



# ***Representing Clients Facing an Indeterminate Sex Offense Sentence***

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# Indeterminate Sex Sentence

- Also called “Determinate Plus”
- Sentence is a range; release date is uncertain
- Maximum = Statutory Maximum  
(5 years/10 years/LIFE)
- Minimum = some number in the Standard Range(SR).
- Exceptional sentence is possible (to increase minimum term)

ISRB



# Indeterminate Sentence Review Board



- Originally created in 1986
- Crimes prior to 1984; Pre-SRA or Parole sentenced (PRE)
- Indeterminate sex offenses (2001) (CCB)
- Youth convicted as adult (2013)

# RCW 9.94A.507, RCW 9.95.420

## Any one of the 2-strike sex offenses:

- Rape in the first or second degree
- Rape of a child in the first or second degree
- Child molestation in the first degree,
- Indecent liberties by forcible compulsion
- Sexually motivated +
  - murder in the first or second degree, homicide by abuse, kidnap in the first or second degree, assault in the first or second degree, assault of a child in the first or second degree and burglary in the first degree;
- Any Attempt of any of these crimes
  - \*\*EXCLUDES 17 years old or younger with ROC 1, 2, CM 1

**Any sex offense (except FTR) and any prior from this list.**

***\*Effective date 9-1-2001***

# End of Sentence Review (DOC)

End of Sentence Review  
Committee (ESRC)

- Level I – Low Risk
- Level II – Moderate Risk
- Level III – High Risk

RCW 72.09.345

*\*For sexual re-offense*

- Release Plan
- SO Notification Level
- Referrals for SOs

# ISRB

- DOC examination of risk for future sexual dangerousness
- ISRB may contract for additional independent expert evaluation
- Release is presumed
- Preponderance standard – released unless individual is more likely than not to reoffend

# The “420” hearing

Individual

No attorney

Counselor

Treatment Provider

Supporters

Victims

- Survivors
- Witnesses
- RCW 7.69.032





# No attorney but...

Can help client prepare

Can submit supporting documents (PSE)

Can attend the hearing (but don't talk)



# RPC 1.1, 1.4, 8.4 Duty to Advise



# ISRB Release stats



ISRB data for 2013-2017:

Level I – 83% at first hearing and 13 % second

Level II - 65% at first hearing and 21% by second

Level III – 42% at first hearing and 45% by second hearing

IF NOT RELEASED: New minimum term < 5yr

# Profile of the Released: 2013 study



Only one conviction

Low to Low-Moderate future risk

Risk level I for community  
notification

No significant mental health issues

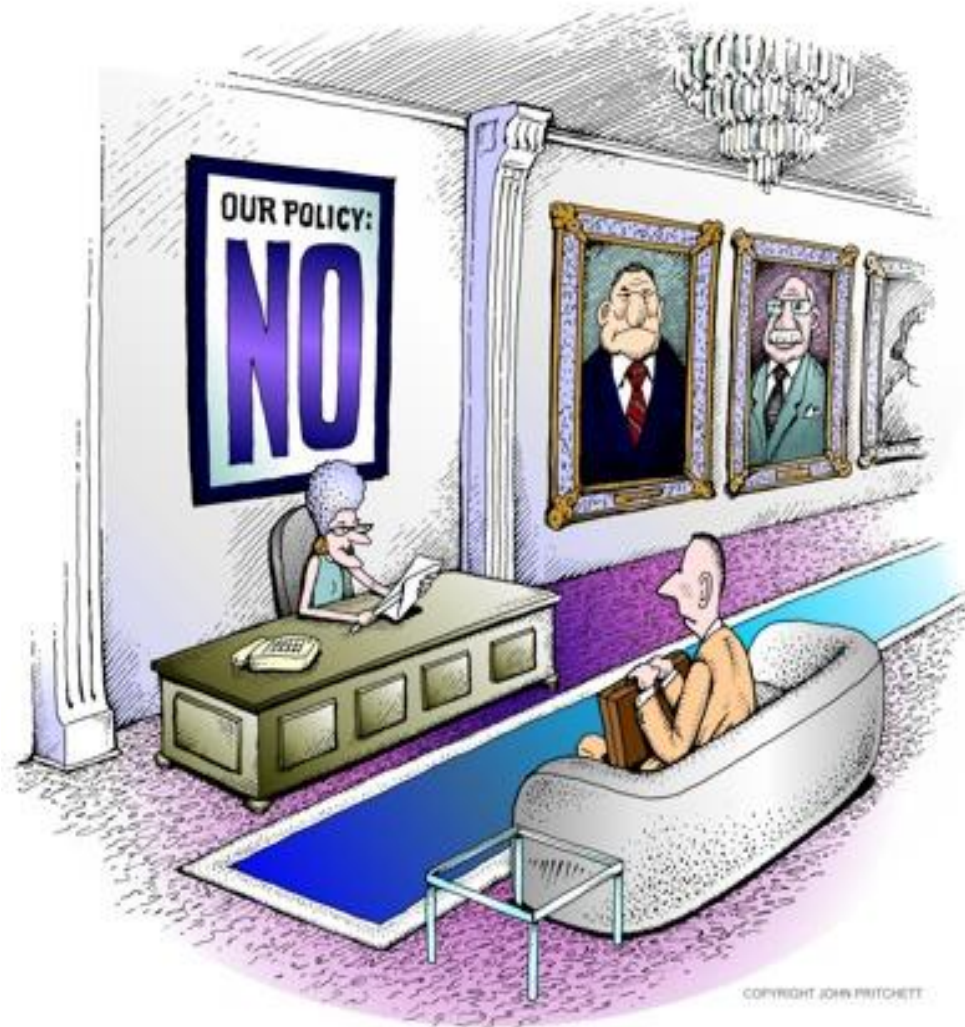
Ability to earn minimum custody  
while in prison

Release to ICE or a supportive  
stable release locations



*"Here are your choices. You can plead guilty."*

# Negotiations





# Duty to Investigate



Fact investigation

Psychosexual Evaluation (PSE)



# Psychosexual Evaluation

**Benefits**

**Risks**

# Psychosexual Evaluation (PSE)

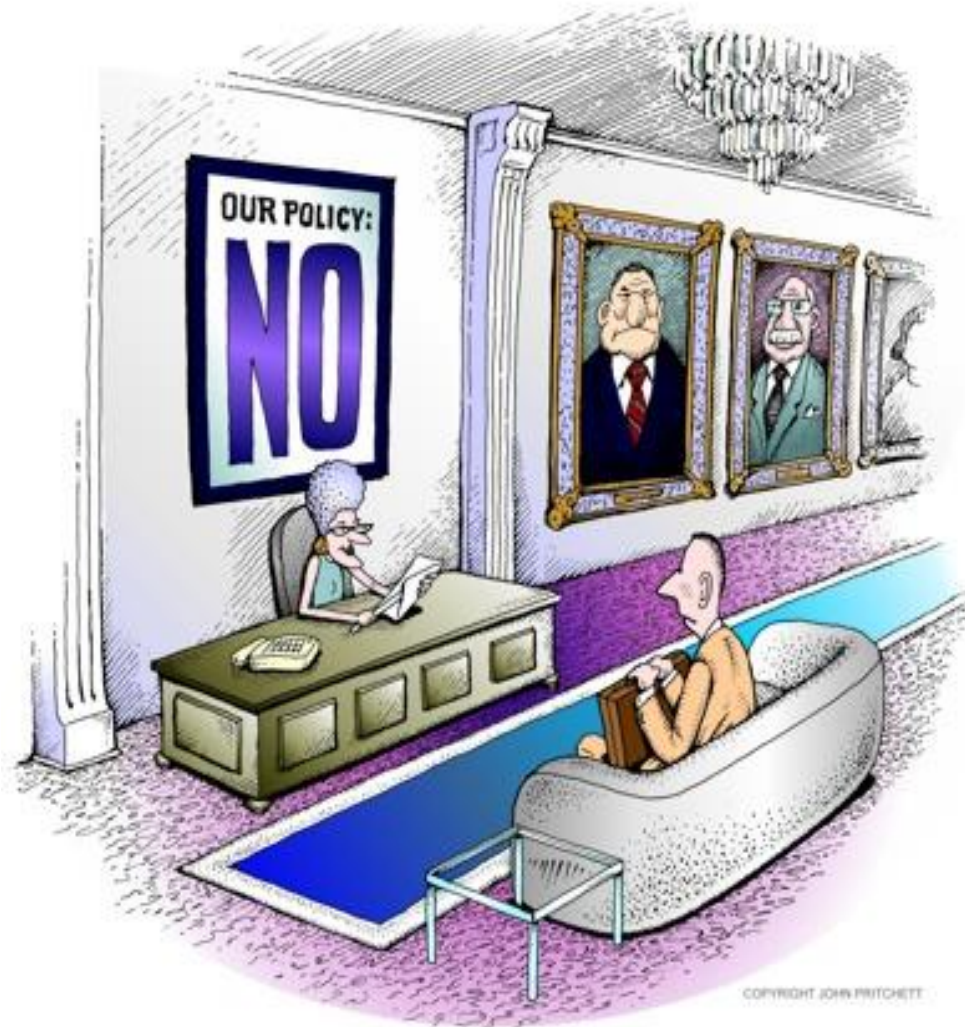
## Benefits

- SSOSA
- Negotiation/Mitigation
- Rule out deviant arousal system
- Rule out other victims
- Client realizes situation
- Trial strategy
- Helpful at release/ISRB

## Risks

- Client can blow the evaluation
- Prior sexual misconduct = new charges
- Compromise trial strategy
- Unfavorable evaluation = compromised negotiations
- PSE ends up in court file

# Negotiations





# Hypothetical Client

- 25 years old
- Molested 6 year old daughter one time
- High on alcohol, weed and meth
- Reported right away and client admission
- PSE is favorable (no other history, benefit from treatment, good candidate for community based treatment)
- Good candidate for SSOSA?



- Not if he has to PG to Class A
- LIFETIME SUPERVISION
- Huge prison sentence hanging over his head  
FOR THE REST OF HIS LIFE

=>This client relapsed and stopped reporting,  
stopped going to treatment. SSOSA revoked!



Conspiracy to Commit CM 1, Class B

38.25-51 mo - DETERMINATE

Conspiracy to Commit Assault of a Child  
2 with Sex Mo, Class B -

23.25-30.75 mo + 18 mo (SM)

DETERMINE

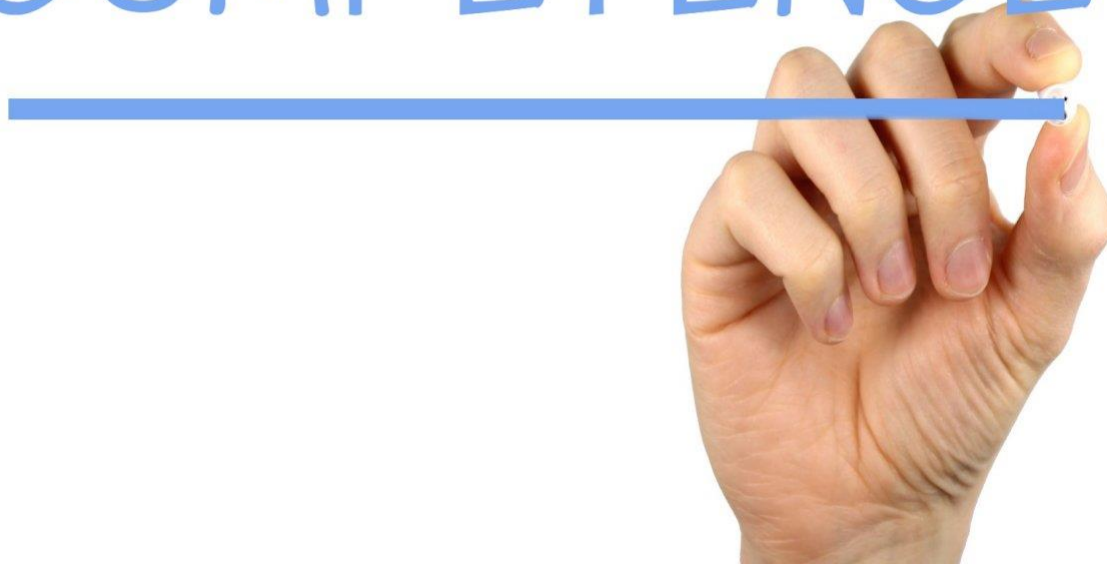
Attempt to Commit Assault of a Child 2  
with Sex Mo – Class B

23.25-30.75 mo + 18 mo (SM)

INDETERMINE

# RPC 1.1

# COMPETENCE





# Elements of a PSE



- Physical testing
- Psychological testing
- Clinical interview
  - Client's version of the facts
  - Official version of the facts
  - Offense history
  - Other issues
  - Social/employment info

# Preparing for the PSE



- Personal life history
- Sexual history
- Deviant arousal and number of other victims
- Identify cognitive distortions
- Confront cognitive distortions
- Give them homework
- Meet at least two times



Goal!

RPC 1.6





- Letter citing ER 410
- Notice + right to be heard if PRA
- Motion to Seal/Redact if filing with the court
- Prepare client for disclosure

# Participate in PSI?

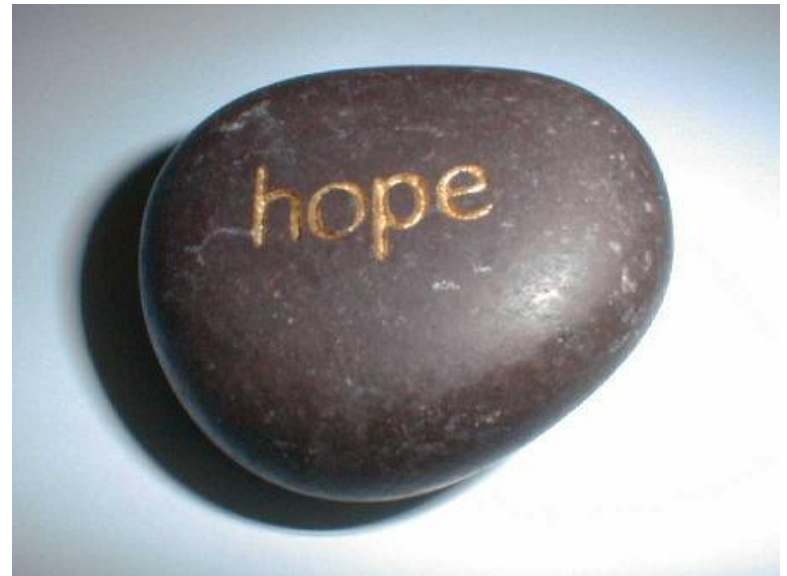
- Community Notification  
Risk Level
- Demonstrate stability
- Express sympathy or  
acknowledge harm to  
victim(s)



# RPC 2.1 Lawyer as Counselor

## Indeterminate Sentence

- SOTP in prison
- Access Programming
- Avoid infractions
- Prepare for getting out now
  - Family or community support
  - Money for rent/housing



# In your materials....

- Article “Preparing the Client for the PSE”
- Motion to Redact PSE and Treatment Reports
- FOF/COL Defense Motion to Redact Certain Appendices
- WDA Practice Advisories



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