

COLORADO DEPARTMENT OF REGULATORY AGENCIES  
OFFICE OF POLICY AND RESEARCH

# SEX OFFENDER MANAGEMENT BOARD

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2000 SUNSET REVIEW



October 15, 2000

Members of the Colorado General Assembly  
c/o the Office of Legislative Legal Services  
State Capitol Building  
Denver, Colorado 80203

Dear Members of the General Assembly:

The Colorado Department of Regulatory Agencies has completed the evaluation of the Sex Offender Management Board. I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2001 Legislative Committees of Reference. The report is submitted pursuant to §24-34-104(8)(a), of the Colorado Revised Statutes (C.R.S.), which states in part:

*"The department of regulatory agencies shall conduct an analysis of the performance of each division, board or agency or each function scheduled for termination under this section...*

*The department of regulatory agencies shall submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination . . ."*

The report discusses the question of whether there is a need for the regulation provided under Title 16, Articles 11.7 and 13 (Parts 8 and 9), C.R.S. The report also discusses the effectiveness of the Division of Criminal Justice and staff in carrying out the intention of the statutes and makes recommendations for statutory and administrative changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

M. Michael Cooke  
Executive Director

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## **Background**

### *Sunset Process/Methodology*

The Department of Regulatory Agencies (DORA) has concluded its sunset review of the Sex Offender Management Board as required by §16-11.7-103(6)(b), Colorado Revised Statutes (C.R.S.). The review was conducted in accordance with the statutory criteria contained in §24-34-104(9)(b), C.R.S., which are included in this report as Appendix A.

Prior to the creation of the Sex Offender Treatment Board (SOTB) in 1992, Colorado's criminal justice system's treatment of sex offenders was haphazard and inconsistent from jurisdiction to jurisdiction. There were no clearly delineated standards or policies for dealing with these uniquely dangerous offenders.

Recognizing the need for consistent policies and standards, the General Assembly created the 12-member SOTB in the 1992 legislative session. The General Assembly recognized that attempting to cure adult sex offenders was futile. Rather, the General Assembly adopted the idea of containing adult sex offenders, by requiring sex offense-specific treatment, continuous supervision by the state's probation and parole officers, and verification of treatment progress through the use of the polygraph. Thus, the SOTB's initial workload consisted of developing the standards by which Colorado's convicted adult sex offenders would be managed, developing an instrument by which the criminal justice system could assess the risk of whether a given sex offender would re-offend sexually and evaluating whether the standards and systems developed by the SOTB were successful.

When the General Assembly created the SOTB, it also created the Sex Offender Surcharge Fund (Surcharge Fund) into which are deposited the fines paid by convicted sex offenders. The bulk of the Surcharge Fund was intended to provide cash funding for the SOTB and its constituent agencies.

The Division of Criminal Justice (DCJ), the state agency housing the SOTB, applied for, and was awarded, a federal Drug Control and System Improvement Program (DCSIP) grant. The DCSIP grant was to be shared by the SOTB and the DCJ's Office of Research and Statistics (ORS). The SOTB and ORS were to collaborate on developing the risk assessment tool.

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The SOTB's staff originally consisted of a DCJ manager who was able to devote less than half of her time to the administration of the SOTB. As the SOTB's work expanded, the SOTB was placed in the ORS so that the DCSIP grant would be easier to administer.

In 1995, after two years of research and deliberations, the SOTB completed the standards for treatment providers, evaluators, polygraph examiners, plethysmograph examiners and Abel Screen examiners. However, the SOTB lacked the statutory authority to implement the standards, so the General Assembly granted the SOTB such authority in 1995. The *Standards and Guidelines for the Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders (Standards)* were first published in 1996, and were substantively revised in 1998 and 1999.

Also in 1995, the Department of Human Services and the Department of Institutions, each of which appointed a representative to the SOTB, merged. Simultaneous with the merger, the Board position representing the Department of Institutions was dissolved, reducing the size of the SOTB to 11 members.

However, in 1997, the General Assembly expanded the SOTB to 14 members by adding two additional treatment providers and one polygraph examiner. Prior to this, polygraph examiners, although required to comply with the *Standards*, were not represented on the SOTB and it was recognized that such expertise was needed.

The SOTB was renamed the Sex Offender Management Board (SOMB) in 1998. Simultaneously, the General Assembly directed the SOMB to develop criteria for the lifetime supervision of certain adult sex offenders and to develop standards for the supervision and treatment of adult sex offenders who have developmental disabilities. The SOMB subsequently published, in 1992, the *Lifetime Supervision Criteria* and the *Standards for Community Entities that Provide Supervision and Treatment for Adult Sex Offenders Who Have Developmental Disabilities* in June 1999.

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In 1999, the General Assembly directed the SOMB to develop criteria for the notification of communities of sexually violent predators (SVPs). The U.S. Congress previously directed the states to develop criteria for the identification of SVPs and for notifying the communities in which they reside, or risk losing federal DCSIP funding.

The General Assembly directed the SOMB to develop the criteria for community notification and for developing a tool, the *Sexual Predator Risk Assessment Screening Instrument*, for identifying SVPs. In addition, the General Assembly directed the SOMB to create a Technical Assistance Team to assist local law enforcement in conducting community notifications, and also to provide continuous training to local law enforcement agencies regarding these issues. The *Criteria, Protocols and Procedures for Community Notification Regarding Sexually Violent Predators* was published in November 1999.

In addition, the General Assembly again expanded the membership of the SOMB in 1999. By adding a judge, the SOMB grew to 15 members.

The SOMB was transferred out of the ORS in July 2000, and into a newly created Office of Domestic Violence and Sex Offender Management (DVSOM). In addition, in the 2000 legislative session, the General Assembly directed the SOMB to develop standards for the management of juvenile sex offenders and expanded the SOMB from 15 members to 21 members. The additional members were to provide the SOMB with the expertise necessary to develop comprehensive standards for juvenile sex offenders.

While it waits for the various appointing authorities to complete its membership, the SOMB has already begun preliminary research on juvenile sex offenders. In addition, the SOMB's previously developed and published standards, guidelines, criteria and protocols continue to be reviewed and revised. The SOMB considers these documents to be "living" documents, meaning they have been developed with the idea that as research progresses and knowledge regarding sex offenders increases, the documents can and should be revised accordingly. Evidence of this philosophy is the fact that the *Standards* have already been substantively revised twice since their original publication in 1996.

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## **Summary of Statute**

### Summary of Statute

The Sex Offender Management Board's enabling statutes can be found in Title 16, Articles 11.7 and 13 (Parts 8 and 9) of the Colorado Revised Statutes and are included as Appendix B in this report. The Sex Offender Management Board (SOMB) oversees a program which standardizes the evaluation, identification, treatment, and continued monitoring of sex offenders at each stage of the criminal justice system in order to curtail recidivistic behavior of sex offenders and to enhance the protection of victims and potential victims. In addition, the SOMB is responsible for overseeing the registration of sex offenders and notifying relevant communities when a sexually violent predator resides in such community.

Such programs are necessary because, according to the Colorado Sex Offender Lifetime Supervision Act of 1998, most sex offenders, if left untreated, will continue to commit sex offenses upon release from incarceration. Keeping sex offenders incarcerated for life is costly and some sex offenders respond well to treatment and supervision enabling them to function in society. §16-13-801, C.R.S.

Sections 16-11.7-102, 16-13-803 and 16-13-902, C.R.S., define a sex offender as a person convicted of one of the following sex offenses:

- Sexual assault in the first, second or third degree;
- Unlawful sexual contact;
- Sexual assault on a child;
- Sexual assault on a child by one in a position of trust;
- Sexual assault on a client by a psychotherapist;
- Enticement of a child;
- Incest;
- Aggravated incest;
- Trafficking in children;
- Sexual exploitation of children;
- Procurement of a child for sexual exploitation;
- Indecent exposure;
- Soliciting for child prostitution;
- Pandering of a child;

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- Procurement of a child for prostitution;
  - Keeping a place of child prostitution;
  - Pimping of a child;
  - Inducement of child prostitution;
  - Patronizing a prostituted child; and
  - Criminal attempt, conspiracy or solicitation to commit any of the above offenses.

The SOMB consisted of 15 members until July 1, 2000. House Bill 00-1317 directed the SOMB to develop standards regarding juvenile sex offenders. Concomitantly, the General Assembly increased the size of the SOMB to 21 members in order to reflect these new duties.

Membership on the SOMB is for a four-year term. The 21-member SOMB has representatives appointed by five departments of state government, representing mental health professionals in both public and private practice, prosecutors, public defenders, judges, probation officers, parole officers, polygraph examiners and victims rights advocates. The following table illustrates the number of appointments to the SOMB for each appointing authority.

Table 1

Appointees by Agency

<b>Number of Appointees</b>	<b>Appointing Authority</b>
3	Chief Justice of the Supreme Court
1	Executive Director of the Department of Corrections
3	Executive Director of the Department of Human Services
1	Commissioner of Education
13	Executive Director of the Department of Public Safety

In addition, the presiding officer of the SOMB is appointed by the Executive Director of the Department of Public Safety from among the members of the SOMB.

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The duties of the SOMB include:

- To develop and prescribe:
  - Standardized procedures for evaluating and identifying sex offenders. §16-11.7-103(4)(a), C.R.S.
  - A system for implementing the guidelines and standards developed by the SOMB and for tracking offenders who have been subjected to evaluation, identification and treatment. §16-11.7-103(4), C.R.S.
- To develop and implement:
  - Measures of successful treatment based on a “no-cure” policy for intervention. §§16-11.7-103(4), 16-13-809(1)(b), C.R.S.
  - Methods of intervention, which are appropriate to the needs of a particular sex offender, but which also protect the physical and psychological safety of victims and potential victims. §16-11.7-103(4), C.R.S.
  - Guidelines and standards for a system of treatment programs for all sex offenders who are placed on probation or parole, incarcerated or placed in community corrections. Such programs shall provide a continuing monitoring process and a continuum of treatment for sex offenders as they proceed through the criminal justice system. §16-11.7-103(4)(b), C.R.S.
- Develop:
  - A plan for the allocation of moneys deposited in the Sex Offender Surcharge Fund among the (§16-11.7-103(4), C.R.S.):
    - Judicial Department;
    - Department of Corrections;
    - Division of Criminal Justice; and the
    - Department of Human Services.
  - A system for monitoring sex offender behaviors and adherence to prescribed behavioral changes. §16-11.7-103(4), C.R.S.

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- Coordinate the expenditure of moneys from the Sex Offender Surcharge Fund for the identification, evaluation and treatment of sex offenders. §16-11.7-103(4)(c), C.R.S.
  - Consult on and approve the risk assessment screening instrument developed by the Division of Criminal Justice to assist the courts in determining the likelihood that an offender would commit one or more sex offenses. §16-11.7-103(4)(c.5), C.R.S.
  - Research and analyze the effectiveness of the evaluation, identification and treatment procedures and programs developed by the SOMB. §16-11.7-103(4)(d), C.R.S.
  - In collaboration with the Department of Corrections, the Judicial Department and the State Parole Board:
    - Develop criteria for measuring a sex offender's progress in treatment. §16-11.7-103(4)(e), C.R.S.
    - Establish criteria by and the manner in which a sex offender may demonstrate that he would not pose an undue threat to the community if released on parole or probation, placed on a lower level of supervision while on parole or probation, or discharged from parole or probation. §16-13-809(1)(a), C.R.S.
    - Establish criteria to be applied by the Department of Corrections or a supervising probation or parole officer in determining whether to petition for a determination that a sexually violent predator is subject to community notification. §16-13-904(1)(a), C.R.S.
    - Establish criteria to be applied by local law enforcement agencies in determining whether to effect a community notification of a sexually violent predator. §16-13-904(1)(b), C.R.S.
    - Establish protocols for effecting a community notification that a sexually violent predator resides in that community. §16-13-904(1)(c), C.R.S.

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- In collaboration with the Technical Assistance Team, establish the protocols and procedures for effecting a community notification of a sexually violent predator. §16-13-904(2), C.R.S.

In addition, HB 00-1317 directed the SOMB to develop by July 1, 2002, new standards, guidelines, criteria and protocols for juvenile sex offenders, similar in nature to those previously developed for adult sex offenders. §§16-11.7-103(f) – (i), C.R.S.

Before any sex offender is considered for parole, the pre-sentence or probation investigation must include evaluations for treatment and risk, and an identification as a sex offender or sexually violent predator. §16-11.7-104, C.R.S. Once paroled, an offender must also undergo treatment. §16-11.7-105(2), C.R.S.

An individual convicted of a sex offense is required to undergo treatment to the extent appropriate based upon the recommendations of the evaluation and identification of the sex offender. All such treatment or monitoring must be at a facility or with a person approved by the SOMB. §16-11.7-105(1), C.R.S. Thus, the SOMB is authorized to approve treatment providers. The SOMB must establish the standards for such providers, in collaboration with the Department of Corrections, the Judicial Department and the State Parole Board. §16-13-809(1)(c), C.R.S.

All evaluation and treatment providers with whom the SOMB, or a sex offender, may contract to provide such services, must conform to the standards developed by the SOMB. §16-11.7-106(1), C.R.S.

Before any individual is certified or approved by the SOMB as an evaluation or treatment provider, that individual must submit a complete set of fingerprints for criminal history checks by both the Colorado Bureau of Investigation and the Federal Bureau of Investigation. §16-11.7-106(2), C.R.S.

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Sex offenders and sexually violent predators are required to register with the local law enforcement agency for the community in which they reside within five business days of moving to that community. Failure to register is a Class 2 misdemeanor requiring a minimum 90-day jail sentence, in addition to any other appropriate penalties. Any second or subsequent failure to register is a Class 6 misdemeanor requiring a minimum one-year jail sentence, in addition to any other appropriate penalties.

Pursuant to its various statutory mandates, the SOMB has developed various standards, guidelines, criteria and protocols. It is important to note that the SOMB has no enforcement power of its own. The SOMB has developed these standards, guidelines, criteria and protocols to better assist other government agencies, treatment providers and evaluators in fulfilling their duties in the criminal justice system. The regulations promulgated by the SOMB can be found as Appendix C to this report.

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## **Program Description and Administration**

### "Containing" Sex Offenders

The focus of Colorado's Sex Offender Management Board is to manage, rather than simply treat, sex offenders. However, the treatment of sex offenders plays an integral role in sex offender management.

The General Assembly and the SOMB have concluded that the "containment approach" is the way in which Colorado will manage its sex offenders.

Containment strategies operate in circumstances of multi-agency collaboration, explicit policies, and consistent practices that combine case evaluation and risk assessment, sex offender treatment, and intense community surveillance designed specifically to restrict offenders' privacy and access to victims.<sup>1</sup>

Successful sex offender containment strategies consist of five components:<sup>2</sup>

- A coordinated, multidisciplinary implementation strategy;
- Consistent and informed public policies and agency protocols;
- Case management and control that is individualized for each sex offender;
- A consistent multi-agency philosophy focused on public safety; and
- Quality-control mechanisms designed to ensure that policies are implemented and that services are delivered as planned.

Analyzing these five components of sex offender containment provides an excellent backdrop for describing the program the SOMB has developed (and continues to develop) and how the various pieces of the program interact with one another.

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<sup>1</sup> "The Containment Approach: An Aggressive Strategy for the Community Management of Adult Sex Offenders," by K. English, *Psychology, Public Policy, and Law*, Vol. 4, No. 1/2, (1998) at 219.

<sup>2</sup> *Id.* at 221.

*Coordinated, Multi-Disciplinary Implementation Strategy*

The SOMB is an inclusive, multi-disciplinary policy-making body. The SOMB is composed of 21 members appointed by five different appointing authorities, representing approximately 17 aspects of various disciplines. Currently, however, only 16 appointments are filled. The table that follows illustrates the various appointing authorities involved, as well as the nature and number of appointments each is authorized to make.

Table 2

Representation on the Sex Offender Management Board and Appointing Authorities

Number of Appointments	Representation	Appointing Authority
1	Judicial Department	Chief Justice of the Supreme Court
1	Department of Corrections	Department of Corrections
1	Department of Human Services	Department of Human Services
1	Division of Criminal Justice	Department of Public Safety
1	Judge	Chief Justice of the Supreme Court
3	Licensed Mental Health Professionals with Expertise in the Treatment of Sex Offenders	Department of Public Safety
1	District Attorney	Department of Public Safety
1	Member of a Community Corrections Board	Department of Public Safety
1	Public Defender	Department of Public Safety
1	Law Enforcement	Department of Public Safety
2	Recognized Experts in the Field of Sex Abuse	Department of Public Safety
1	Clinical Polygraph Examiner	Department of Public Safety
1	Licensed Mental Health Professional with Expertise in the Treatment of Juvenile Sex Offenders	Department of Public Safety
1	Sex Abuse Victims and Victims' Rights Organizations	Department of Public Safety
1	Division of Youth Corrections	Department of Human Services
1	Expert in Dealing with Juvenile Sex Offenders in the Public School System	Commissioner of Education
1	Juvenile Magistrate	Chief Justice of the Supreme Court
1	Provider of Out-of-Home Placement Services to Juvenile Sex Offenders	Department of Human Services

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The final six appointments listed in the table above are the result of HB 00-1317, and are related to the SOMB's newly legislated mandate to develop standards for managing juvenile sex offenders. None of these appointments have been filled as of this writing.

The composition of the SOMB is demonstrative of its interdisciplinary nature. The SOMB consists of, among others, treatment providers, evaluators, polygraph examiners, judges, police officers, prosecutors, public defenders, probation and parole officers and victims' rights advocates.

The primary goal of the SOMB is to improve public safety and to prevent additional victimization. The SOMB has based its work with adult sex offenders on a set of guiding principles, which are grounded in public safety. Some of these guiding principles are:

- Sexual offending is a behavioral disorder which cannot be "cured."
- Sex offenders are dangerous.
- Community safety is paramount.
- Assessment and evaluation of sex offenders is an on-going process. Progress in treatment and level of risk are not constant over time.
- Assignment to community supervision is a privilege.
- Victims have a right to safety and self-determination.
- When a child is sexually abused within the family, the child's individual need for safety, protection, developmental growth and psychological well being outweighs any parental or family interests.
- Standards and guidelines for assessment, evaluation, treatment and behavioral monitoring of sex offenders will be most effective if the entirety of the criminal justice and social services systems, not just sex offender treatment providers, apply the same principals and work together.
- The management of sex offenders requires a coordinated team response.
- Successful treatment and management of sex offenders is enhanced by the positive cooperation of family, friends, employers and members of the community who have influence in sex offenders' lives.

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The SOMB makes every attempt to be inclusive – that is, many non-SOMB members participate in SOMB meetings. Toward this goal, the SOMB has established a set of informal “ground rules” to enable its meetings to maintain an informal atmosphere in which ideas are freely exchanged, but ensure that those who have something to contribute are allowed to do so.

The SOMB has numerous detractors including defense attorneys and psychologists, but even virulent critics concede that the SOMB has been fair in listening to various sides of the issues it has addressed, and continues to address. These detractors further concede that they are fairly certain that if they so requested, they would be placed on an SOMB meeting agenda with little effort.

In order to take greater advantage of the participation of non-members, both supporters and detractors, and because the SOMB is large, the SOMB has created several task-oriented committees. Most of the substantive and ongoing work of the SOMB is done in its various committees.

**Application Review Committee** – This is the only SOMB committee that has only SOMB members in its membership. This committee reviews all of the applications, and renewal applications, for treatment providers, evaluators and polygraph, plethysmograph and Abel Screen examiners applying to be placed on the Provider List. The Provider List is statutorily mandated and consists of those practitioners who have demonstrated their compliance with the *Standards & Guidelines for the Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders (Standards)*. If this committee denies placement on the Provider List, the applicant may appeal to the full SOMB. This committee has been widely criticized for its lack of progress in approving applicants. This has been attributed to the overwhelming number of applications received by the SOMB after the publication of the *Standards*, the fact that the committee carefully reviews each application and conducts thorough background investigations on each applicant, and because of a staffing shortage. Most of these problems have purportedly been resolved through increased staffing and the processing of most applicants. In addition, this committee reports to the SOMB regarding needed changes to the *Standards* around practice and implementation issues.

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**Polygraph Issues Committee** – This committee has solicited input from the Division of Criminal Justice’s Office of Research and Statistics, national polygraph examiner experts and Department of Corrections’ staff involved in polygraph research in its efforts to draft an appendix to the *Standards*, which will respond to the more complex polygraph implementation questions being posed in the field.

**Treatment Issues Subcommittee** - This committee produced a draft appendix to the *Standards* regarding sex offender contact with victims and potential victims.

**Lifetime Supervision Report Committee** – This committee is responsible for coordinating the submission of a report to the General Assembly regarding the lifetime supervision of certain sex offenders.

**Community Notification Curriculum Development Advisory Committee** – This committee is responsible for developing a curriculum for the training of local law enforcement agencies regarding the implementation of the *Criteria, Protocols and Procedures for Community Notification Regarding Sexually Violent Predators*. Further, this advisory committee’s responsibilities include developing forms to be used in the community notification process, developing educational materials and safety tips for communities and providing an electronic community presentation to be used by local law enforcement during required community notification meetings.

In addition to the committees described above, a number of dormant committees may be reconvened as well as a number of new committees being created to enable the SOMB to address certain issues including:

- Juvenile Sex Offender Standards;
- Evaluation Grant Research; and
- Developmentally Disabled Sex Offender Standards.

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## *SOMB Accomplishments*

- Publication, ongoing implementation and revision of the *Standards and Guidelines for the Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders (Standards)*. The *Standards* provide the structure for the comprehensive management of convicted sex offenders. The *Standards* explain, in detail, the various aspects of sex offender management – from the roles and inter-relations of the various parties to recommended treatment programs.
- Maintenance and publication of a Provider List of evaluators, treatment providers, plethysmograph examiners, Abel screen examiners and polygraph examiners who meet the criteria outlined in the *Standards*. Before one of these professionals can receive referrals from the criminal justice system, they must be placed on the Provider List. The SOMB has developed criteria for each profession, which must be satisfied before being placed on the List. Typically, a professional can be placed on the Provider List at the “Full Operating Level,” which requires no supervision, but has higher threshold qualification standards, or at the “Associate Level,” which requires supervision, but has lower threshold qualification standards. This list will eventually reflect those professionals who address the needs of juvenile sex offenders after the development of the new juvenile sex offender standards.
- Ongoing implementation and revision of the *Lifetime Supervision Criteria*. Lifetime supervision is a sex offender management tool unique to Colorado. It allows the sentencing court to impose an indeterminate sentence on a sex offender convicted of a class 2, 3 or 4 felony. A sex offender convicted of a class 2 or 3 felony, for example, may be sentenced to 20 years to life of lifetime supervision; a sex offender convicted of a class 4 felony, for example, may be sentenced to 10 years to life of lifetime supervision. The “life” component means the sex offender will be required to register as a sex offender with local law enforcement for his entire natural life. The sentence, however, is somewhat discretionary in that the sex offender can earn his way off of lifetime supervision

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beginning at year 10, or 20, as the case may be. Lifetime supervision requires the sex offender to register as a sex offender and remain in sex offense-specific treatment, participate in polygraph examinations and be on parole or probation until he earns his way off. Finally, the sentence of lifetime supervision can be imposed regardless of whether the sex offender is incarcerated or placed on probation or parole. It is a very flexible tool for the long-term supervision and management of sex offenders.

- Ongoing implementation and revision of the *Standards for Community Entities that Provide Supervision and Treatment for Adult Sex Offenders Who Have Developmental Disabilities*.
- Annual recommendations for allocation of the dollars in the Sex Offender Surcharge Fund.
- Consultation with the Office of Research and Statistics (ORS) and approval of any revision to the *Sexual Predator Risk Assessment Screening Instrument*.
- Ongoing implementation and revision of the *Criteria, Protocols and Procedures for Community Notification Regarding Sexually Violent Predators (Community Notification Criteria)*, including the management of a Community Notification Technical Assistance Team to train law enforcement agencies statewide and assist in community notification and community education. Community notification is different from placement on the state's sex offender registry. Sexually Violent Predators ("SVPs") are sex offenders who have a higher risk of re-offending sexually. The SOMB and ORS have developed a list of 10 different criteria to be used in determining whether a sex offender should be identified as a SVP. Once so identified, the *Community Notification Criteria* are implemented. The *Community Notification Criteria* include placement of the SVP on an Internet registry and the direct notification of the community in which the SVP resides that the SVP has been so identified. In addition, SVPs are required to register with local law enforcement once per calendar quarter for placement on the state's sex offender registry.

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- Development of a system of tracking sex offenders through the programs created and evaluating the impact of those programs. This evaluation process is currently targeted to adult programs and will address the juvenile programs after they are developed.
  - Development, publication, ongoing implementation and revision of an assessment process and a system of programs for juvenile sex offenders.
  - Development and implementation of a process for measuring progress in treatment for juvenile sex offenders.

In addition to these statutory mandates, the SOMB also provides ongoing training for the criminal justice system, the sex offender services community and the victim services community; provides training for local law enforcement regarding sex offender registration and assistance to the Colorado Bureau of Investigation (CBI) in auditing the state's sex offender registry;<sup>3</sup> and serves as a National Resource Site for the Center for Sex Offender Management.

To better ensure that the Standards are complied with, the SOMB has issued the "Provider List." Treatment providers, evaluators, and polygraph, plethysmograph and Abel Screen examiners who apply to the SOMB and meet SOMB requirements may be placed on the Provider List.

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<sup>3</sup> Every person convicted of a sex offense is required to register with local law enforcement for placement on the state's sex offender registry. Unless the sex offender is an SVP, he is required to register once per year. The sex offender registry is a written list of sex offenders indicating the communities in which they reside and is available for inspection by request only – it is not posted on the internet or other publicly accessible venue. Local law enforcement agencies notify the CBI of registrations and the CBI notifies the Federal Bureau of Investigation for placement on the national sex offender registry.

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The *Standards* and other documents developed by the SOMB are comprehensive in nature, addressing everything from requirements for placement on the Provider List to providing guidance as to the treatment and evaluation of sex offenders. To ensure compliance with the SOMB's system of management and treatment, practitioners must meet certain qualification thresholds, including education, clinical experience and training, continuing education, background investigations, and demonstrated compliance with the standards for treatment. To ensure continued compliance, these practitioners must reapply for placement on the Provider List every three years.

As of August 2000, there were 206 treatment providers (160 at the full operating level and 46 at the associate level), 78 evaluators (60 at the full operating level and 18 at the associate level), 17 polygraph examiners (13 at the full operating level and four at the associate level), 13 plethysmograph examiners and five Abel Screen examiners on the Provider List.

### *Staffing*

Based on legislation creating the Domestic Violence Offender Management Board (DVOMB) in the Division of Criminal Justice (DCJ), the SOMB and the DVOMB staffs have been combined to form the Office of Domestic Violence and Sex Offender Management (ODVSOM) within the DCJ.

As of this report, the SOMB staff consists of six employees and four contract staff members, for a total of ten FTE. Prior to the approval of federal grants, the program was staffed by two FTE and four contract employees.

The ODVSOM employs the following classifications of employees to work with the SOMB:

**Program Administrator** – 1.0 FTE. This individual is responsible for the administration of the SOMB, its programs and for supervising its staff. The Program Administrator reports directly to the Director of the DCJ and is co-manager of the ODVSOM.

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**Coordinator of Provider Services and Community Notification** – 1.0 FTE. This individual is the primary staff to the Application Review Committee and is the team leader for the Community Notification Technical Assistance Team.

**Administrative Assistant III** – 1.0 FTE. This individual provides comprehensive administrative assistance to the SOMB staff.

**Administrative Assistant II** – 0.5 FTE. This position is currently vacant, but when filled, will assist in the development of standards for juvenile sex offenders.

**Researcher** – 1.0 FTE. This position is currently vacant, but when filled will be responsible for all research activities of the SOMB, including the tracking and reporting of sex offenders on lifetime supervision.

**Juvenile Sex Offender Specialist** – 1.0 FTE. This position is currently vacant, but when filled, will staff the SOMB's development of standards for juvenile sex offenders.

**Sex Offender Registry Specialist** – 0.5 FTE. This position is currently vacant, but when filled, will assist the Community Notification Technical Assistance Team by providing expertise and training regarding sex offender registration issues, and by assisting the CBI with a continuous audit of the accuracy of the statewide sex offender registry.

For the most part, positions that are currently vacant will be filled when federal grant money becomes available in October 2000.

In addition to its employees, the SOMB staff has also utilized the services of several contractors to conduct the background investigations for the Application Review Committee and to staff the Community Notification Technical Assistance Team.<sup>4</sup>

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<sup>4</sup> Contractors on the Community Notification Technical Assistance Team assist the SOMB staff on an as needed basis.

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## *Complaint Handling*

Appendix G to the *Standards* delineates the process for filing a complaint against someone on the Provider List. The SOMB staff and the vice-chairperson of the SOMB review complaints before they are forwarded to the Application Review Committee.

If warranted, the Application Review Committee may call for an investigation, conducted by a private investigator. Investigations vary, depending upon the complexity of the issues involved, but most are completed within two or three months. The Application Review Committee then deliberates and issues a finding and a letter.

The parties have 30 days from the date of the Application Review Committee's letter to appeal the case to the full SOMB. Appeals are typically scheduled for the next regularly scheduled SOMB monthly meeting.

While hearing appeals, the SOMB adheres to strict appellate procedures, allowing each side 15 minutes to present arguments. At the conclusion of the SOMB's deliberations, the SOMB issues a decision. The SOMB staff issues a letter consistent with the decision within 30 days. Although no one has ever appealed a SOMB decision, such an appeal would be heard by an administrative law judge.

The SOMB has received only eight complaints since its inception in 1992, and has summarily removed someone from the Provider List only twice. Most complaints have revolved around whether the practitioner was complying with the *Standards* and failure to treat clients (sex offenders) with dignity and respect. The tables on the following pages detail the complaints received from 1992 - 2000 and the denials and removals from the Provider List for the same time period.

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Table 3  
Complaints Received by the Sex Offender Management Board

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Table 4  
Denials/Removals from the Provider List

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## Budgeting and Finances

The SOMB receives funds from the state General Fund and the Sex Offender Surcharge Fund (Surcharge Fund). Each person convicted of a sex crime is required to pay a “surcharge” – a fine - to the clerk of the sentencing court, of which 95% is forwarded to the Surcharge Fund (5% is retained by the clerk to cover administration costs).

The surcharge is established by statute at §18-21-103, C.R.S. Currently, surcharges are assessed as follows:

<u>Level of Conviction</u>	<u>Surcharge Assessed</u>
Class 2 Felony	\$3,000.00
Class 3 Felony	\$2,000.00
Class 4 Felony	\$1,000.00
Class 5 Felony	\$750.00
Class 6 Felony	\$500.00
Class 1 Misdemeanor	\$400.00
Class 2 Misdemeanor	\$300.00
Class 3 Misdemeanor	\$150.00

Since FY93, the year in which the SOMB and Surcharge Fund were created, the balance in the Surcharge Fund has steadily increased.

Table 5

Balance of Surcharge Fund  
FY93-FY00

<b>Fiscal Year</b>	<b>Surcharge Fund</b>
93	\$20,408
94	\$82,336
95	\$108,586
96	\$161,093
97	\$192,314
98	\$257,169
99	\$305,722
00	\$304,000 <sup>5</sup>

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<sup>5</sup> Figures for FY00 are estimates.

The General Assembly has charged the SOMB with submitting to the Joint Budget Committee (JBC), recommendations for allocating money out of the Surcharge Fund to the Division of Criminal Justice for administration of the SOMB; the Judicial Department for the funding of direct services (sex offender evaluations, assessments and polygraph examinations for indigent sex offenders); the Department of Corrections for the management of sex offender data collection and the psychological and risk assessments for use in treatment planning and research, and the Department of Human Services. §16-11.7-103(4)(c), C.R.S.

The SOMB has recommended the following allocations to the indicated agencies for the respective fiscal years.

Table 6  
Allocations from the Surcharge Fund  
FY98-FY01

	FY98	FY99	FY00	FY01
<b>Division of Criminal Justice</b>	\$72,000	\$131,000	\$140,160	\$143,315
<b>Judicial Department</b>	\$209,000	\$225,000	\$225,000	\$209,000
<b>Department of Corrections</b>	\$0	\$0	\$30,000	\$31,500

Although the JBC may reject or amend an SOMB recommendation, it has never done so. The SOMB's recommendations regarding Surcharge Fund allocations have, historically, been approved as presented.

In addition, the SOMB has been awarded several state-administered federal grants to supplement its allocations from the Surcharge Fund. When the SOMB was originally created, there was no money in the Surcharge Fund; a federal Drug Control and System Improvement Program ("DCSIP") grant was awarded to the DCJ, which allocated the grant money jointly to the ORS and the SOMB. This initial DCSIP grant provided start-up funding for the SOMB and funded the joint research of the SOMB and ORS regarding the development of the statutorily mandated sex offender risk assessment instrument.

The grant amounted to \$595,041, distributed unevenly over four years, the maximum longevity for a DCSIP grant.<sup>6</sup>

<u>Year</u>	<u>Amount</u>
1994	\$ 73,440
1995	\$124,440
1996	\$187,457
1997	\$209,704

More recently, the SOMB has been awarded two additional federal grants: a National Criminal History Improvement Program (“NCHIP”) grant, with an estimated \$36,118 becoming available in October 2000; and a second DCSIP grant, with an estimated \$67,370 becoming available in October 2000.

The new DCSIP grant will be used to fund a full-time researcher for the SOMB, enabling the SOMB to conduct a statutorily mandated self-evaluation. The NCHIP grant will be used to fund a part-time employee to assist the Community Notification Technical Assistance Team with community notifications and sex offender registrations and will also coordinate with the CBI to perform audits of the state's sex offender registry.

The SOMB recently began receiving funding from the state's General Fund in connection with community notifications, lifetime supervision and developing standards for juvenile sex offenders.

The table below summarizes the SOMB's various funding sources and the funding provided by those sources since FY97.

Table 7  
SOMB Funding Sources  
FY97-FY01

<b>Fiscal Year</b>	<b>Federal Grants</b>	<b>Surcharge Fund</b>	<b>General Fund</b>	<b>Total</b>
1997	\$209,704	\$71,972	\$0	\$281,676
1998	\$0	\$71,972	\$0	\$71,972
1999	\$0	\$71,972	\$0	\$71,972
2000	\$0	\$136,100	\$139,870	\$275,970
2001	\$103,488 <sup>7</sup>	\$144,246	\$213,769	\$461,503
<b>TOTAL</b>	<b>\$313,192</b>	<b>\$496,262</b>	<b>\$353,639</b>	<b>\$1,163,093</b>

<sup>6</sup> It is important to note that DCSIP grant money is allocated based on the federal government's fiscal year, which begins October 1, not the state's fiscal year, which begins July 1.

<sup>7</sup> Figures for FY01 are estimates.

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The table below summarizes the SOMB's expenditures since FY97, including estimated expenditures for FY 2001.

Table 8  
SOMB Expenditures  
FY97-FY01

Fiscal Year	SOMB Program	Community Notification	Lifetime Supervision	Juvenile Standards	Total
1997	\$128,207 <sup>8</sup>	\$0	\$0	\$0	\$128,207
1998	\$134,882 <sup>9</sup>	\$0	\$0	\$0	\$134,882
1999	\$72,061	\$0	\$81,119	\$0	\$153,180
2000	\$138,181	\$131,102	\$139,870	\$0	\$409,153
2001	\$144,246	\$72,909	\$140,338	\$127,872	\$485,365

As these tables illustrate, the funding has fluctuated considerably over the last several years while the expenditures have increased significantly. These fluctuations can be attributed to the expiration of grants, the awarding of new grants, and the allocation of funds from the General Fund to cover expenses associated with increased SOMB duties and responsibilities regarding community notifications, lifetime supervision and developing standards for juvenile sex offenders.

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<sup>8</sup> This figure represents allocations from the Surcharge Fund and the SOMB's share (approximately 1/3) of the DCSIP grant. It is important to note that DCSIP grant money is allocated based on the federal government's fiscal year, which begins October 1, not the state's fiscal year, which begins July 1.

<sup>9</sup> This figure represents allocations from the Surcharge Fund and the SOMB's share (approximately 1/3) of the DCSIP grant. It is important to note that DCSIP grant money is allocated based on the federal government's fiscal year, which begins October 1, not the state's fiscal year, which begins July 1.

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## **Analysis and Recommendations**

### *Recommendation 1: The General Assembly Should Continue the Sex Offender Management Board until 2006*

The Department of Regulatory Agencies (SOMB) recommends that the General Assembly continue the Sex Offender Management Board. Although the actual effectiveness of the SOMB's system of sex offender management and containment is undetermined, there is evidence that treatment of sex offenders tends to reduce the risk of re-offending sexually. Treatment is a major component of sex offender management. Therefore, it can be inferred that if treatment tends to reduce recidivism, so too does sex offender management. Although it is difficult to quantify recidivism among managed sex offenders, any reduction means fewer innocent people are victimized by re-offending sex offenders, a positive step in protecting the health, safety and welfare of the people of Colorado.

Research regarding sex offenders continues. As knowledge grows, new therapeutic and management methods are developed, requiring changes in laws and policy.

The containment approach of sex offender management adopted by the General Assembly and the SOMB reflects the belief that effective sex offender management requires a multi-disciplinary and multi-systemic approach. The 21-member SOMB is composed of, among others, judges, lawyers, mental health professionals, probation and parole officers, polygraph examiners and victims rights advocates. The SOMB publishes a Provider List, identifying treatment providers, evaluators, and polygraph, plethysmograph and Abel Screen examiners who satisfy the minimum standards of the SOMB, and who are authorized to work with convicted adult sex offenders in Colorado's criminal justice system. Similarly, the SOMB publishes various documents relating to the treatment, supervision and monitoring of adult sex offenders.

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A random telephone survey conducted jointly by the Colorado Department of Public Health and Environment and the Centers for Disease Control and Prevention revealed that, within the previous twelve months of the survey, 9,730 women and 1,710 men had been the victims of either attempted or completed sexual assaults.<sup>10</sup> Only 1,794 of these were reported to law enforcement.<sup>11</sup>

Not surprisingly, then, nationally, only 16% of rapes are reported to law enforcement, meaning that 84% of sex offenses, and sex offenders, go unreported.<sup>12</sup>

These statistics demonstrate the seriousness of sexual assault across the nation and in Colorado. The numbers regarding reported rapes are alarming by themselves, but become even more so when we consider that they may represent only 16% of the sex offenses that actually occur.

Any Sunset Review must inevitably ask whether the system the agency has implemented works. In the case of the SOMB, that question can be reduced to a look at recidivism rates among sex offenders. Unfortunately, the recidivism rates for treated versus untreated, and managed versus unmanaged sex offenders is far from conclusive.

Only through adequate treatment can sex offenders learn how to control their deviant arousal and behavior. Treatment focuses on techniques that assist offenders in maintaining control throughout their lifetime.<sup>13</sup>

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<sup>10</sup> *Sexual Assault in Colorado: Results of a 1998 Statewide Survey*, by the Colorado Department of Public Health and Environment and the U.S. Centers for Disease Control and Prevention (July 1999).

<sup>11</sup> *Id.*

<sup>12</sup> "Rape in America: At a Glance," by the National Victim Center and the Crime Victims Research and Treatment Center (April 23, 1992).

<sup>13</sup> English, *et al.* at 2-33.

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But quantifying whether treatment, a major component of management, is effective is another matter entirely. There is no shortage of research regarding the efficacy of sex offender treatment, but it is difficult, if not impossible, to compare the various studies. The studies vary considerably in the number and types of people in the study groups, different control/comparison groups and the length and consistency of the follow-up periods and the types of treatment studied.<sup>14</sup>

In addition, recidivism studies suffer from the fact that only about 16% of rapes are ever reported. This means that, for the most part, studies are tainted by a very small representative sample of the much larger whole.<sup>15</sup>

Although difficult to quantify, treatment seems to have a positive impact on recidivism:

Across the collection of evaluation studies, most treatment groups fared better than comparison groups in measures of post-treatment recidivism. Results from 20 comparisons favored the treatment group, four favored the comparison group, and one reported no differences between conditions.<sup>16</sup>

Indeed, one researcher found that for adults who receive sex offense-specific treatment, the recidivism rate was 13%, compared to 18% for those not receiving treatment.<sup>17</sup>

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<sup>14</sup> See "A Quantitative Review of the Effects of Sex Offender Treatment on Sexual Reoffending," by C. Gallagher, D. Wilson, P. Hirschfield, M. Coggeshall and D. MacKenzie, *Corrections Management Quarterly*, Fall 1999 at 19; "Recidivism Rates Among Child Molesters and Rapists: A Methodological Analysis," by R. Prentky, A. Lee and D. Cerce, *Law and Human Behavior*, Vol. 21, No. 6 (1997) at 636.

<sup>15</sup> Furby, *et al.* at 4.

<sup>16</sup> Gallagher, *et al.* at 22.

<sup>17</sup> *Fact Sheet: Recidivism and Treatment Effectiveness of Youth Who Sexually Abuse*, by G. Ryan (Oct. 1999).

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There are a plethora of studies regarding sex offender recidivism for sex offenders who have undergone treatment. However, to date, there have been very few recidivism studies regarding sex offender management, the approach adopted by the General Assembly and the SOMB. However, we can infer that since sex offense-specific treatment seems to have a positive impact on recidivism, and such treatment is at the center of Colorado's containment approach to sex offender management, containment of sex offenders also has a positive impact on sex offender recidivism.

The degree to which treatment and management reduce recidivism is a critical question, but not necessarily dispositive of whether sex offender management works well enough to continue the SOMB.

Sexual assaults have devastating effects on innocent victims, so that any reduction in the rate of offending should be viewed as beneficial. In fact, an often neglected aspect of offering treatment to offenders is the real reduction in suffering that occurs when even a few of these men are prevented from re-offending. . . . Whenever treatment, no matter how unsophisticated, reduces offending by *any* degree, it saves innocent victims much suffering.<sup>18</sup>

Assuming these claims and numbers are somewhat accurate, the SOMB-supervised system of sex offender containment is helping to protect the health, safety and welfare of the people of Colorado.

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<sup>18</sup> "Issues in Sexual Assault," by W. Marshall, D. Laws and H. Barbaree, *Handbook of Sexual Assault: Issues, Theories and Treatment of the Offender*, w. Marshall, D. Laws and H. Barbaree, eds. Plenum Press, New York (1990) at 6. Emphasis in the original.

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The driving question of any Sunset Review is whether the program being reviewed is necessary to better protect the health, safety and welfare of the people of Colorado. The SOMB's guiding principles declare, among other things, that sex offenders are dangerous and that public safety is paramount. Furthermore, a primary component of sex offender management is to prevent the creation of new victims through sex offense-specific treatment and limiting the sex offender's access to potential new victims through effective supervision and monitoring.

Of course, the most obvious way to prevent the creation of new victims is to incarcerate sex offenders for as long as possible, and some states have adopted this simplistic approach to dealing with this complex issue. From a public safety standpoint, this would obviate the need for treatment and the SOMB's entire program. However, simply incarcerating convicted sex offenders would be problematic as well.

As of June 30, 2000, the DOC reported that 3,510 sex offenders were in Colorado's state prisons, accounting for approximately 19% of the total DOC incarcerated population. This compares to the national average of sex offenders accounting for 9.7% of state prison populations.<sup>19</sup>

Also of great concern is the rate at which the sex offender prison population is growing relative to the general prison population. Between 1980 and 1994, the average annual growth rate for the general prison population was 7.6%, for sex offenders it was 15% - a more rapid rate of change than for any other category of violent crime.<sup>20</sup>

More alarming, however, is the fact that only 20% of convicted sex offenders in Colorado are sent to prison -- 65% are placed on probation and 15% are placed in community corrections.<sup>21</sup>

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<sup>19</sup> Greenfeld at 19.

<sup>20</sup> *Id.* at 18.

<sup>21</sup> *Sex Offender Community Notification Manual for Colorado Law Enforcement*, Colorado Sex Offender Management Board (June 2000).

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There are two major points of detraction for simply incarcerating sex offenders without management: 1) eventually, most of them will get out of prison; and 2) the cost of imprisonment is far higher than the cost of supervision while on probation or parole. Anecdotal evidence suggests that 90% of sex offenders will be released from prison at some point. In a 1991 survey of state prisoners, approximately 24% of rapists and 19% of sex offenders had been on probation or parole at the time they committed the sex offense for which they were currently serving time.<sup>22</sup>

According to the Colorado Judicial Department (“Judicial”), it costs Colorado taxpayers approximately \$24,105 per year to keep one person in prison, excluding capital construction costs; \$13,169 - \$19,374 per year to keep one person in community corrections, depending upon the type of program; and only \$4,150 per year to keep one sex offender on Sex Offender Intensive Supervision Probation. It should be noted that, although sex offenders are required to pay a sex offender “surcharge” into the Sex Offender Surcharge Fund, to partially offset some of the sex offender-specific costs incurred by Judicial and the DOC, a sex offender who is on probation or parole is required to pay for treatment and evaluation costs, whereas a sex offender in prison or on community corrections may not be so required.

This evidence suggests that although simple incarceration is an appealing alternative to the SOMB, at least superficially, it will not necessarily, on its own, protect the health, safety and welfare of the people of Colorado better than the standards and systems implemented by the SOMB. In addition, the General Assembly expressly rejected this option in the Colorado Lifetime Supervision Act of 1998, by declaring that lifetime incarceration is too costly.<sup>23</sup>

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<sup>22</sup> Greenfeld at 25.

<sup>23</sup> § 16-13-801, C.R.S..

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The systems and standards implemented by the SOMB have received national recognition. In 1999, the SOMB was named a Center for Sex Offender Management National Resource Site, a program which identifies programs that are worthy of emulation in other jurisdictions. Officials at the Center for Sex Offender Management (“CSOM”), a unit of the Center for Effective Public Policy, report that Colorado has the most developed, comprehensive and well-respected sex offender management program in the country. The newly created Illinois Sex Offender Management Board recently sent its chairperson to Colorado to observe the SOMB and obtain guidance for his fledgling board.

Before the Colorado General Assembly created the SOMB in 1992, the treatment of sex offenders varied greatly across the state. Anecdotal evidence suggests that some therapists who treated sex offenders engaged in inappropriate and ill-advised treatment programs. In addition, no other state agency regulates polygraph examiners, so polygraph examiners who worked with sex offenders had no guidelines and were ultimately accountable to no one. While the SOMB does not regulate polygraph examiners, it has established minimum standards that must be met to be placed on the SOMB’s Provider List – failure to satisfy these standards does not affect a polygraph examiner’s ability to engage in the profession, it simply prevents them from working with sex offenders.

Similarly, the SOMB has developed the *Standards*, which include standards for treatment providers, evaluators, plethysmograph examiners and Abel Screen examiners, as well as polygraph examiners. The *Standards* help to ensure that sex offenders are treated consistently and fairly, regardless of their physical location in the state. In addition, the *Standards* provide new practitioners with guidelines and minimum requirements to help ensure that people who work with sex offenders know what they are doing and are prepared for the difficulties involved in working with sex offenders.

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Although an argument could be made to the effect that such standards only serve to protect the income and jobs of those already approved, such an argument could be made for any state board that regulates any profession. Furthermore, there is no evidence to suggest that in developing and implementing the *Standards*, the SOMB has been unfair or protectionist. Indeed, the SOMB's Application Review Committee, the body charged with approving applicants to the Provider List, often works with applicants who do not satisfy certain requirements so that as many qualified applicants as possible can be placed on the Provider List. In fact, only ten applications have been denied. This is not to say that the SOMB waives requirements for some and not for others, although this has been alleged (but not corroborated). Rather, the SOMB recognizes the fact that different therapists have developed their own treatment programs and may not have adhered to the SOMB's standards as strictly as necessary.

In addition to the on-going application review process, the SOMB was recently assigned the task of developing standards for managing juvenile sex offenders. It is estimated that approximately 20% of all rapes and approximately 50% of all child molestations in the U.S. are committed by juveniles.<sup>24</sup> The General Assembly has mandated that the SOMB complete this task prior to July 1, 2002. While two years may seem an excessive length of time to develop such standards, SOMB members and staff insist that the SOMB will need this long to amass the knowledge base to develop quality standards that are consistent with the adult sex offender standards and to ensure that both sets of standards provide a continuum of management tools.

Finally, research in the area of sex offenders is progressing at a rapid pace. Very little research was performed regarding sex offenders prior to the late 1980s. Thus, the knowledge base for treating and managing sex offenders continues to grow as new theories gain acceptance and old theories are discarded.

The existence of the SOMB helps to ensure that Colorado state government continues to focus on these issues and revise the state's policies and standards accordingly.

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<sup>24</sup> "Understanding Juvenile Sexual Offending Behavior: Emerging Research, Treatment Approaches and Management Practices," Center for Sex Offender Management (Dec. 1999) at 1.

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It is clear that there is much about sex offenders that we still do not know. However, the SOMB helps protect the health, safety and welfare of the people of Colorado by reducing, to an admittedly arguable level, the rate of recidivism among sex offenders, by developing and maintaining a system of containment that attempts to reduce risk and detect re-offending behavior before it occurs, by serving as a central repository of knowledge and expertise on sex offender issues for the state of Colorado and the nation through the SOMB's participation in the CSOM National Resource Site program, by providing consistent state-wide standards for dealing with adult sex offenders and by developing similar standards for managing juvenile sex offenders.

Accordingly, the General Assembly should continue the SOMB.

*Recommendation 2: The Membership of the Sex Offender Management Board Should be Changed by Adding an Attorney in Private Practice who Routinely Works with Sex Offenders and Remove the Public Defender Position*

The SOMB is a very open and inclusive board. It arrives at decisions through a remarkably successful collaborative process. It has been asserted, by proponents and detractors of the SOMB, that the strength of the SOMB comes from its multi-disciplinary membership and its inclusiveness – anyone can participate in an SOMB meeting, participation is not limited to the voting SOMB members.

However, there are only two attorneys on the SOMB, a district attorney and a public defender. Obviously, the district attorney represents the state's prosecutors. The public defender represents the state's defense attorneys. However, this scheme is not as equitable as it would appear and raises the question of whether the SOMB adequately represents the public's interest. It must be remembered that the public's interest includes both safety from sex offenders, but also safety from the state infringing upon an individual's rights.

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Public defenders do not specialize in particular types of crimes. Rather, public defenders have diversified caseloads, so their expertise on sex offender issues is limited. In addition, it is difficult to find public defenders who are willing to commit the time and energy necessary to adequately represent the defense bar. For these reasons, we recommend that this position be eliminated.

As part of this Sunset Review, several defense attorneys were interviewed. These attorneys, as well as others interviewed, expressed some serious concerns about the SOMB that could perhaps be rectified by a private defense attorney sitting on the SOMB.

Some individuals believe that the SOMB is too dogmatic, that it is inflexible in the way it treats all sex offenders the same, regardless of their specific offense. Interviews conducted as part of this review raised the issue of whether the SOMB's standards are the least restrictive form of regulation consistent with the public interest, a Sunset criterion.

Having a private defense attorney on the SOMB would help to ensure that these types of allegations are addressed and rectified, where appropriate. In addition, by including the private defense bar in the decision making process, there is likely to be a greater "buy-in" effect as defense attorneys recognize that one of their colleagues was involved in the process.

The SOMB considers itself to be a collaborative body that is open to the ideas of everyone involved in sex offender management. A representative of a key component is missing – the defense bar. A private defense bar representative can better enhance a balanced representation of the public's interests and help to ensure the standards and other activities of the SOMB are the least restrictive form of regulation consistent with those interests.

Accordingly, the membership of the SOMB should be changed to include an attorney in private practice who routinely works with sex offenders and remove the public defender position. The defense bar representative could be appointed by the governor, who has no appointments to the SOMB, or by the Chief Justice of the Supreme Court.

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*Recommendation 3: The General Assembly Should Authorize the Executive Director of the Department of Regulatory Agencies to Appoint Mental Health Professionals to the Board*

The Executive Director of the Department of Public Safety appoints thirteen members of the SOMB. Four of the positions are representatives of licensed mental health professionals. By comparison, the General Assembly, in creating the Domestic Violence Offender Management Board found at §16-11.8-103, C.R.S., saw fit to provide that the Executive Director of the Department of Regulatory Agencies appoints six members of the 18-member board. Included in these appointments are a licensed social worker, a psychologist, a marriage and family therapist, a licensed professional counselor, and an unlicensed mental health professional.

Mental health professionals in Colorado have been regulated under the Department of Regulatory Agencies for many years. DORA houses five separate boards established to license applicants, discipline licensees who violate Colorado regulatory laws governing their practice and to promulgate rules and regulations for the effective regulation of practitioners.

Further, as reported in this review, the Sex Offender Management Board and the Domestic Violence Officer Management Board now receive administrative support from the joint Office of Domestic Violence and Sex Offender Management.

It is reasonable to conclude, therefore, that administrative consistency in both of these areas is the goal of the General Assembly and the Department of Public Safety. Towards achieving that objective, the Executive Director of DORA should be authorized by the General Assembly to appoint the five mental health professional positions to the SOMB.

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*Recommendation 4: The General Assembly Should Require that the Sex Offender Management Board Conduct a Study to Determine Whether and to what Extent the Containment of Sex Offenders and Other SOMB Policies and Approaches Work and that Report be Presented to the General Assembly No Later than December 1, 2001*

The Sex Offender Management Board (SOMB) is statutorily required to evaluate the effectiveness of the evaluation, identification and treatment standards it develops.<sup>25</sup> The SOMB was assigned this task in its original implementing legislation and has not yet performed this task.

When the General Assembly created the Sex Offender Treatment Board (SOTB) in 1992, it mandated that the SOTB evaluate its effectiveness. The SOTB was granted the authority to implement the standards it had developed in 1995, and the standards were implemented in 1996. Thus, for the SOTB's first four years of existence, there was nothing to evaluate.

It is reasonable to conclude that the effectiveness of the policies and programs of the SOMB cannot be adequately measured for at least two years after implementation. It takes this long to disseminate the standards and revise relevant programs into compliance.

It wasn't until October 2000, that the SOMB secured the funding necessary to perform the evaluation the General Assembly mandated in 1992. A portion of the funding provided by the federal Drug Control and System Improvement Program grant referred to in the "Program Description" section of this report will be used to fund a full-time researcher.

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<sup>25</sup> § 16-11.7-103(4), C.R.S..

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This research is important because, as indicated in various sections of this report, no one truly knows whether treatment and/or management of sex offenders are having a significant impact on recidivism. The sex offender management community believes that management of sex offenders works, but does it? This research should also examine which aspects of the SOMB's program work, and which do not. There is some concern, expressed by critics of the SOMB, that these programs are overly punitive and lacking in rehabilitative components.

The results of such a study would also be dispositive of the guiding Sunset question of whether the SOMB's program protects the health, safety and welfare of the people of Colorado.

The SOMB has already begun preliminary discussions regarding the design of the research program to be initiated. DPS officials have been assured that the statutorily mandated self-evaluation of the SOMB will be a key priority for this new researcher, who will begin working in October 2000.

Accordingly, the SOMB should conduct a study to determine whether and to what extent the containment of sex offenders and other SOMB policies and approaches work.

*Administrative Recommendation 1: The Sex Offender Management Board Should Encourage its Various Appointing Authorities to Make Appointments in a Manner that will Increase the Geographic and Ethnic Diversity of the SOMB*

The SOMB is currently composed of eight women and seven men – gender diversity is not an issue. However, of these, only one is a member of an ethnic minority (Hispanic) and one is from a rural area (Durango); all other SOMB members are predominantly Caucasian and are from the Denver Metro-area and the Front Range.

Anecdotal evidence makes it clear that sex offender issues in Colorado's rural areas are often drastically different than those of the Front Range. For example, there is a limited number of SOMB-approved treatment providers, evaluators, and polygraph examiners in rural areas of Colorado, whereas there are a great many choices in the Denver Metro-area.

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In addition, the Colorado Department of Corrections reports that of the 51 sex offenders sentenced to lifetime supervision who are still in prison, 17 will parole-out to the Western Slope, an area of the state lacking representation on the SOMB.

Similarly, Colorado's ethnic communities are inadequately represented on the SOMB. Colorado has an ethnically diverse population and the SOMB's membership does not adequately reflect that diversity.

The SOMB is an inter-disciplinary body whose members are appointed based on their expertise, not their political affiliations, ethnic backgrounds, or congressional districts and this should not be altered. However, the SOMB would benefit from having a more diverse membership by having the interests of Colorado's diverse geographical and ethnic communities represented. These individuals will undoubtedly bring additional perspectives to the SOMB, perspectives that are currently underrepresented.

Accordingly, the SOMB should encourage its various appointing authorities to make appointments in a manner that will increase the geographic and ethnic diversity of the SOMB.

***Administrative Recommendation 2: The Sex Offender Management Board Should Fill its Open Staff Positions as Soon as Possible***

In conducting this Sunset Review, it was repeatedly reported that the SOMB is severely understaffed and that this has led to considerable delays in the approval process for applicants to the Provider List. The SOMB staff has indicated that this problem has been solved, in great part, due to the fact that most applications have now been processed for initial placement on the Provider List and that the renewal process will be less cumbersome.

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As of October 2000, the SOMB will begin receiving federal grant money to fund several additional staff positions. The SOMB should make every effort to fill these open positions as soon as possible so that the full-time researcher can begin working on the various research projects discussed in this Sunset Report, as well as other SOMB-required studies, and so that the other new staff members can be securely in place when the SOMB begins its work on developing standards for the management of juvenile sex offenders.

Accordingly, the SOMB should fill its open staff positions as soon as possible.

*Administrative Recommendation 3: The Sex Offender Management Board should revise the Standards to clarify what is required of an Associate Level Treatment Provider who applies to become a Full Operating Level Treatment Provider*

The *Standards* require a Full Operating Level Treatment Provider to, among other things,

. . . have attained the underlying credential of licensure or certification and be in good standing as a physician, psychologist, clinical social worker, professional counselor, marriage and family therapist, or clinical psychiatric nurse specialist[.]<sup>26</sup>

An Associate Level Treatment Provider, on the other hand, need not have attained licensure or certification in one of these enumerated fields. In providing treatment, this discrepancy in qualifications is not problematic because an Associate Level Treatment Provider must be supervised by a Full Operating Level Treatment Provider.

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<sup>26</sup> § 4.010, *Standards & Guidelines for the Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders*.

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However, an Associate Level Treatment Provider who wishes to become a Full Operating Level Treatment Provider is not clearly required to have attained the necessary licensure or certification.

Movement to Full Operating Level. Associate level treatment providers wishing to move to full operating level status must complete and submit documentation of a total of 1,000 hours of supervised clinical experience, 100 hours of clinical supervision, at least half of which must be face to face, 80 hours of training and submit a letter from their supervisor indicating their readiness to become a full operating level provider.<sup>27</sup>

Nothing is mentioned regarding needing a license or certificate to become a Full Operating Level Treatment Provider. This section makes it appear as though an Associate Level Treatment Provider can become a Full Level Treatment Provider without a license or certificate if he/she has sufficient experience. This is not discussed in the qualifications section for Full Operating Level Treatment Providers.

Appendix G of the *Standards* appears to attempt to address this issue, but is equally unclear.

Individuals who are at the associate level on the Provider List shall notify the board in writing when they have obtained the required *experience or qualifications* to be listed on the Provider List at the full operating level. Documentation of such *experience or qualifications* must be submitted.<sup>28</sup>

This section seems to indicate that the license/certificate qualification of a Full Operating Level Treatment Provider may be substituted with experience, but the requirements for a Full Operating Level Treatment Provider are silent on this issue.

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<sup>27</sup> § 4.060, *Standards & Guidelines for the Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders*.

<sup>28</sup> Appendix G, paragraph D, *Standards & Guidelines for the Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders*.

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It is unclear whether an Associate Level Treatment Provider needs to possess one of the enumerated licenses or certificates to become a Full Operating Level Treatment Provider.

Accordingly, the SOMB should revise the *Standards* to clarify what is required of an Associate Level Treatment Provider who applies to become a Full Operating Level Treatment Provider.

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## **Appendix A - Sunset Statutory Evaluation**

- (I) Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- (II) If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- (III) Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;
- (IV) Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- (V) Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- (VI) The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- (VII) Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- (VIII) Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action; and
- (IX) Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

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**Appendix B - Sex  
Offender  
Management  
Board Statute**

**16-11.7-101. Legislative declaration.** The general assembly hereby declares that the comprehensive evaluation, identification, treatment, and continued monitoring of sex offenders who are subject to the supervision of the criminal justice system is necessary in order to work toward the elimination of recidivism by such offenders. Therefore, the general assembly hereby creates a program which standardizes the evaluation, identification, treatment, and continued monitoring of sex offenders at each stage of the criminal justice system so that such offenders will curtail recidivistic behavior and the protection of victims and potential victims will be enhanced. The general assembly hereby recognizes that some sex offenders cannot or will not respond to treatment and that, in creating the program described in this article, the general assembly does not intend to imply that all sex offenders can be successful in treatment.

**16-11.7-102. Definitions.** As used in this article, unless the context otherwise requires:

(1) "Board" means the sex offender management board created in section 16-11.7-103.

(2) (a) "Sex offender" means any person who is:

(I) Convicted in the state of Colorado, on or after January 1, 1994, of any sex offense as defined in subsection (3) of this section; or

(II) Convicted in the state of Colorado on or after January 1, 1994, of any criminal offense, if such person has previously been convicted of a sex offense as described in subsection (3) of this section in the state of Colorado, or if such person has previously been convicted in any other jurisdiction of any offense that would constitute a sex offense as defined in subsection (3) of this section, or if such person has a history of any sex offenses as defined in subsection (3) of this section; or

(III) Convicted in the state of Colorado on or after July 1, 2000, of any criminal offense, the underlying factual basis of which involves a sex offense; or

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(IV) Adjudicated as a juvenile or who receives a deferred adjudication on or after July 1, 2002, for an offense that would constitute a sex offense if committed by an adult or for any offense, the underlying factual basis of which involves a sex offense.

(b) For purposes of this subsection (2), any person who receives a deferred judgment or deferred sentence for the offenses specified in this subsection (2) is deemed convicted.

(3) "Sex offense" means any felony or misdemeanor offense described in this subsection (3) as follows:

(a) (I) Sexual assault, in violation of section 18-3-402, C.R.S.; or

(II) Sexual assault in the first degree, in violation of section 18-3-402, C.R.S., as it existed prior to July 1, 2000;

(b) Sexual assault in the second degree, in violation of section 18-3-403, C.R.S., as it existed prior to July 1, 2000;

(c) (I) Unlawful sexual contact, in violation of section 18-3-404, C.R.S.; or

(II) Sexual assault in the third degree, in violation of section 18-3-404, C.R.S., as it existed prior to July 1, 2000;

(d) Sexual assault on a child, in violation of section 18-3-405, C.R.S.;

(e) Sexual assault on a child by one in a position of trust, in violation of section 18-3-405.3, C.R.S.;

(f) Sexual assault on a client by a psychotherapist, in violation of section 18-3-405.5, C.R.S.;

(g) Enticement of a child, in violation of section 18-3-305, C.R.S.;

(h) Incest, in violation of section 18-6-301, C.R.S.;

(i) Aggravated incest, in violation of section 18-6-302, C.R.S.;

(j) Trafficking in children, in violation of section 18-6-402, C.R.S.;

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(k) Sexual exploitation of children, in violation of section 18-6-403, C.R.S.;

(l) Procurement of a child for sexual exploitation, in violation of section 18-6-404, C.R.S.;

(m) Indecent exposure, in violation of section 18-7-302, C.R.S.;

(n) Soliciting for child prostitution, in violation of section 18-7-402, C.R.S.;

(o) Pandering of a child, in violation of section 18-7-403, C.R.S.;

(p) Procurement of a child, in violation of section 18-7-403.5, C.R.S.;

(q) Keeping a place of child prostitution, in violation of section 18-7-404, C.R.S.;

(r) Pimping of a child, in violation of section 18-7-405, C.R.S.;

(s) Inducement of child prostitution, in violation of section 18-7-405.5, C.R.S.;

(t) Patronizing a prostituted child, in violation of section 18-7-406, C.R.S.; or

(u) Criminal attempt, conspiracy, or solicitation to commit any of the offenses specified in this subsection (3).

(4) "Treatment" means therapy, monitoring, and supervision of any sex offender which conforms to the standards created by the board pursuant to section 16-11.7-103.

**16-11.7-103. Sex offender management board - creation - duties - repeal.** (1) There is hereby created, in the department of public safety, a sex offender management board that shall consist of fifteen members. The membership of the board shall consist of the following persons:

(a) One member representing the judicial department appointed by the chief justice of the supreme court;

(b) One member representing the department of corrections appointed by the executive director of such department;

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(c) One member representing the department of human services appointed by the executive director of such department;

(d) One member representing the department of public safety, division of criminal justice, appointed by the executive director of such department;

(d.5) One member appointed by the chief justice of the supreme court who is a judge;

(e) (Deleted by amendment, L. 94, p. 2651, § 125, effective July 1, 1994.)

(f) Three members appointed by the executive director of the department of public safety who are licensed mental health professionals with recognizable expertise in the treatment of sex offenders;

(g) One member appointed by the executive director of the department of public safety who is a district attorney;

(h) One member appointed by the executive director of the department of public safety who is a member of a community corrections board;

(i) One member appointed by the executive director of the department of public safety who is a public defender;

(j) One member appointed by the executive director of the department of public safety who is a representative of law enforcement;

(k) Two members appointed by the executive director of the department of public safety who are recognized experts in the field of sex abuse and who can represent sex abuse victims and victims' rights organizations; and

(l) One member appointed by the executive director of the department of public safety who is a clinical polygraph examiner.

(2) The executive director of the department of public safety shall appoint a presiding officer for the board from among the board members appointed pursuant to subsection (1) of this section, which presiding officer shall serve at the pleasure of such director.

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(3) (a) Any member of the board created in subsection (1) of this section who is appointed pursuant to paragraphs (a) through (e) of subsection (1) of this section shall serve at the pleasure of the official who appointed such member, for a term which shall not exceed four years. Such members shall serve without additional compensation.

(b) Any member of the board created in subsection (1) of this section who is appointed pursuant to paragraphs (f) through (k) of subsection (1) of this section shall serve for a term of four years. Such members shall serve without compensation.

(4) The board shall carry out the following duties:

(a) Prior to January 1, 1996, the board shall develop and prescribe a standardized procedure for the evaluation and identification of sex offenders. Such procedure shall provide for an evaluation and identification of the offender and recommend behavior management, monitoring, and treatment based upon the knowledge that sex offenders are extremely habituated and that there is no known cure for the propensity to commit sex abuse. The board shall develop and implement measures of success based upon a no-cure policy for intervention. The board shall develop and implement methods of intervention for sex offenders which have as a priority the physical and psychological safety of victims and potential victims and which are appropriate to the needs of the particular offender, so long as there is no reduction of the safety of victims and potential victims.

(b) Prior to January 1, 1996, the board shall develop and implement guidelines and standards for a system of programs for the treatment of sex offenders which can be utilized by offenders who are placed on probation, incarcerated with the department of corrections, placed on parole, or placed in community corrections. The programs developed pursuant to this paragraph (b) shall be as flexible as possible so that such programs may be utilized by each offender to prevent the offender from harming victims and potential victims. Such programs shall be structured in such a manner that the programs provide a continuing monitoring process as well as a continuum of treatment programs for each offender as that offender proceeds through the criminal justice system and may include, but shall not be limited to, group counseling, individual counseling, outpatient treatment, inpatient treatment, or treatment in a therapeutic

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community. Also, such programs shall be developed in such a manner that, to the extent possible, the programs may be accessed by all offenders in the criminal justice system. The procedures for evaluation, identification, treatment, and continued monitoring required to be developed pursuant to this paragraph (b) and paragraph (a) of this subsection (4) shall be implemented only to the extent moneys are available in the sex offender surcharge fund created in section 18-21-103 (3), C.R.S.

(c) The board shall develop a plan for the allocation of moneys deposited in the sex offender surcharge fund created pursuant to section 18-21-103 (3), C.R.S., among the judicial department, the department of corrections, the division of criminal justice of the department of public safety, and the department of human services. In addition, the board shall coordinate the expenditure of moneys from the sex offender surcharge fund with any moneys expended by any of the departments described in this paragraph (c) for the identification, evaluation, and treatment of sex offenders. The plan developed pursuant to this section shall be submitted to the general assembly on or before January 1, 1993. For the fiscal year beginning July 1, 1993, the general assembly shall appropriate moneys from the sex offender surcharge fund in accordance with such plan.

(c.5) On or before January 1, 1999, the board shall consult on and approve the risk assessment screening instrument developed by the division of criminal justice to assist the sentencing court in determining the likelihood that an offender would commit one or more of the offenses specified in section 18-3-414.5 (1) (a) (II), C.R.S., under the circumstances described in section 18-3-414.5 (1) (a) (III), C.R.S. No state general fund moneys shall be used to develop the risk assessment screening instrument. In carrying out this duty, the board shall consider sex offender risk assessment research and shall consider as one element the risk posed by a sex offender who suffers from a mental abnormality, psychosis, or personality disorder that makes the person more likely to engage in sexually violent predatory offenses. For purposes of this subsection (4) only, "mental abnormality" means a congenital or acquired condition that affects the emotional or volitional capacity of a person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the

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person a significant risk to the health and safety of other persons. If a defendant is found to be a sexually violent predator, the defendant shall be required to register pursuant to section 18-3-412.5 (3.5), C.R.S.

(d) The board shall research and analyze the effectiveness of the evaluation, identification, and treatment procedures and programs developed pursuant to this article. The board shall also develop and prescribe a system for implementation of the guidelines and standards developed pursuant to paragraph (b) of this subsection (4) and for tracking offenders who have been subjected to evaluation, identification, and treatment pursuant to this article. In addition, the board shall develop a system for monitoring offender behaviors and offender adherence to prescribed behavioral changes. The results of such tracking and behavioral monitoring shall be a part of any analysis made pursuant to this paragraph (d).

(e) Pursuant to section 16-13-809, on or before July 1, 1999, the board, in collaboration with the department of corrections, the judicial department, and the state board of parole shall develop criteria for measuring a sex offender's progress in treatment. Such criteria shall assist the court and the state board of parole in determining whether a sex offender may appropriately be released from incarceration pursuant to section 16-13-806 (1), or whether the sex offender's level of supervision may be reduced pursuant to section 16-13-806 (2) (a) or 16-13-808, or whether the sex offender may appropriately be discharged from probation or parole pursuant to section 16-13-806 or 16-13-808. At a minimum, the criteria shall be designed to assist the court and the state board of parole in determining whether the sex offender would pose an undue threat to the community if he or she were released from incarceration, released to a reduced level of supervision, or discharged from probation or parole. The criteria shall not limit the decision-making authority of the court or the state board of parole.

(5) The board and the individual members thereof shall be immune from any liability, whether civil or criminal, for the good faith performance of the duties of the board as specified in this section.

(6) (a) This section is repealed, effective July 1, 2001.

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(b) Prior to said repeal, the sex offender management board appointed pursuant to this section shall be reviewed as provided for in section 24-34-104, C.R.S.

**16-11.7-104. Sex offenders - evaluation and identification required.** (1) On and after January 1, 1994, each sex offender who is to be considered for probation shall be required, as a part of the presentence or probation investigation required pursuant to section 16-11-102, to submit to an evaluation for treatment, an evaluation for risk, procedures required for monitoring of behavior to protect victims and potential victims, and an identification developed pursuant to section 16-11.7-103 (4) (a).

(2) The evaluation and identification required by subsection (1) of this section shall be at the expense of the person evaluated, based upon such person's ability to pay for such treatment.

**16-11.7-105. Sentencing of sex offenders - treatment based upon evaluation and identification required.** (1) Each sex offender sentenced by the court for an offense committed on or after January 1, 1994, shall be required, as a part of any sentence to probation, community corrections, or incarceration with the department of corrections, to undergo treatment to the extent appropriate to such offender based upon the recommendations of the evaluation and identification made pursuant to section 16-11.7-104, or based upon any subsequent recommendations by the department of corrections, the judicial department, the department of human services, or the division of criminal justice of the department of public safety, whichever is appropriate. Any such treatment and monitoring shall be at a facility or with a person certified or approved by the board and at such offender's own expense, based upon such offender's ability to pay for such treatment.

(2) Each sex offender placed on parole by the state board of parole on or after January 1, 1994, shall be required, as a condition of such parole, to undergo treatment to the extent appropriate to such offender based upon the recommendations of the evaluation and identification pursuant to section 16-11.7-104 or any evaluation or subsequent reevaluation regarding such offender during the offender's incarceration or any period of parole. Any such treatment shall be at a facility or with a person certified or approved by the board and at such offender's expense, based upon such offender's ability to pay for such treatment.

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**16-11.7-106. Sex offender treatment - contracts with providers.** (1) The department of corrections, the judicial department, the division of criminal justice of the department of public safety, or the department of human services shall not employ or contract with and shall not allow a sex offender to employ or contract with any individual or entity to provide sex offender evaluation or treatment services pursuant to this article unless the sex offender evaluation or treatment services to be provided by such individual or entity conforms with the standards developed pursuant to section 16-11.7-103 (4) (b).

(2) The board shall require any person who applies for placement on the list of persons who may provide sex offender treatment services pursuant to this article to submit a complete set of his or her fingerprints. The board shall forward any such fingerprints received pursuant to this subsection (2) to the Colorado bureau of investigation for use in conducting a state criminal history record check and for transmittal to the federal bureau of investigation for a national criminal history record check. The board shall use the information obtained from the state and national criminal history record check in determining whether to place the person on the approved provider list.

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## **Appendix C - Summary of Regulations**

Standards & Guidelines for the Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders

The *Standards & Guidelines for the Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders (Standards)* were developed pursuant to §§16-11.7-104, 16-11.7-106 and 16-13-809, C.R.S. Some of the guiding principals behind these standards and guidelines are:

- Sexual offending is a behavioral disorder which cannot be “cured.”
- Sex offenders are dangerous.
- Community safety is paramount.
- Assessment and evaluation of sex offenders is an on-going process. Progress in treatment and level of risk are not constant over time.
- Assignment to community supervision is a privilege.
- Victims have a right to safety and self-determination.
- When a child is sexually abused within the family, the child’s individual need for safety, protection, developmental growth and psychological well being outweighs any parental or family interests.
- Standards and guidelines for assessment, evaluation, treatment and behavioral monitoring of sex offenders will be most effective if the entirety of the criminal justice and social services systems, not just sex offender treatment providers, apply the same principals and work together.
- The management of sex offenders requires a coordinated team response.
- Successful treatment and management of sex offenders is enhanced by the positive cooperation of family, friends, employers and members of the community who have influence in sex offenders’ lives.

**Guidelines for Pre-Sentence Investigations.** Each sex offender should be subject to a pre-sentence investigation, including a mental health sex offense-specific evaluation, prior to sentencing.

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**Standards for Mental Health Sex Offense-Specific Evaluations.** Such evaluations should only be performed by SOMB-approved evaluators and should consider:

- Sexual evaluation, including sexual developmental history and evaluation for sexual arousal/interest, deviance and paraphilias;
- Character pathology;
- Level of deception and/or denial;
- Mental and/or organic disorders;
- Drug and/or alcohol use;
- Stability of functioning;
- Self-esteem and ego-strength;
- Medical/neurological/pharmacological needs;
- Level of violence and coercion;
- Motivation and amenability for treatment;
- Escalation of high-risk behaviors;
- Risk of re-offense;
- Treatment and supervision needs; and
- Impact on the victim.

The evaluation should make recommendations as to the level and intensity of treatment and monitoring needed; the treatment of any co-existing conditions, considerations of the types of external controls to be utilized, methods to lessen victim impact; and the appropriateness and extent of community placement.

**Standards of Practice for Treatment Providers.** Sex offender treatment providers must be registered as such and must develop written treatment plans. Offense-specific treatment must be designed to:

- Reduce the offenders' denial and defensiveness;
- Decrease and/or manage offenders' deviant sexual urges and recurrent deviant fantasies;
- Educate offenders about the potential for re-offending and an offender's specific risk factors;
- Teach offenders self-management methods to avoid a sexual re-offense;

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- Identify and treat the offenders' thoughts, emotions, and behaviors that facilitate sexual re-offenses or other victimizing or assaultive behaviors;
  - Identify and correct offenders' cognitive distortions;
  - Educate offenders about non-abusive, adaptive, legal, and pro-social sexual functioning;
  - Educate offenders about the impact of sexual offending upon victims, their families and the community;
  - Provide offenders with an environment that encourages the development of empathic skills needed to achieve sensitivity and empathy for victims;
  - Provide offenders with guidance to prepare, when applicable, written explanation or clarification for the victim(s) that meets the goals of: establishing full perpetrator responsibility, empowering the victim and promoting emotional restitution for the victim(s);
  - Identify and treat offenders' personality traits and deficits that are related to their potential for re-offending;
  - Identify and treat the effects of trauma and past victimizations on offenders as factors in their potential for re-offending;
  - Identify and decrease offenders' deficits in social and relationship skills;
  - Require offenders to develop a written relapse prevention plan for preventing a re-offense;
  - Maintain communication with other significant persons in offenders' support systems to assist with meeting treatment goals;
  - Evaluate cultural, language, developmental disabilities, sexual orientation and/or gender factors that may require social treatment agreements;
  - Identify and address issues of gender role socialization; and
  - Identify and treat issues of anger, power and control.

To undergo treatment, sex offenders must waive most of their confidentiality and sign a written contract with their treatment provider. Such contract must explain the responsibilities of the treatment provider and the sex offender.

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To determine whether a recommendation for the discontinuation of court-ordered treatment is warranted, the treatment provider must:

- Assess actual changes in the sex offender's potential to re-offend;
- Attempt to repeat those assessments that might show changes in a sex offender;
- Assess and document how the goals of the treatment plan have been met, what actual changes in a sex offender's re-offense potential have been accomplished and what risk factors remain, particularly those affecting the emotional and physical safety of the victim(s);
- Seek input from others who are aware of a sex offender's progress as part of the decision regarding termination of treatment;
- Report to the supervising officer regarding a sex offender's compliance with treatment and recommend any modifications in conditions of community supervision and/or termination of treatment;
- Inform the sex offender about the recommendation to end court-ordered treatment.

Before a sex offender is released from incarceration, a sex offense-specific evaluation should be performed. Treatment for sex offenders who are incarcerated should be substantially the same as for those not incarcerated.

While incarcerated, sex offenders:

- Should not have contact with their victim(s);
- Should not have contact with children, including their own;
- Shall not date or befriend anyone with children under 18;
- Shall not access or loiter near children in the visiting room or participate in any volunteer activity that involves contact with children;
- Should not possess any pornographic, sexually oriented or sexually stimulating materials; and
- Shall not utilize "900" or adult telephone numbers or any other sex-related telephone numbers.

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Sex offenders who continue to deny the conviction offense or continue to be highly defensive should not be placed on community supervision. When such sex offenders must be so placed (because of mandatory parole, for example), offense-specific treatment shall begin by specifically addressing denial and defensiveness. If there is no change after six months, revocation proceedings should be initiated.

A treatment provider may employ treatment methods that integrate the results of plethysmography, the Abel Screen or other physiological testing. In addition, polygraph examinations may be, and frequently are, employed to identify treatment issues and for behavioral monitoring.

**Standards for Polygraph Examinations.** Polygraph examinations must be at least 90 minutes long, videotaped and conducted using a state-of-the-art computerized polygraph system. The polygraph examiner must issue a written report for each examination.

**Standards for Plethysmograph and Abel Screen Examinations.** A plethysmograph is an electronic device used to determine and register variations in penile tumescence associated with sexual arousal. Physiological changes associated with sexual arousal in women are also measured through the use of plethysmography. The Abel Screen measures sexual interest in visual stimuli in terms of the length of time the subject elects to view a certain stimulus.

All plethysmograph and Abel Screen examinations must be performed in accordance with the *Guidelines for the Use of the Penile Plethysmograph*, published by the Association for the Treatment of Sexual Abusers and must never be conducted in isolation.

**Qualifications of Treatment Providers.** The SOMB has made a distinction among two grades of approved treatment providers and has developed requirements for the attainment and maintenance of each grade.

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A Full Operating Level Treatment Provider (a “Full Provider”) may treat sex offenders without supervision and may supervise an Associate Level Treatment Provider. A Full Provider must be a licensed/certified physician, psychologist, clinical social worker, professional counselor, marriage and family therapist or a clinical psychiatric nurse specialist in good standing. Within the last five years, a Full Provider must have completed 1,000 hours of clinical experience in sex offender evaluation and treatment. In addition, within the last five years, a Full Provider must have completed 80 hours of documented training specifically related to the evaluation and treatment of sex offenders, including training in the area of victimology. If these requirements are satisfied, the Full Provider may be placed on the Provider List.

A Full Provider must apply for continued placement on the Provider List every three years. Every three years, a Full Provider must demonstrate continued compliance with the *Standards*; accumulate at least 600 hours of clinical experience, at least 300 of which must be face-to-face therapy with adult sex offenders; complete at least 40 hours of continuing education in the field of sex offender treatment; provide satisfactory references; and submit to a current background check.

An Associate Level Treatment Provider (an “Associate Provider”) may treat sex offenders under the supervision of a Full Provider. An Associate Provider must possess a baccalaureate degree or above in a behavioral science. Within the last five years, an Associate Provider must have completed 500 hours of supervised sex offender clinical experience, at least 250 hours of which must have been in face-to-face therapy with adult sex offenders. An Associate Provider must have received at least 50 hours of face-to-face clinical supervision by a Full Provider, and must have at least 40 hours of documented sex offender evaluation and treatment training.

An Associate Provider must apply for continued placement on the Provider List every three years. Every three years, an Associate Provider must demonstrate continued compliance with the *Standards*; accumulate at least 600 hours of clinical experience, at least 300 of which must be face-to-face therapy with adult sex offenders; complete at least 40 hours of continuing education in the field of sex offender treatment; obtain at least one hour of face-to-face supervision for every 30 hours of clinical contact with sex offenders; provide satisfactory references; and submit to a current background check.

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An Associate Provider may become a Full Provider upon completion and documentation of a total of 1,000 hours of supervised clinical experience, 100 hours of clinical supervision (50 of which must be face-to-face), 80 hours of training, and submit a letter from his/her supervisor indicating their readiness to become a Full Provider.

**Qualifications of Evaluators.** The SOMB has made a distinction among two grades of approved evaluators and has developed requirements for the attainment and maintenance of each grade.

A Full Operating Level Evaluator (a “Full Evaluator”) may evaluate sex offenders without supervision and may supervise an Associate Level Evaluator. A Full Evaluator must be a licensed/certified physician, psychologist, clinical social worker, professional counselor, marriage and family therapist or a clinical psychiatric nurse specialist in good standing, and must be a registered as a Full Provider. In the last five years, a Full Evaluator must have completed at least 40 mental health sex offense-specific evaluations and have completed at least 80 hours of documented training specifically related to sex offender evaluation and treatment.

A Full Evaluator must apply for continued placement on the Provider List every three years. Every three years, a Full Evaluator must demonstrate continued compliance with the *Standards*; accumulate at least 600 hours of clinical experience, at least 300 of which must be face-to-face therapy with adult sex offenders; and complete at least 20 mental health sex offense-specific evaluations. Alternatively, a Full Evaluator may discontinue his/her listing as a Full Provider and be listed as a Full Evaluator only. As such, the Evaluator would only need to complete at least 40 mental health sex offense-specific evaluations in the three-year period.

All Full Evaluators, regardless of whether they are listed as evaluators only, must complete at least 40 hours of continuing education in the field of sex offender evaluation; provide satisfactory references; and submit to a current background check.

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An Associate Level Evaluator (an “Associate Evaluator”) may evaluate sex offenders under the supervision of a Full Evaluator. An Associate Evaluator must be registered as an Associate Provider and have at least 50 hours of face-to-face supervision by a Full Provider. A Full Evaluator must sign and approve of each evaluation performed by an Associate Evaluator. An Associate Evaluator must have at least 40 hours of documented training related to sex offender evaluation and treatment.

An Associate Evaluator must apply for continued placement on the Provider List every three years. Every three years, an Associate Evaluator must demonstrate continued compliance with the *Standards*; maintain registration as a treatment provider; complete at least 20 mental health sex offense-specific evaluations; complete at least 40 hours of continuing education in the field of sex offender evaluation; provide satisfactory references; and submit to a current background check.

**Qualifications of Polygraph Examiners.** A Full Operating Level Polygraph Examiner (a “Full Polygraph Examiner”) must have graduated from an accredited American Polygraph Association school and must possess a baccalaureate degree. A Full Polygraph Examiner must have conducted, within the last twelve months, at least 150 criminal specific-issue examinations and must have conducted at least 50 clinical polygraph examinations, of which at least 20 must be disclosure polygraph examinations and 20 more must be either maintenance or disclosure polygraph examinations. In addition, a Full Polygraph Examiner must have completed 40 hours of specialized clinical sex offender polygraph training and provide satisfactory references.

An Associate Level Polygraph Examiner (an “Associate Polygraph Examiner”) is an individual who otherwise meets the requirements of a Full Polygraph Examiner, but who does not possess a baccalaureate degree and/or who has not yet completed 50 clinical polygraph examinations. A Full Polygraph Examiner must supervise an Associate Polygraph Examiner.

An Associate Polygraph Examiner may become a Full Polygraph Examiner by completing and documenting a baccalaureate degree, conducting 150 criminal issue-specific polygraph examinations, conducting 50 clinical polygraph examinations and submit a letter from their supervisor indicating their readiness to become a Full Polygraph Examiner.

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Both Full Polygraph Examiners and Associate Polygraph Examiners must apply for continued placement on the Provider List every three years. Every three years, a polygraph examiner must demonstrate continued compliance with the *Standards*; complete at least 40 hours of continuing education; conduct at least 75 clinical polygraph examinations for sex offenders; provide satisfactory references; and submit to a current background check.

**Qualifications of Plethysmograph and Abel Screen Examiners.** Plethysmograph and Abel Screen examiners must be Full or Associate Treatment Providers and demonstrate that he/she has received credible training in the use of a plethysmograph or Abel Screen.

A plethysmograph or Abel Screen examiner must apply for continued placement on the Provider List every three years, such applications are considered in conjunction with the examiners application as a treatment provider. The examiner must provide documentation of continued administration of plethysmograph or Abel Screen examinations.

**Denial of Placement on Provider List.** The SOMB reserves the right to deny placement on the Provider List to any applicant. Applications are reviewed and approved/denied by the Application Review Committee of the SOMB. Appeals are heard by the full SOMB.

**Standards and Guidelines for Management of Sex Offenders on Probation, Parole and Community Correction.** Each sex offender who is released on probation, parole or placed in community corrections should have an Interagency Community Supervision Team composed of a supervising officer, the sex offender's treatment provider and a polygraph examiner. The goal of the team is to manage and treat sex offenders effectively with community safety as the highest priority.

The supervising officer, typically the probation or parole officer, is the team leader. The supervising officer is responsible for overseeing treatment, behavioral monitoring and all other aspects of a sex offender's term of probation, parole or community placement.

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The treatment provider is responsible for, among other things, providing treatment, reporting violations, reporting increased risk for re-offending, and providing written reports to the supervising officer.

The polygraph examiner must submit written reports to each member of the team for each polygraph examination performed.

Sex offenders placed under community supervision:

- Shall have no contact with their victim(s);
- Shall have no contact, nor reside with children under 18;
- Shall not date or befriend anyone who has children under 18;
- Shall not access or loiter near schools, parks, arcades, playgrounds, etc.;
- Shall not be employed in or participate in any volunteer activity that involves contact with children;
- Shall not possess any pornographic, sexually oriented or sexually stimulating materials;
- Shall not consume or possess alcohol;
- Must have their residence and living situation approved by the supervising officer;
- Shall undergo blood, saliva and DNA testing as required by statute;
- Shall sign information releases;
- Shall not hitchhike or pick up hitchhikers;
- Shall attend and actively participate in evaluation and treatment programs; and
- Shall abide by any other restrictions deemed necessary and imposed by the supervising officer.

Sex offenders placed on community supervision shall be monitored to recognize potential to re-offend, re-victimize or to cause harm.

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A sex offender's contact with victims and potential victims is heavily scrutinized. In determining whether a sex offender may have contact with his victim(s) or potential victim(s), a supervising officer must, among other things:

- Collaborate with the victim(s) therapist(s) and/or guardian;
- Support a victim's decision to avoid contact with the sex offender;
- Arrange contact in a manner that places the safety of the victim/child first;
- Assess the sex offender's readiness and ability to refrain from re-victimizing; and
- If contact is allowed, to closely monitor the process.

**Appendices.** The SOMB has developed several appendices to the *Standards*. These appendices address issues such as risk assessment, levels and types of denial among sex offenders, conducting plethysmograph and polygraph examinations, code of ethics, philosophy regarding contact with children and administrative policies.

### *Lifetime Supervision Criteria*

The *Lifetime Supervision Criteria* were developed pursuant to §§16-11.7-103 and 16-13-809, C.R.S. Lifetime supervision is a sex offender management tool allowing for indeterminate sentencing. Unless the sex offender complies with the *Lifetime Supervision Criteria* and earns his way off, a sex offender sentenced to lifetime supervision is subject to sex offender management for his entire natural life.

While engaging in the lifetime supervision of sex offenders, supervising officers and treatment providers should take steps to ensure the following:

- Adequate clinical and administrative supervision;
- Regular case audits;
- Critical incident debriefings;
- Support for trauma reactions;
- Methods for transferring cases as needed; and
- Adequate self care.

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**Criteria for Release from Prison to Parole.** In order to demonstrate that the sex offender would not pose an undue threat to the community if released from prison to parole, the sex offender must satisfy all of the required criteria in the focus areas of:

- Past and Present Criminal Behavior;
- Sentence Failures;
- Participation in Sex Offender Treatment Programs;
- Code of Penal Discipline Rules Convictions, Escapes or Absconds;
- Classification Level Change;
- Risk Assessment;
- Victim Input;
- Age of Offender at Time of the Offense vs. on the Date of Parole Hearing;
- Parole Plan; and
- Honesty.

**Criteria for Reduction in Level of Supervision While on Parole and Discharge from Parole.** In order to demonstrate that the sex offender would not pose an undue threat to the community if placed on a lower level of supervision while on parole, or if discharged from parole, the sex offender must satisfy all of the required criteria in the focus areas of:

- Polygraph examinations;
- Progress in Treatment;
- Employment;
- Relationships;
- Sex Offender Registration;
- Leisure Activities; and
- Compliance with the Conditions of Supervision.

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**Criteria for Reduction in Level of Supervision While on Probation and Discharge from Probation.** In order to demonstrate that the sex offender would not pose an undue threat to the community if placed on a lower level of supervision while on probation, or if discharged from probation, the sex offender must satisfy all of the required criteria in the focus areas of:

- Compliance with the Treatment Contract;
- Consistency Between Words and Behavior;
- Appropriate Relationships and Community Support;
- Stable and Safe Residence;
- Stable and Safe Employment;
- Substance Abuse Treatment;
- Leisure Activities; and
- Compliance with the Conditions of Supervision.

**Criteria for Successful Progress in Treatment.** In order for a sex offender to demonstrate progress in, or completion of, treatment, the sex offender must satisfy all of the required criteria in the focus areas of:

- Reduction in Denial;
- Decrease Deviant Sexual Urges, Arousal and Fantasies;
- Environment Management Criteria;
- Community and Victim Responsiveness Criteria;
- Offender Criteria; and
- Co-morbidity and Adjunctive Issues.

Sex offender treatment in the prison setting is always preliminary to continued treatment and supervision in the community after release from prison. Treatment cannot be completed in prison, so the SOMB has developed three formats for sex offender participation in prison treatment based on differing minimum sentences and time to parole eligibility. Sex offenders must meet all of the SOMB's criteria for their assigned format to receive a recommendation for release to parole. For example, some of these criteria address the areas of active participation in treatment, completion of non-deceptive polygraph examinations, psychiatric recommendations for medication and the ability to be supervised outside of prison without undue threat to the community.

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## Standards for Community Entities that Provide Supervision and Treatment for Adult Sex Offenders Who Have Developmental Disabilities

In developing the *Standards for Community Entities that Provide Supervision and Treatment for Adult Sex Offenders Who Have Developmental Disabilities (DD Standards)*, the SOMB subscribed to the following principles for working with sex offenders who have developmental disabilities:

- Sex offenders with developmental disabilities pose as clear a threat to public safety as sex offenders without developmental disabilities;
- There is nothing inherent in the presence of developmental disabilities that causes sexual offending, and there is nothing inherent in developmental disabilities which inoculated from sexual offending; and
- Sex offenders with developmental disabilities shall be offered treatment that is appropriate to their developmental capacity, their level of comprehension and their ability to integrate treatment material and progress.

**Standards for Mental Health Sex Offense-Specific Evaluations.** In addition to the requirements set out in the *Standards*, sex offenders with developmental disabilities are subject to additional requirements.

In order to determine a sex offender's level of functioning and appropriate treatment interventions, the following criteria must be considered:

- Level of planning in crime of conviction and other sexual offending behavior;
- Street smarts;
- Expressive and receptive language skills;
- Social judgment;
- Adaptive behavior;
- Criminal behavior;
- Attention deficit;
- Ability to function in groups; and
- Support systems.

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**Standards of Practice for Treatment Providers.** Although sex offenders with developmental disabilities must comply with the *Standards*, the SOMB recognizes that treatment plans may need to be tailored more narrowly for sex offenders with developmental disabilities.

The SOMB has developed standards for community placement of sex offenders with developmental disabilities at specialized facilities. Such facilities must:

- Be alarmed and/or locked;
- Maintain line-of-sight supervision of sex offenders during contact with the community;
- Provide all staff members having contact with the sex offender with sex offense-specific training;
- Maintain a client ratio no higher than 1:3; and
- Provide sex offense-specific treatment by a treatment provider on the Provider List.

**Qualifications of Treatment Providers/Evaluators with a Specialty in Treatment and Evaluation of Sex Offenders with Developmental Disabilities.** In addition to the requirements for placement on the Provider List, treatment providers and evaluators who work with sex offenders who have developmental disabilities must comply with additional requirements for initial placement on the Provider List and for continued placement on the Provider List.

**Standards and Guidelines for Management of Sex Offenders on Probation, Parole and Community Corrections.** In addition to the Community Supervision Team, supervising officers should include the following team members, as appropriate, when dealing with a sex offender with developmental disabilities:

- Community Center Board Case Manager;
- Residential Providers;
- Supported Living Coordinator;
- Day Program Provider;
- Vocational or Educational Provider;
- Professional Advocate;
- Guardians;

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- Social Services;
  - Family Members;
  - Authorized Representatives; and
  - Other applicable providers.

**Standards for Polygraphy with Sex Offenders Who Have Developmental Disabilities.** In addition to the standards for working with sex offenders without developmental disabilities and in addition to the requirements for placement on the Provider List, polygraph examiners must comply with additional standards and requirements when working with sex offenders who have developmental disabilities.

**Standards for Plethysmography and Abel Screen with a Specialty in Examination of Sex Offenders Who Have Developmental Disabilities.** In addition to the requirements for placement on the Provider List, treatment providers and evaluators who administer plethysmograph and Abel Screen examinations to sex offenders who have developmental disabilities must comply with additional requirements for initial placement on the Provider List and for continued placement on the Provider List.

**Guidelines for Sex Offenders Who Have Developmental Disabilities and Are Not Convicted.** Treatment providers who work with individuals with developmental disabilities who engage in sexual offending behavior, but who have not been convicted, who have been found to be incompetent or who are subject to an imposition of legal disability should utilize the following guidelines to assess and manage the individual's risk to the community:

- Sexual offending behavior should be identified, documented and reported to the criminal justice system;
- Individuals engaging in sexual offending behavior should be referred for mental health sex offense-specific evaluation to assess sexual offending behavior and potential risk;
- Lack of conviction should not prevent access to effective sex offense-specific treatment.
- Treatment should be consistent with the standards for treatment developed by the SOMB;

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- Treatment providers should establish rules that limit changing therapists to avoid the work of treatment or to attempt to undermine appropriate containment of the offending behavior; and
  - Treatment providers should establish safe living environments for individuals engaging in sexual offending behavior who have not been convicted.

#### Criteria, Protocols and Procedures for Community Notification Regarding Sexually Violent Predators

The *Criteria, Protocols and Procedures for Community Notification Regarding Sexually Violent Predators (Community Notification Criteria)* were developed pursuant to §26-13-904, C.R.S..

Community notification, or the release of relevant information about sexual offenders to law enforcement, public and private entities and the general public, is intended to increase public safety and enhance strategies for crime detection and prevention. The intent of community notification is to reduce risk to the community.

In developing the *Community Notification Criteria*, the SOMB had to balance public safety, the right to know, increased supervision, communication among community groups and the goals of treatment against possible identification of victims, unofficial dissemination of information, development of unwarranted sense of community safety or complacency, unintended negative consequences and vigilantism or harassment of sex offenders.

**Responsibilities of the Court.** At the time a pre-sentence investigation report is ordered for a sex offender, the court must also order that the sexually violent predator (“SVP”) risk assessment be conducted. If the sex offender is found to be an SVP, the SVP’s probation or parole officer must petition for a determination that the SVP is subject to community notification.

**Responsibilities of the Probation Officer.** If the court grants a petition for a determination that the SVP is subject to community notification, the probation officer must, within 48 hours, notify local law enforcement for the jurisdiction in which the SVP resides or plans to reside that the SVP is subject to community notification.

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**Responsibilities of the Parole Board.** When considering parole for a sex offender convicted of violating the SVP statute, the State Parole Board must make specific findings regarding whether the sex offender is an SVP. If the sex offender is found to be an SVP, the Department of Corrections or the parole officer must petition the State Parole Board for a determination that the SVP is subject to community notification.

**Responsibilities of the Parole Officer.** If the State Parole Board grants a petition for a determination that the SVP is subject to community notification, the parole officer must, within 48 hours, notify local law enforcement for the jurisdiction in which the SVP resides or plans to reside that the SVP is subject to community notification.

**Responsibilities of the Department of Corrections.** If the court or State Parole Board grants a petition for a determination that the SVP is subject to community notification, the Department of Corrections must, within 48 hours of the SVP's release, notify local law enforcement for the jurisdiction in which the SVP resides or plans to reside that the SVP is subject to community notification.

**Responsibilities of Law Enforcement Agencies.** Local law enforcement agencies are responsible, with the assistance of the Community Notification Technical Assistance Team, for effecting any community notifications for SVPs residing within their jurisdiction and for notifying the Colorado Bureau of Investigations of the SVP's status as being subject to community notification so that such information may be entered in the state's sex offender registry.

**Responsibilities of the Community Notification Technical Assistance Team.** The Technical Assistance Team is responsible for assisting local law enforcement agencies in carrying out community notifications. In addition, the Technical Assistance Team is also available to assist communities in providing general information concerning sex offenders.

**Responsibilities of the Colorado Bureau of Investigations.** When the CBI receives information regarding an SVP subject to community notification, the CBI must enter the SVP's information in the state's sex offender registry.

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**Petitioning the Court or Parole Board for a Determination that an SVP is Subject to Community Notification.** In addition to other information, any such petition must report the score on and attach the Sexual Predator Risk Assessment Screening Instrument.

**Community Notification Technical Assistance Team.** In addition to assisting local law enforcement in carrying out community notifications, the Technical Assistance Team has been charged with developing curriculum and education materials to be utilized in community notification and education efforts and providing training to law enforcement agencies around the state on the implementation of the community notification process.

**Development of Regional/Local Community Notification Teams.** Such teams should be formed to promote a consistent, interdisciplinary group available to provide community notifications.

**Protocols for Law Enforcement Agencies Carrying Out Community Notification Regarding SVPs.** In conducting community notifications, local law enforcement agencies are required to:

- Share information regarding SVPs;
- Ensure that the victim or parent, custodian or guardian of a child victim is contacted regarding the date and type of any planned community notification prior to the notification;
- Not release any information regarding an SVP that could directly be utilized to identify the SVP's victim to the community;
- Provide information to specific agencies, organizations and groups; and
- Facilitate a community notification meeting open to the public, but targeted to people residing in the immediate neighborhood of the SVP.

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**Procedures for Notification of Agencies, Organizations and Groups.** These targeted notifications may include specific agencies or organizations that fall within the SVP's identified pattern of behavior. Such notifications must include:

- Name;
- Photo;
- Physical description;
- Crimes of conviction;
- Preferred age range of target victims;
- Whether the victim was a stranger or known to the SVP;
- Authority for releasing the information;
- Conditions of release;
- Address of the SVP;
- Vehicle information;
- Type of work;
- Compliance with the conditions of supervision;
- Current general criminal justice status of the SVP;
- Vigilantism will not be tolerated;
- Phone number to call with questions;
- Resources for community members who are impacted by the crime or notification process;
- How to contact law enforcement;
- Number of sex offenders registered state-wide, county-wide and jurisdiction-wide; and
- Statement regarding risk from sex offenders who are not registered or otherwise identified by the criminal justice system.

**Procedures for Initiating Community Notification Public Meetings.** The following must receive notification of such meetings:

- SVP;
- Victim;
- Neighborhood groups;
- Local organizations; and
- Local media, as appropriate.

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**De-Notifying Communities When SVPs Relocate Outside of the Community.** Local law enforcement agencies must make every effort to de-notify those community members who have been notified of the presence of an SVP through the community notification process when that SVP leaves the community.

In addition, the SOMB has also designed the State of Colorado Sexual Predator Risk Assessment Screening Instrument which includes sections to be completed by the SVP's probation officer and evaluator.