

April 24, 2024

H7832

Laura A. Pisaturo Testimony

Mr. Chairman, and honorable members of the House Judiciary Committee:

My name is Laura Pisaturo and I serve as the appointed chairperson of the Rhode Island Parole Board. I am providing this testimony to help inform the updates in Rhode Island General Laws 11-37.1-Section 6 and Section 16 under House Bill 7832. I wish to thank Representative Knight for sponsoring this bill, the main purpose of which is to codify some evidence-informed practices into the risk assessment process for those persons convicted of sex offenses.

- Proposed updates in Section 6 would codify existing community notification guidelines and reflect recognized and approved practices in the field of sexual offender risk leveling, including **the recognized use of a structured decision-making approach in narrow circumstances where an accepted validated risk assessment instrument does not exist – particularly child sexual exploitation material cases and female offender cases**. In such cases, the Sex Offender Board of Review would be authorized to use a Structured Professional Judgment (SPJ) approach, in which the Board evaluates the presence or absence of commonly employed risk variables (static and dynamic), together with all other information available to the Board, to determine the level of risk for sexual recidivism. Any risk assigned would of course be subject to appeal as provided in the statute.

- Proposed updates in Section 16 would incorporate the updates in Section 6 to support the state's *prima facie* case in the Court review of an offender's risk level. The statute allows the parole board authority to designate the tools and materials used by the Sex Offender Board of Review in its leveling function, however, as currently written, the statute places a higher or unreachable burden of proof and persuasion on the state in the judicial review process (Section 16). The proposed updates in Section 16 would correct this.

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Background:

Under the Rhode Island Sexual Offender Registration and Community Notification Act (the Act), there are two state boards involved in assigning risk (for sexual recidivism) and in determining the scope of community notification for registered sex offenders who are residing, working, or attending school in Rhode Island: (1) the Sex Offender Board of Review (SOBR) and (2) the Parole Board. Community notification takes place separately from sexual offender registration. Sexual Offender Community Notification (SOCN) relates to the scope of notification to the public, victims, and law enforcement for persons convicted of eligible sex offenses who are residing, working, or attending school in Rhode Island.¹ The Act requires that the parole board develop guidelines and procedures for community notification and, within those guidelines, provide for three (3) risk levels (high, moderate, low) and their corresponding scope of community notice.² The SOBR is a separate board tasked with “utiliz[ing] a validated risk assessment instrument and other material approved by the parole board to determine the level of risk an offender poses to the community”³ Risk levels assigned by the SOBR are subject to review by the court.⁴

Proposed Updates to 11-37.1-6 and 11-37.1-16:

Section 11-37.1-6 currently authorizes the SOBR to use a validated risk assessment instrument and other material approved by the parole board to determine the level of risk an offender poses to the community. In its Community Notification Guidelines, the Parole Board has approved the use [by SOBR] of a structured decision-making judgment approach in narrow circumstances where there is no recognized

¹ §11-37.1-12.

² §11-37.1-6(b)

³ §11-37.1-6(1)(a)-(b). The SOBR is an independent board made up of eight persons (appointed by the governor) and includes “experts in the field of the behavior and treatment of sexual offenders by reason of training and experience, victim’s rights advocates, and law enforcement representatives to the sex offender board of review. At least one member of the sex offender board of review must be a qualified child/adolescent sex offender treatment specialist.” RIGL §11-37.1-6(1)(a).

⁴ RIGL §§11-37.1-13--16.

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validated risk assessment tool – such as with *female* sexual offenders or child sexual exploitation material cases (*e.g., possession or distribution of child pornography*).

Parole Board SOCN Guidelines provide:

2.1 The Sex Offender Board of Review will utilize a validated risk assessment instrument and other material approved by the parole board to determine the level of risk an offender poses to the community and to assist the sentencing court in determining if that person is a sexually violent predator. If the offender is a juvenile, the Department of Children, Youth & Families shall select and administer a risk instrument appropriate for juveniles and shall submit the results to the sex offender board of review. *See R.I. General Laws § 11-37.1-6 (b)*. For child pornography and non-hands-on offenses, where a validated risk assessment instrument is not available, the Sex Offender Board of Review shall use a Structured Professional Judgment (SPJ) approach, in which the Board shall evaluate the presence or absence of commonly employed risk variables (both static and dynamic), together with all other information available to the Board, to make a determination concerning the level of risk.

2.2 Currently, the Parole Board approves the use of the following validated risk assessment instruments to assist the Sex Offender Board of Review with its determination of risk level for adult offenders: Static99R, Static2002R, Stable 2007 and the above-referenced SPJ approach when a validated risk assessment instrument is not otherwise recognized as credible and reliable for forensic purposes.

House Bill 7832 amendments to 11-37.1-6 would codify this guideline and better reflect established and approved practices in the field of sexual offender risk leveling. Currently, fourteen(14) states utilize some form of a Structured Professional Judgment (SPJ) approach in assessing risk and determining the scope of community notification. Under the SPJ approach, the SOBR evaluates the presence or absence of commonly employed risk variables, together with all other information available to the Board, to determine the level of risk for sexual recidivism.

Any risk assigned by the SOBR is subject to appeal as provided in the statute. H7832 would not change this right.

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House Bill 7832 amendments to 11-37.1-**16** would incorporate the updates in Section 6 to support the state's *prima facie* case in the Court review of an offender's risk level. As presently written, the legislature has given the parole board authority to designate the tools and materials used by the Sex Offender Board of Review in its leveling function but, as currently written, the statute places a higher or unreachable burden of proof and persuasion on the state in the judicial review process (Section 16). The proposed updates in Section 16 would correct this.

In the area of sex offender risk assessment tools, there is no one-size-fits-all and a validated risk assessment tool recognized for a particular category of offenses may not be appropriate to use with other category offenses or may not exist for a category of offenses or offenders. For example, the "Static-99R is an actuarial risk assessment instrument designed to assess the risk of sexual recidivism for adult males who have already been charged with or convicted of at least one sex offense against a child or a non-consenting adult. * * * [Static-99R] is not recommended for females, young offenders under the age of 18 at the time of release, or for offenders convicted of possession/ distribution of pornography/indecent materials."⁵ As further stated by the experts, even a recognized and validated risk assessment tool [such as the Static-99R] "does not address all relevant risk factors for sex offenders. *Consequently, a prudent evaluator will always consider other external factors, such as dynamic or changeable risk factors, that may influence risk in either direction.*"⁶

As currently written, the reviewable standard under Sections 6 and Section 16 of the Act requires something that the science cannot provide. House Bill 7832 proposes updates to reflect recognized and approved practices in the field including (1) the recognized use of third-generation risk assessment instruments (so-called) as well as a

⁵ Phenix, Amy, Fernandez, Yolanda, Harris, Andrew J.R., Helmus, L. Maaiké, Hanson, R. Karl & Thornton, David (November 14, 2016). *Static-99R Coding Rules Revised-2016 pp.12-13*; see, generally, Phenix, Amy, Helmus, L. Maaiké, & Hanson, R. Karl. (October 29, 2016). *Static-99R & Static-2002R Evaluators' Workbook*.

⁶ Phenix, Amy, Fernandez, Yolanda, Harris, Andrew J.R., Helmus, L. Maaiké, Hanson, R. Karl & Thornton, David (November 14, 2016) (*emphasis supplied*). *Static-99R Coding Rules Revised-2016 p.7*.

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structured decision-making approach that incorporates an evaluation of both static and dynamic factors that may influence risk and (2) the inapplicability of existing risk assessment tools to certain category of offenses or offenders.

Thank you for the opportunity to comment. I may be reached at (401) 462-0900 for any questions.