

## Family members of sex offenders organize lawsuit against Colorado's indeterminate sentences

By Jessica Fender *The Denver Post* *The Denver Post*  
Posted:

DenverPost.com

Paul Allen, his parents and his attorney thought he'd serve his probation and move on once he pleaded guilty in 1999 to bouncing a child relative on his knee while sexually aroused.

But after his attempts to recant and withdraw that plea got him booted out of therapy, a judge resentenced him to two years to life in state prison.

A decade later, he's still there.

Allen, 40, was one of the first men sentenced under a 1998 law designed to give mid- to high-level sex offenders a choice: Get treatment behind bars or stay there for life.

Years later, a lack of therapy resources and a parole board reluctant to release even treated sex offenders has blocked the exit out of prison for hundreds of inmates on so-called indeterminate sentences.

Defense attorneys, offenders and their families say the state has broken its promise to treat and release these inmates. Family members are organizing a class-action lawsuit against the Department of Corrections.

Sixty-six of 1,659 sex offenders in custody on indeterminate sentences had eventually been paroled as of June 30, 2010, according to the department's most recent annual report on the program.

Nearly as many inmates are waiting for sex-offender treatment — 300 — as the 345 who are currently receiving it, corrections officials report.

After watching fellow inmates try and try again at therapy, only to be denied parole anyway, Allen waited until 2009 to ask for treatment.

He's halfway through the first phase.

"This wasn't meant to be a life sentence. This was supposed to be an education thing," Allen said.

In 1998 some Colorado lawmakers wanted to institutionalize sex offenders once they served their criminal sentences. Then-state Sen. Majority Leader Norma Anderson wanted something less costly and more fair, she said.

The Lifetime Supervision Act was born.

Judges now pick a minimum sentence for people convicted of certain sex offenses, which ranges from probation to time in prison. The maximum is automatically set at life in prison.

Before locked-up offenders can be recommended for parole, they must complete two phases of therapy.

Then, Colorado Parole Board members decide whether those inmates can re-enter the community on specialized and lengthy probation.

The law applies to Class 4 felony sex offenses — adults having sex with an older but still underage teen or the luring of a child over the Internet — and up through Class 2 felonies such as rape causing serious injury.

### Sentencing mid-level offenders

The highest-level offenders have much longer minimum sentences, so those now caught in the DOC backlog are mostly the mid-level offenders.

Anderson said the intent of the law is good.

"Instead of keeping someone in prison for life to protect the public from a sex offender, you give them treatment and have them out and controlled . . . and a productive member of society. That's the whole idea," Anderson said.

But that's not the way it has worked. Recently, sex offenders have had to turn to the courts to even get access to treatment.

In the first decision of its kind in the state, a district court judge in Colorado Springs in June ordered the DOC to treat a sex offender who waited five years to start therapy.

Thomas Spitz, 51, got a minimum two years to life in 2001, after he admitted to touching a 15-year-old relative sexually in a hot tub.

Judge David Gilbert in his order said prison officials "simply failed to process (Spitz's) application or respond to it in any way" and criticized their "abject failure to work with (Spitz), communicate with (Spitz), and to deal fairly with him."

Peggy Heil, who oversees therapeutic programs for DOC, said she could not comment on Spitz's case. She lamented resources that have lagged behind program demands.

Lack of treatment resources

In 2002, for every sex offender treatment program employee, there were 73 inmates who needed therapy. By 2010, that ratio was one to 108.

Likewise, department figures show the number of inmates DOC says need therapy has jumped 47 percent since indeterminate sentencing started, while the budget has increased 20 percent to \$3.2 million.

"We're really doing everything we can with those resources. We would love to be able to treat everybody, but the resources aren't there," Heil said.

Prison officials have started taking steps to more quickly process sex offenders with indeterminate sentences.

In March 2009, for example, indeterminate sentence offenders within four years of their minimum started getting pushed to the front of the treatment line, boosting the numbers of inmates DOC could recommend to parole.

About 30 people who call themselves Advocates for Change sat in a circle of folding tables in the low-ceilinged basement of a Denver church on a recent Tuesday and took turns voicing concerns about how sex offenders are treated in Colorado's prisons.

These family members of inmates on indeterminate sentences have spent years in limbo and argue prison policies are as much to blame as budget woes.

For one, inmates can't deny their offenses and still get into treatment. Anything they tell a therapist can be used against them, so offenders trying to appeal their conviction are stuck.

Even those who admit their offenses can have problems.

In the 13 years the lifetime law has been in place, 159 people had completed treatment as of March.

That number is far too low, according to Boulder defense attorney John Pineau, who is spearheading the lawsuit against the state.

"We are trying to get DOC to comply with Colorado law," said Pineau, who admits that his clients aren't the most

sympathetic characters. "No one really gives a damn what we do to sex offenders."

Victim advocates like Erin Jemison worry that the DOC backlog could topple the Lifetime Supervision Act, including parts that allow monitoring offenders for life after their release.

"Everyone's screaming they're getting punished too much," said Jemison, executive director of the Colorado Coalition Against Sexual Assault. "I just don't want people to lose sight of the fact it's so hard to get people to report sex assault . . . and then there's such a minuscule group that ends up in prison."

Before former chemistry teacher Derrick Davies went to prison for having sex with a 16-year-old student, a community corrections program had accepted him for treatment and an assessment showed he was a low risk to re-offend.

Davies, now 36, got two years to life in prison in May 2006.

By 2010 he'd completed treatment, but the Parole Board said he was no longer safe for the community and denied his release. This year, the board told him not to come back until 2013.

"You're thinking 'Here's my shot. Here's my shot.' And then you think, 'OK, there's nothing more I can do,' " Davies said. "They want you to plan ahead, think ahead, but that's really difficult when you don't know when or if you're getting out."

Indeterminate consequences

Before 2009, the board released seven sex offenders with lifetime sentences. As of March, that number had grown to 82.

State Parole Board vice chairman Michael Anderson said that years later, it's easy to forget the sting of a sex offense and its impact on a victim.

"Look at something fresh . . . take a look at the victim," Michael Anderson said. "We get down the road, we start to disregard how all of this started in the first place."

Judicial observers are starting to pay more attention to the unintended consequences of indeterminate sentencing.

Defense attorneys say their clients now plead guilty to lesser sex offenses and avoid a trial they might win just to take the possibility of lifetime sentences off the table.

A judge in Broomfield County sentenced Curtis Jay Hilty, a former Realtor who was found guilty of sexually assaulting his sleeping 20-year-old babysitter, to a 30-day jail sentence and 20 years of highly supervised probation in June.

The concern: Any prison term could become a life sentence.

Boulder County District Attorney Stan Garnett, who did not prosecute Hilty's case, said the judge's decision echoes the growing qualms of some in the legal community about the lack of judicial discretion over sentencing.

"Nobody wants to see the system impose penalties that strike the majority of the community as unfair," Garnett said. "It's important for the system to have credibility. It's important we get these right."

Jessica Fender: 303-954-1244 or [jfender@denverpost.com](mailto:jfender@denverpost.com)