model with conditions that are reasonable and realistic for a probationer to stick with will more likely ensure success and less chance of reoffending.

- Expand registration requirements to include crimes like cruelty to animals, misdemeanor offenses against adults and all types of invasion of privacy.
- Revisit current classifications for “sex offender” and “sexually violent predator” to determine what crimes that currently require 90 day verification may be reasonably tracked on an annual basis instead (those crimes that do not pose a high risk to society).
- Assess and classify offenders using a risk assessment tool and a team approach, including the court, DA, probation officer or other person or board trained to do assessments, instead of application of an arbitrary and inconsistent assignment system based on statute.
- Provide public notification consistently based on public input.
- Reduce duplication of efforts in verification of registration. While a person is on probation, a probation officer is visiting that person regularly, so other verification efforts during that time are duplicative. Also, after a person has established a stable residence for a year or 2, ease the 90-day verification back to once a year.
- Expand community policing efforts (i.e., Brunswick has a law enforcement bulletin that circulates up the coast, giving other law enforcement agencies notice of offenders who are in the community).
- Make sex offender treatment a cooperative effort by therapists, law enforcement and probation officers; parties need to look at community safety, make a relapse plan, provide social skill development and minimize denial.

The commission asked the presenters to provide a future written response regarding what they would recommend to improve community safety, what offenses they believed were inappropriately labeled for registration purposes and how they would create a new process for classifying offenders without creating a new bureaucracy.

Jackie Theriault: State Bureau of Identification and Sex Offender Registry

Lt. Theriault gave a history of the Sex Offender Registry, the impact of legislative changes on the registry and an update on the status of Internet access to sex offender information. One of the biggest challenges for the State Bureau of Identification is identifying those who are required to register. The Sex Offender Registry and criminal history records system are not connected, and because the system is not automated, there is no way to know every person who must register. The State Bureau of Identification is waiting for some people to come forward and register. The State Bureau of Identification is working to complete the Internet access to information and several related links (FBI, Department of Corrections inmate search, etc.).

There are 1902 registrants now – 1312 are active, 590 are inactive (not on website, including pending incarcerated and pending referred to CID who is locating persons to get them to register, and those who revoke/reoffend and are reincarcerated). Seventy-five percent of registrants are registered as sexually violent predators, and approximately 200 are in violation of the registry. The State Bureau of Identification registers

approximately 578 offenders annually, but some are converted from the old registry and some are new people that now must register. Until the system is fully automated, there is no way to know what the extent of registration will be.

Rep. Sean Faircloth: Overview of Child Abuse Conference in Wisconsin

Child abuse is an epidemic public health issue, and more prevention efforts are being put forth to address the problem. States are looking at intensive treatment strategies for both offenders and victims. In addition to treatment practices, people are looking at state laws regarding child abuse. Rep. Faircloth indicated that the National Council of State Legislatures reported that Maine has the least restrictive penalties for persons who commit sex offenses against prepubescent children.

Next meeting

The commission ended its meeting by briefly identifying some of the possible recommendations that should be considered at the November 10th meeting. A summary of those proposed recommendations, along with others that have been sent to me by members or that were mentioned at the prior 2 meetings will be the focus of discussion on November 10th. (9:30 a.m., room 126 of the State House)