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King County Prosecutor
Juvenile Division

87740-8

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SUPREME COURT
STATE OF WASHINGTON

SUPREME COURT NO
COA # 07461-7
2012 AUG 10 A 9:27

BY RONALD R. CARPENTER

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2012 AUG -8 PM 4:08

STATE OF WASHINGTON,

Respondent,

v.

JOSH ANTHONY SANCHEZ,

Petitioner.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

The Honorable Helen Halpert, Judge

PETITION FOR REVIEW

FILED
AUG 13 2012
CLERK OF THE SUPREME COURT
STATE OF WASHINGTON

CB

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ORIGINAL

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I. IDENTITY OF PETITIONER

The petitioner is Josh Anthony Sanchez.

II. CITATION TO THE COURT OF APPEALS DECISION

The Petitioner seeks review of the published opinion of Division One of the Court of Appeals filed on July 9, 2012 in *State v. Sanchez*, No. 6746-7-I, interpreting for the first time the language of newly adopted legislation (SSB 5204), a legislative amendment to the statutory scheme for a Juvenile Duty to Register (as a sex offender) and Relief From Registration.

III. ISSUES PRESENTED FOR REVIEW

1. Whether a plain reading of SSB 5204 supports the Petitioner's arguments that the new legislation effectively overrules and amends previously existing registration and relief from registration requirements and in particular (with respect to this appeal) whether or not the End Of Sentence Review Committee (ESRC) displaces the King County Sheriff as the entity responsible for Risk Classifications and therefore involves an issue of substantial public interest.

2. Whether the Court Of Appeals decision ignores the plain language of the new legislation (SSB 5204) with unnecessary interpretations of the prior legislative scheme in an effort to uphold the

trial courts determination that the SSODA evaluation must be given to the King County Sheriff for purposes of conducting risk classifications and that the new legislation is “not relevant”.

IV. STATEMENT OF THE CASE

On August 4, 2011 the trial court ordered that the SSODA evaluation conducted regarding the Petitioner be released to the King County Sheriff for purposes of conducting a risk assessment. SEE *Order On Motion* of the trial court dated August 4, 2011, which is attached to these pleadings as Attachment A. CP at pg 62.

The issue on appeal (and in this petition) relates to the propriety and legal authority for releasing the SSODA evaluation to the King County Sheriff for purposes of conducting risk assessments.

Trial counsel requested the trial courts consideration of SSB 5204 (effective date July 22, 2011), which directly addresses the issue of the release of psychological evaluations to the End-of-Sentence Review Committee for purposes of conducting risk assessments pursuant to Section 5 thereof at subsections (2) and (4). SEE Attachment B.

The trial court advised counsel that SSB 5204 was not relevant at all. VRP August 4, 2011, at page 19

On July 9, 2012, Division I upheld the decision of the trial court releasing the SSODA evaluation to the King County Sheriff for purposes of conducting a risk assessment which is reflected in the court's slip opinion which is attached as Attachment "C".

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

A. THIS IS THE FIRST INTERPRETATION BY AN APPELLATE COURT OF THE LANGUAGE OF SSB 5204 WHICH IS CLEAR AND UNAMBIGUOUS

By enacting SSB 5204 the legislature amended previous legislation relating to sex offender registration and relief from registration requirements. At the same time, and in the same legislation, the legislature specifically amended previous legislation relating to conducting risk assessments and which entity should be responsible for risk assessments.

An analysis of the issues involved must begin with the language of SSB 5204 which became effective July 22, 2011 and is now controlling on the issue of risk classification. SSB 5204 (2) reads:

In order for public agencies to have the information necessary to notify the public as authorized by RCW 4.24.550, **the secretary shall establish and administer an end-of-sentence review committee for the purpose of assigning risk levels**, reviewing available release plans, and making appropriate referral for sex offenses.

Emphasis added.

The objective of statutory interpretation is to ascertain and carry out legislative intent. *State, Dept. of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 43 P.3d 4 (2002). If the meaning of a statute is plain on its face, the court must give effect to that plain meaning as an expression of legislative intent. *Campbell & Gwinn*, 146 Wn.2d at 9-10, 43 P.3d 4 (2002).

SSB 5204 sets forth the new parameters of risk classification.

In the context of risk classification there can be no doubt about the legislative intent. The local Sheriff is no longer authorized to conduct risk assessments. That process is now delegated to the End of Sentence Review Committee which is now charged with making risk classifications in the future pursuant to SSB 5204 which became effective on July 22, 2011.

We review issues of statutory construction de novo. *State v. Hahn*, 83 Wash.App. 825, 831, 924 P.2d 392 (1996). Our duty is “to ascertain and give effect to the intent and purpose of the Legislature.” *Hahn*, 83 Wash.App. at 831, 924 P.2d 392. But when statutory language is plain and unambiguous, the legislative intent is clear and no further construction is permitted. *State v. J.P.*, 149 Wash.2d 444, 450, 69 P.3d 318 (2003). A statute is not ambiguous merely because different interpretations are conceivable. *State v. Leyda*, 157 Wash.2d 335, 352, 138 P.3d 610 (2006).

B. THE COURT OF APPEAL'S INTERPRETATION OF SSB 5204 IN PATENTLY INCORRECT GIVEN THE PLAIN LANGUAGE OF SSB 5204.

The Court of Appeals embarks on a review of previously existing legislation and the constitutionality thereof to support its opinion. The Petitioner is not challenging the constitutionality of the previous legislative scheme. It is no longer relevant. The Court of Appeals maintains that RCW 13.50.050 and RCW 4.24.550, compelled disclosure. Those arguments are mooted out by the passage of SSB 5204.

SSB 5204 specifically amends RCW 13.50.050 and RCW 4.24.550 by delineating the limitations of release, to whom release is authorized, and for what purposes. SEE *SSB 5204 Sec. 4*

The respondent maintains that RCW 42.56.050, the 4th, 5th, 6th and 14th Amendments to the United States Constitution, and comparable sections of the Washington State Constitution, protect the disclosure of SSODA evaluations to anyone other than the End of Sentence Review Committee.

Under RCW 42.56.050:

A person's "right to privacy," "right of privacy," "privacy," or "personal privacy," as these terms are used in this chapter, is invaded or violated only if disclosure of information about the person: (1) Would be highly offensive to a reasonable person, and (2) is not of legitimate concern to the public. The provisions of this chapter dealing with the right to privacy in

certain public records do not create any right of privacy beyond those rights that are specified in this chapter as express exemptions from the public's right to inspect, examine, or copy public records.

C. THE COURT OF APPEAL'S USE OF A SUPPORTING REFERENCE TO THE FINAL BILL REPORT ACTUALLY RELIES UPON A SUMMARY ON THE STATUTORY BACKGROUND AND NOT THE CURRENT BILL

The Court of appeals in its opinion quotes from the Background Section of the Final Bill Report as follows:

If the juvenile is on probation at the county level or serving a sentence under a Special Sex Offender Disposition Alternative (SSODA), the juvenile's initial risk classification will be assigned by the county sheriff

State v Sanchez No. 67461-7-1, slip op, at 3 footnote 4

This language is taken from the historical analysis of the first section of Final Bill Report which reads as follows:

Background: Juvenile Duty to Register & Relief from Registration. In Washington State, a juvenile who is adjudicated of a sex or kidnapping offense has the same duty to register as an adult offender, regardless of the person's age at the time of offense. If the juvenile is under the custody of the Juvenile Rehabilitation Administration, the End of Sentence Review Committee with the Department of Corrections will review the person's file and assign an initial risk classification. If the juvenile is on probation at the county level or serving a sentence under a Special Sex Offender Disposition Alternative (SSODA), the juvenile's initial risk classification will be assigned by the county sheriff.

D. THE ACTUAL BILL HISTORY CONTAINED IN THE FINAL BILL REPORT STATES THAT THE DEPARTMENT OF CORRECTIONS, END OF SENTENCE REVIEW COMMITTEE (ESRC) TO ASSIGN THE INITIAL RISK CLASSIFICATION FOR ALL JUVENILES REQUIRED TO REGISTER AS A SEX OFFENDER WHO GO THROUGH THE JUVENILE REHABILITATION ASSOCIATION **AND THOSE THAT RECEIVE A SSODA**

After detailing the chronological history of the bill a final historical passage reads as follows:

Registered Persons Who Attend School. In May of 2010, a student in a Seattle school was sexually assaulted by another student who was a registered juvenile sex offender. In response to that incident, legislators asked the Board to study existing laws regarding juvenile sex offenders and school notification. The Board came to several consensus recommendations, including requiring:

- that a court that orders 24/7 monitoring as part of SSODA must enter findings regarding that condition;
- schools to have policy and procedures in place regarding students who have been adjudicated of a registrable sex offense and the provision of a safe learning environment for all students;
- Department of Corrections, End of Sentence Review Committee (ESRC) to assign the initial risk classification for all juveniles required to go through the Juvenile Rehabilitation Association **and those who receive a SSODA sentence.**

Emphasis added.

In the **Summary** section of the Final Bill Report SSB 5204 at the second to last full paragraph the authors note:

The ESRC must assign the initial risk classification for juveniles under the jurisdiction of the county juvenile court and juveniles supervised from out-of-state under the interstate compact for juveniles.

Emphasis added.

The Final Bill Report SSB 5204 is attached as Attachment "D"

E. BLANKET RE-DISSEMINATION OF THE ENTIRE SSODA EVALUATION TO THE KING COUNTY SHERIFF FOR CONDUCTING RISK ASSESSMENTS BECAUSE IT WAS PERMISSABLE UNDER A PRIOR LEGISLATIVE SCHEME, IGNORES THE CLEAR LANGUAGE OF SSB 5204 AND POSES A SERIOUS AND IMMINENT THREAT TO THIS 13 YEAR OLDS RIGHTS' TO PRIVACY.

State recognition for an individual's right to privacy regarding his health, is found under RCW 70.02.005, where the legislature makes the following two findings: "Health care information is personal and sensitive information that if improperly used or released may do significant harm to a patient's interests in privacy, health care, or other interests", and "Persons other than health care providers obtain, use, and disclose health record information in many different contexts and for many different purposes. It is the public policy of this state that a patient's interest in the proper use and disclosure of the patient's health care information survives even when the information is held by persons other than health care providers." RCW 70.02.005(1) and (4).

At the federal level, Josh's privacy rights in the evaluation are also protected. SEE: *45 CFR SUBTITLE C §160*

The Court of Appeals all but concedes this issue when it states

“Even if we considered the evaluation to be a health care record there is a specific statute mandating its release to the sheriff for purposes of making a risk assessment, not for purposes of dissemination.”

State v Sanchez No. 67461-7-I slip op at 5.

The Court of Appeals then returns to RCW 4.24.550(6) to claim that the statute removes the privacy restrictions.

State v Sanchez No. 67461-7-I slip op at 6.

The Court of Appeals concludes by saying that the Petitioner is challenging the constitutionality of the statute (RCW.4.24.550) and in so doing must prove its unconstitutionality beyond a reasonable doubt. *State v Sanchez* No. 67461-7-I slip op. at 6.

The Court of Appeals misunderstands and conflates the Petitioner's arguments. The Petitioner is not asserting that RCW 4.24.550 is unconstitutional. What the Petitioner is saying is that it no longer matters what the previous statutory scheme said or authorized. That statutory scheme has been replaced by SSB 5204 which is now controlling

on the issue of Risk Assessment and that task is now delegated to the End Of Sentence Review Committee (ESRC).

F. IF THE SSODA EVALUATION IS RELEASED TO THE KING COUNTY SHERIFF (WHICH SHOULD NOT HAPPEN) ONLY THE FINAL CONCLUSION AND RISK ASSESSMENT OF THE EVALUATION SHOULD BE RELEASEABLE. THE RELEASE OF THE ENTIRE SSODA EVALUATION THREATENS THE APPELLANT'S PRIVACY RIGHTS (AND THOSE OF ALL THE COLLATERALS PARTICPATING IN THE PROCESS) BECAUSE THE ENTIRE EVALUATION IS NOT RELEVANT WHEN BALANCED AGAINST THE PRIVACY RIGHTS OF THIS JUVENILE PETITIONER

Under RCW 13.40.160 and HIPAA, the public's right to access to these records is extremely limited and supports the Petitioner's assertions that there are sufficient privacy or safety concerns at stake if the SSODA evaluation is released to the King County Sheriff. The court must turn to the issue of whether or not public access to the entire report poses a serious and imminent threat to these concerns.

With the adoption of SSB 5204, the legislature re-instated a juvenile's right to seal sex offense records. If this court accedes to the department's request it will be impossible to recover those records that have been distributed to the King County Sheriff because of *Koenig* implications. The accessibility of that file once it is in the hands of a

public entity such as the King County Sheriff, effectively deprives Josh of the true ability to forever seal his file. SEE *Koenig v Thurston County*, 155 Wash.App. 398, 229 P.3d 910, (2010) (Wa.Sup Ct # 84940-0).

In Josh's case the new legislation becomes meaningless.

The parties anxiously await the ruling of this Court which will determine the public disclosure of SSODA/SSOSA like evaluations in the possession of the prosecuting attorney's offices across the state.

Under GR 15 (c)(2) a court may prohibit re-dissemination to the King County Sheriff of the SSODA evaluation if there are identifiable compelling safety or privacy concerns that outweigh the public interest in access to a document and redacting a document would not adequately address those concerns.

In a SSODA context the RCWs mandate an evaluation to determine if the respondent is amenable to treatment in the community. RCW 13.40.160 and WAC 246-930-320. When an evaluation is undertaken, a defendant's personal and confidential medical and mental health records become available to the evaluator. The statute provides:

(3) When a juvenile offender is found to have committed a sex offense, other than a sex offense that is also a serious violent offense as defined by RCW 9.94A.030, and has no history of a prior sex offense, the court, on its own motion or the motion of the state or the respondent, may order an examination to determine whether the respondent is amenable to treatment.

The report of the examination shall include at a minimum the following: The respondent's version of the facts and the official version of the facts, the respondent's offense history, an assessment of problems in addition to alleged deviant behaviors, the respondent's social, educational, and employment situation, and other evaluation measures used. The report shall set forth the sources of the evaluator's information. RCW 13.40.160 (3)

In addition, the report must include an opinion as to a Risk Assessment. RCW 13.40.160(3).

Forensic mental health reports often reference details of the personal information contained in the confidential medical and mental health records that are not only related to the juvenile but also to a host of third parties participating in the exchange necessary to conduct a meaningful evaluation. They also list any currently observed symptoms of mental illness and list diagnostic findings that under all other circumstances would be confidential and privileged. Evaluators include information in forensic mental health reports indicating whether the defendant has received mental health services in the community, including whether or not the defendant has been compliant with treatment recommendations and history of compliance with taking prescribed medications.

In this case, the evaluation contains a wealth of forensic mental health reports which include sensitive information about Mr. Sanchez, and

numerous third parties.

G. THE SHERIFF'S "INTERNAL POLICY" OF NOT
RELEASING THESE EVALUATIONS IS
CONTRAINDICATED BY ITS ACTUAL PRACTICE AND
DISPUTED BY THIRD PARTIES SUCH AS MR. DAVID
KOENIG.

Both Federal and Washington statutes and the Federal and Washington Constitution recognize a defendant's right to privacy. Article 1 Section 7 of the Washington constitution provides "No person shall be disturbed in his private affairs, or his home invaded, without authority of law." The Washington Supreme Court has recognized that the defendant's right to privacy includes the right to nondisclosure of intimate personal information or confidentiality. See *O'Hartigan v Department of Personnel*, 118 Wn. 2d 111, 821 P.2d 44 (1991). Several statutes govern the confidentiality and limited release of medical and mental health records.¹

It is commonly understood that the actual practice of the King County Sheriff (and other Sheriff departments in Washington State) is to

¹ See RCW 70.02.060 governing release of medical records, and RCW 71.05.630 governing release of mental health records, RCW 71.05.390 governing release of information about civil mental commitment proceedings, RCW 70.02.005(1) ("Health care information is personal and sensitive information that if improperly used or released may do significant harm to a patient's interests in privacy, health care or other interests.")

release SSODA and SSOSA evaluations to third parties upon receipt of a PRA request. Mr. David Koenig maintains that not only should SSOSA evaluations be released but also Victim Impact Statements in the hands of prosecuting attorneys. SEE *Koenig v Thurston County*, 155 Wash.App. 398, 229 P.3d 910, (2010) (Wa.Sup Ct # 84940-0).

H. THE RESPONDENT'S DUE PROCESS RIGHTS SUPPORTS THE PROHIBITION OF RE-DISCLOSURE OF THE SSODA EVALUATION TO KING COUNTY SHERIFF FOR RISK ASSESSMENT PURPOSES SINCE THAT TASK IS NOW DELEGATED TO THE END OF SENTENCE REVIEW COMMITTEE.

The interests of the public and of Josh and other residents are adequately protected by releasing the SSODA evaluation only to the End of Sentence Review Committee (and not the King County Sheriff) for purposes of conducting risk assessments particularly since The End of Sentence Review Committee is now charged with making those assessments. SEE *SSB 5204 Section 5*.

What would happen to treatment prospects if these evaluations are released to the public?

Mr. Sanchez is compelled by statute to participate in a SSODA evaluation if he wants to take advantage of sentencing options. He has not raised a mental health defense. Therefore, the public (and the King County Sheriff) has little if any interest in the protected information

contained in the **entire** SSODA Evaluation.

Under the circumstances in this case, public access to the entire SSODA evaluation poses a serious and imminent threat to this 13 year old petitioner's privacy rights which clearly outweighs the public right to such reports.

The legislature has stated that individuals have a fundamental interest in protecting the privacy of health care information. The Court of Appeals all but concedes this issue. The records reviewed by the evaluator and the report itself fit within the definition of "health care information". The legislature recognizes the danger of disclosure of that information except in limited circumstances. SSB 5204 now limits disclosure to the End-of Sentence Review Committee. Privacy concerns are even more pressing in juvenile court, where the legislature has recognized that materials in an offender's social file are not available to the public. RCW 13.50.050(3)

Dozens of SSODA cases are pending in King County. An authoritative determination is clearly needed to provide future guidance to public officers in King County and in counties across the state and therefore is an issue of substantial public concern.

V. CONCLUSION

The respondent respectfully requests that this court require that the King County Sheriff return the SSODA evaluation to the King County Probation Department, only to be released to the End-of-Sentence Review Committee when requested to do so by the Committee.

Given the implementation of SSB 5204 there is no longer statutory support for the release of the SSODA evaluation to the King County Sheriff. The suggestion that it be should done because it is permissible under a prior legislative scheme flies in the face of the 4th, 5th, 6th, and 14th amendments to the United State's Constitution, and analogous provisions of the Washington State Constitution, to which Josh and all similarly situated individuals are entitled.

Respectfully submitted this 8th day of August, 2012.



James W. Conroy WSBA # 11563
Attorney for the Appellant

ATTACHMENT "A"

SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF KING JUVENILE DEPARTMENT

STATE OF WASHINGTON,
Plaintiff

Case No. 10-8-04493-2
ORDER ON MOTION

v.
Josh Sanchez
Respondent

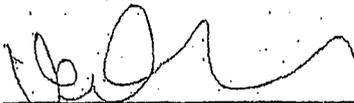
RE: Respondent's Motion to

Bar Release of SODA Evaluation to the
{ } Clerk's Action Required King County Sheriff

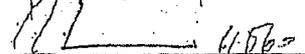
The above-entitled Court, having heard a motion by the defense to bar release
of the juvenile sexual behavior and risk assessment to the
King County Sheriff's office.

IT IS HEREBY ORDERED that the defense motion is denied. The
Order of July 19, 2011 is vacated except that the
Probation Department shall not release the evaluation
to the Sheriff's office until after August 12, 2011
unless that date is extended by this Court or the
Court of Appeals. The court finds disclosure is required by
RCW 4.24.550(6).

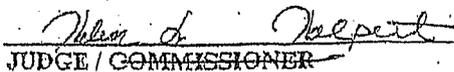
DATED: 8-4-11



Attorney for the Plaintiff
WSBA # 37209



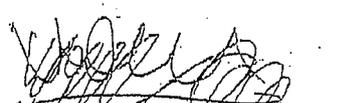
Attorney for the Respondent
WSBA # _____


JUDGE / COMMISSIONER

Juvenile Probation Counselor

Page 1 of _____


attorney for King County Sheriff's Office
WSBA # 26125


Juvenile Probation Counselor

ATTACHMENT "B"

1 physical characteristics, name, birthdate or address, but does not
2 include information regarding criminal activity, arrest, charging,
3 diversion, conviction or other information about a person's treatment
4 by the criminal justice system or about the person's behavior.

5 (24) Information identifying child victims under age eighteen who
6 are victims of sexual assaults by juvenile offenders is confidential
7 and not subject to release to the press or public without the
8 permission of the child victim or the child's legal guardian.
9 Identifying information includes the child victim's name, addresses,
10 location, photographs, and in cases in which the child victim is a
11 relative of the alleged perpetrator, identification of the relationship
12 between the child and the alleged perpetrator. Information identifying
13 a child victim of sexual assault may be released to law enforcement,
14 prosecutors, judges, defense attorneys, or private or governmental
15 agencies that provide services to the child victim of sexual assault.

16 Sec. 5. RCW 72.09.345 and 2008 c 231 s 49 are each amended to read
17 as follows:

18 (1) In addition to any other information required to be released
19 under this chapter, the department is authorized, pursuant to RCW
20 4.24.550, to release relevant information that is necessary to protect
21 the public concerning offenders convicted of sex offenses.

22 (2) In order for public agencies to have the information necessary
23 to notify the public as authorized in RCW 4.24.550, the secretary shall
24 establish and administer an end-of-sentence review committee for the
25 purposes of assigning risk levels, reviewing available release plans,
26 and making appropriate referrals for sex offenders. (~~The committee
27 shall assess, on a case-by-case basis, the public risk posed by sex
28 offenders who are: (a) Preparing for their release from confinement
29 for sex offenses committed on or after July 1, 1984; and (b) accepted
30 from another state under a reciprocal agreement under the interstate
31 compact authorized in chapter 72.74 RCW.~~)

32 (3) The committee shall assess, on a case-by-case basis, the public
33 risk posed by:

34 (a) Offenders preparing for release from confinement for a sex
35 offense or sexually violent offense committed on or after July 1, 1984;

36 (b) Sex offenders accepted from another state under a reciprocal

ATTACHMENT "C"

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)
)
 Respondent,)
)
 v.)
)
 JOSH A. SANCHEZ,)
 B.D. 08/29/97,)
)
 Appellant.)

No. 67461-7-1
DIVISION ONE
PUBLISHED OPINION
FILED: July 9, 2012

FILED
COURT OF APPEALS
DIVISION ONE
JUL 09 2012

GROSSE, J. — The juvenile court is statutorily required to transmit relevant information to local enforcement agencies that review and assign a risk level to sexual offenders. Here, the juvenile court transmitted a juvenile’s sexual behavior and risk assessment evaluation to the King County Sheriff. That information is relevant and, as such, mandated by statute. Accordingly, we affirm.

Pursuant to a juvenile disposition, Josh Sanchez was permitted to remain in the community on the basis of a juvenile sexual behavior and risk assessment SSODA (special sex offender disposition alternative) evaluation. RCW 13.40.160(3) concerns the juvenile court’s authority to impose a SSODA. A juvenile is eligible for alternative disposition if an examination determines that the juvenile is amenable to treatment. RCW 13.40.162(2) provides:

- (a) The report of the examination shall include at a minimum the following:
 - (i) The respondent’s version of the facts and the official version of the facts;
 - (ii) The respondent’s offense history;
 - (iii) An assessment of problems in addition to alleged deviant behaviors;

(iv) The respondent's social, educational, and employment situation;

(v) Other evaluation measures used.

The report shall set forth the sources of the evaluator's information.

(b) The examiner shall assess and report regarding the respondent's amenability to treatment and relative risk to the community. A proposed treatment plan shall be provided and shall include, at a minimum:

(i) The frequency and type of contact between the offender and therapist;

(ii) Specific issues to be addressed in the treatment and description of planned treatment modalities;

(iii) Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members, legal guardians, or others;

(iv) Anticipated length of treatment; and

(v) Recommended crime-related prohibitions.

The juvenile court transmitted the evaluation to the sheriff's office to enable it to establish a risk assessment under RCW 4.24.550(6), which provides:

Local law enforcement agencies that disseminate information pursuant to this section shall: (a) Review available risk level classifications made by the department of corrections, the department of social and health services, and the indeterminate sentence review board; (b) assign risk level classifications to all offenders about whom information will be disseminated; and (c) make a good faith effort to notify the public and residents within a reasonable period of time after the offender registers with the agency. The juvenile court shall provide local law enforcement officials with all relevant information on offenders allowed to remain in the community in a timely manner.¹

Sanchez appeals the trial court's order denying his motion to bar release of the SSODA evaluation to the King County Sheriff's Office. The primary rule of statutory construction is to give effect to the legislature's intent.² Under the theory that the legislature is presumed to mean "exactly what it says,"

¹ (Emphasis added.)

² Lake v. Woodcreek Homeowners Ass'n., 169 Wn.2d 516, 526, 243 P.3d 1283 (2010).

unambiguous statutory language is given its plain meaning.³ Clearly, the evaluation is a record that relates to Sanchez' offense and information contained in the SSODA evaluation is "relevant information."

Sanchez argues that the legislature passed a new bill establishing an end-of-sentence review committee for assessments, which statute in effect overrules the sheriff's authority to make assessments. Specifically, substitute senate bill (SSB) 5204.⁴

Sanchez argues that SSB 5204(5) is controlling and in effect repeals the sheriff's authority to make risk assessments. Section (5) of SSB 5204 amends RCW 72.09.345. RCW 72.09.345(2) provides:

In order for public agencies to have the information necessary to notify the public as authorized in RCW 4.24.550, the secretary shall establish and administer an end-of-sentence review committee for the purposes of assigning risk levels, reviewing available release plans, and making appropriate referrals for sex offenders.

But this is the exact same language that appeared in RCW 72.09.345 in 1997 and remained unchanged by amendments thereto in 2008.⁵ Thus, this section does not, as Sanchez argues, officially displace the sheriff as the designee of risk

³ In re Dependency of J.W.H., 147 Wn.2d 687, 696, 57 P.3d 266 (2002) (quoting State v. McCraw, 127 Wn.2d 281, 288, 898 P.2d 838 (1995)).

⁴ SSB 5204 concerns juveniles who have been adjudicated of a sex offense. Juveniles have the same duty to register as sex offenders as adults do. This bill provides relief to juveniles of that duty to register and for the sealing of records under certain conditions. If the juvenile is under the custody of the juvenile rehabilitation administration, the end-of-sentence review committee with the department of corrections review the juvenile's file and assign an initial risk classification. If the juvenile is on probation at the county level or serving a sentence under a SSODA, the juvenile's initial risk classification is assigned to the county sheriff. See FINAL B. REPORT, on Substitute SB 5204, 62 Leg., Reg. Sess. (Wash. 2011).

⁵ See former RCW 72.09.345 (1997) amended by LAWS OF 2008, ch. 231, § 49.

classifications, because the end-of-sentence review committee is “now charged with making risk classifications in the future.” It has always been charged with risk assessment. One statute applies to the sheriff’s office while the other applies to the end-of-sentence review committee.

Sanchez argues that the sheriff is not one of the parties specifically named by RCW 13.50.050, pertaining to confidential juvenile records. But RCW 13.50.050 cross-references RCW 4.24.550 and provides that records are confidential “and may be released only as provided in this section, RCW 13.50.010, 13.40.215, and 4.24.550.” The statute clearly encompasses the sheriff having the relevant information.

Sanchez next argues that since the information is transmitted to the sheriff that information is at risk of being released under the Public Records Act (PRA), chapter 42.56 RCW. But RCW 13.50.050 provides that all records other than an official juvenile court file are confidential and may be released only in certain circumstances, such as to the sheriff’s office.⁶ RCW 42.56.070 provides for the protection of records from disclosure, where specifically exempt from disclosure by other statutes, such as RCW 13.50.050. Indeed, in his reply brief, Sanchez agrees with King County’s assessment that its policies would prohibit re-

⁶ RCW 13.50.050 provides in part:

- (1) This section governs records relating to the commission of juvenile offenses
- (2) The official juvenile court file . . . shall be open to public inspection, unless sealed
- (3) All records other than the official juvenile court file are confidential and may be released only as provided in this section, RCW 13.50.010, 13.40.215, and 4.24.550.

disclosure of the evaluation under the public policy and rights to privacy contained within the PRA under RCW 42.56.070.

The release of the evaluation under RCW 4.24.550(6) does not violate Sanchez' right to privacy under state or federal statutes or under the state or federal constitutions. Sanchez' cite to GR 15 as support for his invasion of privacy theory is without merit. GR 31(a) identifies judicial policy to facilitate access to court records and to balance such access against the reasonable expectation of privacy as provided by article I, section 7 of the Washington State Constitution. The judiciary engaged in the necessary balancing with respect to juvenile court records in its adoption of Title 10 JuCR, which references RCW 13.50.010 through .250 as containing the rules applicable to juvenile court records.⁷ As noted previously, those statutes establish the confidentiality of juvenile records.

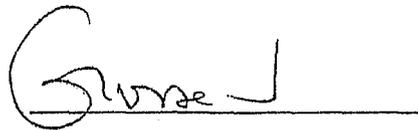
Sanchez next cites RCW 70.02.005, 70.02.060, 71.05.630, and HIPAA (Health Insurance Portability and Accountability Act of 1996) as all precluding the release of the evaluation to the sheriff. Even if we considered the evaluation to be a health care record, there is a specific statute mandating its release to the sheriff for the purpose of making a risk assessment, not for purposes of dissemination. Its release is sanctioned under RCW 70.02.050(2)(b), which provides for release of health care information without authorization if "required by law" and under RCW 71.05.630(1), which provides that records are

⁷ JuCR 10.3 through 10.5.

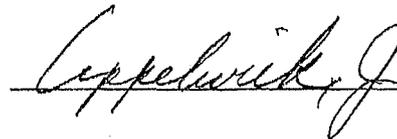
confidential “[e]xcept as otherwise provided by law.” The mandate by RCW 4.24.550(6) removes the privacy restrictions.

For this court to agree with Sanchez’ claim, that the release to the sheriff is constitutionally prohibited, this court must find that the statute providing for the evaluation’s release is unconstitutional. A statute is presumed constitutional and the party challenging the constitutionality of a statute has the burden of proving its unconstitutionality beyond a reasonable doubt.⁸ Where possible, the court must interpret a challenged statute in a manner that upholds its constitutionality.⁹ The presumption in favor of a statute’s constitutionality should be overcome only in exceptional cases.¹⁰ Here, Sanchez has failed to prove the unconstitutionality of the statute beyond a reasonable doubt.

The trial court is affirmed.



WE CONCUR:



⁸ Haley v. Med. Disciplinary Bd., 117 Wn.2d 720, 739, 818 P.2d 1062 (1991).

⁹ City of Seattle v. Webster, 115 Wn.2d 635, 641, 802 P.2d 1333 (1990).

¹⁰ City of Seattle v. Eze, 111 Wn.2d 22, 27-28, 759 P.2d 366 (1988).

ATTACHMENT "D"

FINAL BILL REPORT

SSB 5204

C 338 L 11
Synopsis as Enacted

Brief Description: Concerning juveniles who have been adjudicated of a sex offense.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators Regala, Hargrove and Stevens).

Senate Committee on Human Services & Corrections
House Committee on Early Learning & Human Services
House Committee on Ways & Means

Background: Juvenile Duty to Register & Relief from Registration. In Washington State, a juvenile who is adjudicated of a sex or kidnapping offense has the same duty to register as an adult offender, regardless of the person's age at the time of offense. If the juvenile is under the custody of the Juvenile Rehabilitation Administration, the End of Sentence Review Committee with the Department of Corrections will review the person's file and assign an initial risk classification. If the juvenile is on probation at the county level or serving a sentence under a Special Sex Offender Disposition Alternative (SSODA), the juvenile's initial risk classification will be assigned by the county sheriff.

A person who has a duty to register for a sex or kidnapping offense committed when the person was a juvenile may be relieved of the duty to register if:

- at least 24 months have passed since the adjudication with no new sex or kidnapping offenses;
- the person has not been adjudicated or convicted of a failure to register during the 24 months prior to filing the petition;
- if the person was 15 years of age or older at the time of the offense, the person shows by clear and convincing evidence that he or she is sufficiently rehabilitated to warrant removal from the registration system, or if the person was under the age of 15 at the time of the offense, the person shows by a preponderance of the evidence that he or she is sufficiently rehabilitated.

In general legal terms, clear and convincing is a higher standard of proof than a preponderance of the evidence. Preponderance of the evidence is met if the proposition is more likely to be true than not true. Effectively, the standard is satisfied if there is a greater than 50 percent chance that the proposition is true. Clear and convincing means that it is substantially more likely than not that the thing is in fact true. Beyond a reasonable doubt

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

would be further along the continuum, requiring that the trier of fact be close to certain of the truth of the matter asserted.

In 2008 the Legislature created the Sex Offender Policy Board (Board) to promote a coordinated and integrated response to sex offender management. One of the first tasks assigned to the Board, through 2SHB 2714 (2008), was to review Washington's sex offender registration and notification laws. Soon after its inception, the Board created a subcommittee to address issues specifically related to juveniles who have been adjudicated of a sex offense.

In response to recommendations from the Board, the Legislature modified provisions for a juvenile to petition for relief from registration. Specifically, the Legislature clarified that a juvenile would not be precluded from petitioning for relief if they juvenile had committed only one failure to register. The Legislature also adopted 12 specific factors for the court to review in determining whether to relieve the person from the duty to register. Those factors include the nature of the offense, subsequent criminal history, the person's participation in treatment and rehabilitative programs, input from the victim, and an updated polygraph examination.

Sealing of Juvenile Records. Upon motion to the court, the court may seal the records of a juvenile if:

1. there is no proceeding pending against the moving party seeking his or her conviction for a juvenile or criminal offense;
2. there is no proceeding pending seeking the formation of a diversion agreement with that person;
3. full restitution has been paid;
4. the person has not been convicted of a sex offense; and
5. the following time periods have passed since the last date of release from confinement, full-time residential treatment, or entry of disposition in the community without being convicted of any offense or crime:
 - a. class A felony – five years;
 - b. class B or C felony, gross misdemeanor and misdemeanor offenses and diversions – two years.

Any adjudication of a juvenile offense or a crime subsequent to sealing has the effect of nullifying the sealing order.

Registered Persons Who Attend School. In May of 2010, a student in a Seattle school was sexually assaulted by another student who was a registered juvenile sex offender. In response to that incident, legislators asked the Board to study existing laws regarding juvenile sex offenders and school notification. The Board came to several consensus recommendations, including requiring:

- that a court that orders 24/7 monitoring as part of SSODA must enter findings regarding that condition;
- schools to have policy and procedures in place regarding students who have been adjudicated of a registrable sex offense and the provision of a safe learning environment for all students;
- the Department of Corrections, End of Sentence Review Committee (ESRC) to assign the initial risk classification for all juveniles required to register as a sex offender who

go through the Juvenile Rehabilitation Association and those who receive a SSODA sentence.

A person who is required to register must give notice to the county sheriff within three days prior to arriving at a school or institution of higher education to attend classes, prior to starting work at an institution of higher education, and after any termination of enrollment or employment at a school or institution. The sheriff is in turn required to notify the school's principal or institution's department of public safety. If the student is a risk level II or III, the principal must provide information about the student to every teacher of the student and any other personnel who, in the judgment of the principal, supervises the student or for security purposes, should be aware of the student's record. If the student is a risk level I, information may only be released to personnel who, in the judgment of the principal, should be aware of the student's record.

In 2006 the legislature required the Office of the Superintendent of Public Instruction (OSPI) to convene a workgroup to draft a model policy for school principals to follow when they receive notification from law enforcement that a registered sex/kidnapping offender is attending or is expecting to attend the school (SB 6580). The model policy was created and provides the intended direction. However, schools and school districts are not mandated to adopt the policy or implement safety plans for these students and consequently there is not consistent approach throughout the state.

Summary: A person who has a duty to register for a Class A kidnapping or sex offense committed as a juvenile, age 15 or older, must have spent at least 60 months in the community with no new sex or kidnapping offense before the person may petition to be relieved of the duty to register. Any other person who has a duty to register for a sex or kidnapping offense committed when the person was a juvenile must have spent at least 24 months in the community with no new sex or kidnapping offense before the person may petition to be relieved of the duty to register. In order to be relieved, the person must show by a preponderance of the evidence that he or she is sufficiently rehabilitated to warrant removal from the registration system. This burden of proof applies regardless if the person was under or over the age of 15 at the time of the offense.

A person who committed a sex offense as a juvenile and who has been relieved of the duty to register or whose duty to register has ended, may have his or her records sealed in the same manner and under the same conditions as other offenses unless the person was adjudicated of rape in the first degree, rape in the second degree, or indecent liberties that was actually committed with forcible compulsion.

If the court orders 24 hour continuous monitoring of an offender who is awarded a SSODA, the court must include the basis of this condition in its findings. The ESRC must assign the initial risk classification for juveniles under the jurisdiction of the county juvenile court and juveniles supervised from out-of-state under the interstate compact for juveniles.

The Superintendent of Public Instruction must publish a revised and updated sample policy for schools to follow regarding students required to register as sex or kidnapping offenders.

Votes on Final Passage:

Senate	30	18	
House	97	0	(House amended)
Senate	25	20	(Senate concurred)

Effective: July 22, 2011.