



Dora
Department of Regulatory Agencies

Office of Policy, Research and Regulatory Reform

2009 Sunset Review: Sex Offender Management Board

October 15, 2009





Executive Director's Office
D. Rico Munn
Executive Director

Bill Ritter, Jr.
Governor

October 15, 2009

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 mission of the Department of Regulatory Agencies (DORA) is consumer protection. As a part of the Executive Director's Office within DORA, the Office of Policy, Research and Regulatory Reform seeks to fulfill its statutorily mandated responsibility to conduct sunset reviews with a focus on protecting the health, safety and welfare of all Coloradans.

DORA has completed the evaluation of the Colorado Sex Offender Management Board (Board). I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2010 legislative committee of reference. The report is submitted pursuant to section 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 Article 11.7 of Title 16, C.R.S. The report also discusses the effectiveness of the Board and staff in carrying out the intent of the statutes and makes recommendations for statutory and administrative changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

D. Rico Munn
Executive Director





Bill Ritter, Jr.
Governor

D. Rico Munn
Executive Director

2009 Sunset Review: Sex Offender Management Board

Summary

What Is Regulated?

The Sex Offender Management Board (Board) approves sex offender treatment providers, evaluators, and polygraph examiners.

Why Is It Regulated?

The Board was created to provide consistent statewide standards for the treatment and management of convicted sex offenders in the criminal justice system in order to ensure public safety.

Who Is Regulated?

There are 295 treatment providers, evaluators, and polygraph examiners approved by the Board.

How Is It Regulated?

The Board is housed within the Division of Criminal Justice, in the Department of Public Safety. The Board has established and continues to revise statewide standards and guidelines for the evaluation, treatment, behavioral monitoring, and management of sex offenders (standards). Treatment providers, evaluators, and polygraph examiners who work with convicted sex offenders must adhere to the Board standards and meet the qualifications created in the standards in order to be approved by the Board.

What Does It Cost?

The fiscal year 07-08 expenditure was \$520,131, and there were 4.7 full-time equivalent employees associated with the program.

What Disciplinary Activity Is There?

For the period calendar year 2006 through 2008, the Board issued 6 disciplinary actions, including 2 removals from a list of approved providers and 4 sanctions.

Where Do I Get the Full Report?

The full sunset review can be found on the Internet at: www.dora.state.co.us/opr/oprpublications.htm.

Key Recommendations

Continue the Sex Offender Management Board for five years, until 2015.

The Sex Offender Management Board (Board) was created in 1992 to provide consistent statewide standards for court-ordered treatment and management of convicted sex offenders to advance public safety. This sunset review recommends that the Board be continued by the General Assembly. However, the review identifies a number of areas in which functions of the Board can be improved. The following recommendations, among others, seek to identify those areas and offer suggestions for improvement:

- The Board should report to the General Assembly regarding the effectiveness of sex offender treatment and Board policies by December 1, 2011.
- The Division of Criminal Justice should promulgate treatment standards, *Lifetime Supervision Criteria*, and the requirements to be listed as an approved provider by rule in order to give the public a greater opportunity for input and to increase transparency.
- Complaints, investigations and discipline of treatment providers should be investigated by the Department of Regulatory Agencies to improve the consistency of the investigative process.
- The Sex Offender Treatment and Monitoring Program in the Department of Corrections should be scheduled for sunset review in 2012 to provide analysis of the effectiveness of Colorado's prison-based sex offender treatment program.
- The Board should produce and present an annual report to the General Assembly beginning December 1, 2012 in order to provide evidence-based analysis and recommendations regarding existing laws, pending legislation, and legislation that may be needed to effectively treat offenders and protect the community.

Major Contacts Made During This Review

Adams County Social Services
Arapahoe County Department of Human Services
Arapahoe County Probation
Boulder County Department of Human Services
Boulder County Probation Department
Colorado Association of Polygraph Examiners
Colorado Bureau of Investigations
Colorado Counties, Inc.
Colorado Criminal Defense Bar
Colorado CURE
Colorado Department of Corrections
Colorado Department of Public Safety, Division of Criminal Justice

Colorado Department of Public Safety, Community Corrections
Colorado State Judicial Branch, Division of Probation Services
Denver Juvenile Probation
Department of Regulatory Agencies, Division of Registrations
Department of Human Services
Et Alia
Jefferson County District Attorney's Office
Jefferson County Probation
National Association of Social Workers
Teaching Humane Existence

What is a Sunset Review?

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether or not they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with protecting the public. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the ability of businesses to exist and thrive in a competitive market, free from unnecessary regulation.

Sunset Reviews are Prepared by:
Colorado Department of Regulatory Agencies
Office of Policy, Research and Regulatory Reform
1560 Broadway, Suite 1550, Denver, CO 80202
www.dora.state.co.us/opr

Table of Contents

Background	1
<i>Introduction</i>	1
<i>Types of Regulation</i>	2
<i>Sunset Process</i>	4
<i>Methodology</i>	4
<i>Profile of the Profession</i>	5
Legal Framework.....	8
<i>History of Regulation</i>	8
<i>Summary of Current Laws</i>	9
Program Description and Administration	17
<i>Agency Fiscal Information</i>	19
<i>Provider Listing</i>	23
<i>Complaints/Disciplinary Actions</i>	26
Analysis and Recommendations.....	29
<i>Recommendation 1 – Continue the Sex Offender Management Board for five years, until 2015.</i>	29
<i>Recommendation 2 - The Board should study and determine whether and to what extent the treatment of sex offenders and other Board policies, including the no-cure policy, work, and present the report to the General Assembly no later than December 1, 2011.</i>	31
<i>Recommendation 3 – Require the Division of Criminal Justice to promulgate treatment standards, Lifetime Supervision Criteria, and the requirements to be listed as an approved provider by rule.</i>	35
<i>Recommendation 4 – Complaints, investigations and discipline of treatment providers should be administered by the Department of Regulatory Agencies.</i>	39
<i>Recommendation 5 – Schedule the Sex Offender Treatment and Monitoring Program in the Department of Corrections for sunset review in 2012.</i>	43

Recommendation 6 – Require the Board to produce and present an annual report to the General Assembly beginning on December 1, 2012. 45

Recommendation 7 – Amend the statute to allow the Board members to elect the presiding officers of the Board. 46

Recommendation 8 - Authorize the Board to collect necessary data from approved providers. 47

Administrative Recommendation 1 - The Board should regulate plethysmograph examiners and Abel Screen examiners. 48

Administrative Recommendation 2 – Seek to amend the sunset review bill to include any technical changes necessary to the statute. 48

Background

Introduction

Enacted in 1976, Colorado's sunset law was the first of its kind in the United States. A sunset provision repeals all or part of a law after a specific date, unless the legislature affirmatively acts to extend it. During the sunset review process, the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria¹ and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are based on the following statutory criteria:

- 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;
- 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;
- 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;
- Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- 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;
- The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- 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;
- Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;
- Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

¹ Criteria may be found at § 24-34-104, C.R.S.

Types of Regulation

Consistent, flexible, and fair regulatory oversight assures consumers, professionals and businesses an equitable playing field. All Coloradans share a long-term, common interest in a fair marketplace where consumers are protected. Regulation, if done appropriately, should protect consumers. If consumers are not better protected and competition is hindered, then regulation may not be the answer.

As regulatory programs relate to individual professionals, such programs typically entail the establishment of minimum standards for initial entry and continued participation in a given profession or occupation. This serves to protect the public from incompetent practitioners. Similarly, such programs provide a vehicle for limiting or removing from practice those practitioners deemed to have harmed the public.

From a practitioner perspective, regulation can lead to increased prestige and higher income. Accordingly, regulatory programs are often championed by those who will be the subject of regulation.

On the other hand, by erecting barriers to entry into a given profession or occupation, even when justified, regulation can serve to restrict the supply of practitioners. This not only limits consumer choice, but can also lead to an increase in the cost of services.

Regulation, then, has many positive and potentially negative consequences.

There are also several levels of regulation.

Licensure

Licensure is the most restrictive form of regulation, yet it provides the greatest level of public protection. Licensing programs typically involve the completion of a prescribed educational program (usually college level or higher) and the passage of an examination that is designed to measure a minimal level of competency. These types of programs usually entail title protection – only those individuals who are properly licensed may use a particular title(s) – and practice exclusivity – only those individuals who are properly licensed may engage in the particular practice. While these requirements can be viewed as barriers to entry, they also afford the highest level of consumer protection in that they ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Certification

Certification programs offer a level of consumer protection similar to licensing programs, but the barriers to entry are generally lower. The required educational program may be more vocational in nature, but the required examination should still measure a minimal level of competency. Additionally, certification programs typically involve a non-governmental entity that establishes the training requirements and owns and administers the examination. State certification is made conditional upon the individual practitioner obtaining and maintaining the relevant private credential. These types of programs also usually entail title protection and practice exclusivity.

While the aforementioned requirements can still be viewed as barriers to entry, they afford a level of consumer protection that is lower than a licensing program. They ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Registration

Registration programs can serve to protect the public with minimal barriers to entry. A typical registration program involves an individual satisfying certain prescribed requirements – typically non-practice related items, such as insurance or the use of a disclosure form – and the state, in turn, placing that individual on the pertinent registry. These types of programs can entail title protection and practice exclusivity. Since the barriers to entry in registration programs are relatively low, registration programs are generally best suited to those professions and occupations where the risk of public harm is relatively low, but nevertheless present. In short, registration programs serve to notify the state of which individuals are engaging in the relevant practice and to notify the public of those who may practice by the title(s) used.

Title Protection

Finally, title protection programs represent one of the lowest levels of regulation. Only those who satisfy certain prescribed requirements may use the relevant prescribed title(s). Practitioners need not register or otherwise notify the state that they are engaging in the relevant practice, and practice exclusivity does not attach. In other words, anyone may engage in the particular practice, but only those who satisfy the prescribed requirements may use the enumerated title(s). This serves to indirectly ensure a minimal level of competency – depending upon the prescribed preconditions for use of the protected title(s) – and the public is alerted to the qualifications of those who may use the particular title(s).

Licensing, certification and registration programs also typically involve some kind of mechanism for removing individuals from practice when such individuals engage in enumerated proscribed activities. This is generally not the case with title protection programs.

Regulation of Businesses

Regulatory programs involving businesses are typically in place to enhance public safety, as with a salon or pharmacy. These programs also help to ensure financial solvency and reliability of continued service for consumers, such as with a public utility, a bank or an insurance company.

Activities can involve auditing of certain capital, bookkeeping and other recordkeeping requirements, such as filing quarterly financial statements with the regulator. Other programs may require onsite examinations of financial records, safety features or service records.

Although these programs are intended to enhance public protection and reliability of service for consumers, costs of compliance are a factor. These administrative costs, if too burdensome, may be passed on to consumers.

Sunset Process

Regulatory programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials, representatives of the regulated profession and other stakeholders. To facilitate input from interested parties, anyone can submit input on any upcoming sunrise or sunset review via DORA's website at: www.dora.state.co.us/pls/real/OPR_Review_Comments.Main.

The regulatory functions of the Colorado Sex Offender Management Board (Board) relating to Article 11.7 of Title 16, Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2010, unless continued by the General Assembly. During the year prior to this date, it is the duty of DORA to conduct an analysis and evaluation of the Board pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed regulation of sex offender treatment providers should be continued for the protection of the public and to evaluate the performance of the Board and staff of the Division of Criminal Justice (Division). During this review, the Board and the Division must demonstrate that the regulation serves to protect the public health, safety or welfare, and that the regulation is the least restrictive regulation consistent with protecting the public. DORA's findings and recommendations are submitted via this report to the legislative committee of reference of the Colorado General Assembly.

Methodology

As part of this review, DORA staff attended Board meetings, interviewed Board staff, attended treatment group therapy, reviewed Board records and minutes including complaint and disciplinary actions, interviewed mental health professionals, probation officers, defense attorneys, judges, family members of sex offenders, conducted a literature review, interviewed officials with state and national professional associations, interviewed treatment providers, reviewed Colorado statutes and Board standards, and reviewed the laws of other states.

Profile of the Profession

Sex offender management is carried out through a multidisciplinary system involving mental health professionals, corrections officers, social service workers, polygraph examiners, the criminal justice system, family members of sex offenders, and victims' representatives. Most sex offender management programs rely on a system of containment that involves sex offender treatment, polygraph testing, intensive supervision and, when necessary, incarceration.

A sex offender management team may consist of:

- Sex offense treatment providers;
- Probation, parole or corrections officers;
- Social service professionals; and
- Victims' representatives.

Managing sex offenders is different from managing the general offender population.² Professionals in the field should possess specialized knowledge about:

- Sex offenders;
- Victim issues;
- Effective interventions;
- Predicting risk;
- Sex offender motivations; and
- Legal requirements of sex offenders.

In Colorado, in order to provide sex offense-specific treatment, a treatment provider must be approved by the Board. Sex offender treatment providers may be from any one of the following mental health professions:

- Licensed social workers;
- Licensed psychologists;
- Licensed marriage and family therapists;
- Licensed professional counselors; or
- Unlicensed psychotherapists.

In addition to treatment providers, in Colorado, evaluators and polygraph³ examiners are required to be approved by the Board.

² *The Comprehensive Approach to Sex Offender Management*, Center for Sex Offender Management, (2008).

³ "Polygraphy means the use of an instrument that is capable of recording, but not limited to recording, indicators of a person's respiratory pattern and changes therein, galvanic skin response and cardio-vascular pattern and changes therein. The recording of such instruments must be recorded visually, permanently and simultaneously. Polygraphy includes the interpretation of the data collected in this manner, for the purpose of measuring physiological changes associated with deception." *Colorado Standards and Guidelines for the Treatment, Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders*, Colorado Sex Offender Management Board (2008), p. 17.

Sex offender treatment employs a mixture of cognitive-behavioral therapy and relapse prevention to help the offender learn to manage his or her sexually abusive behavior.⁴ In treatment, offenders are required to take responsibility for their behavior and understand the trauma they have caused their victims. They learn to recognize and change the errors in their thinking that contributed to the sexual abuse. They participate in group sessions with other sex offenders who challenge their distorted thinking, denial, minimization, and manipulation. Sex offender treatment is based on the idea that sexually abusive behavior is a compulsion. Most sex offenders have a cycle that begins some time before the sexual assault is committed, but by learning about their own negative behavioral cycles, sex offenders may develop methods to stop themselves from entering the cycle and reoffending.

While traditional psychotherapy is confidential, sex offender treatment providers must be able to share information with other members of the sex offender management team.

Sex offender treatment is approached differently for juveniles than it is for adults, primarily because of developmental considerations.

Supervision of sex offenders is an important component of sex offender management. Parole and probation officers work with sex offender treatment programs to supervise sex offenders. They develop conditions of parole or probation that the offenders must adhere to in order to remain in the community. Supervision may include global positioning system devices or unannounced visits to the offender's home or workplace, and treatment programs may use human trackers to monitor offenders throughout the day.

Treatment providers must evaluate and assess the risk of each offender throughout the criminal justice process in order to develop a comprehensive treatment and supervision plan. In Colorado, a number of risk assessment tools are used, some of which include the Parental Risk Assessment, Sexually Violent Predator Risk Assessment, and the Colorado Sex Offender Risk Scale.

Polygraphy is another tool used by treatment providers. First, it is used to obtain a sexual history of the offender which is necessary to develop a treatment plan. An offender may have been convicted for one type of sex crime, but the offender may have committed other sex offenses that were unreported and unknown to the criminal justice system. For example, a sex offender may be convicted of raping an adult woman, but the offender may have a history of molesting young girls between the ages of three and six, and he may have also sexually assaulted an elderly person. A treatment and supervision plan that would keep potential victims safe would be different for an offender with such a varied history of sexual assaults than for someone who only preys on adult women.

⁴ *An Overview of Sex Offender Management*, Center for Sex Offender Management (2002).

Second, denial is a mechanism that sex offenders use to protect themselves, psychologically, from the trauma they inflict on their victims. The polygraph is a tool that treatment providers use to help the offender break through the cycle of denial.

Finally, polygraphs are routinely used in treatment to ensure offenders are in compliance with conditions of treatment and supervision. The effectiveness of polygraph testing in sex offender treatment is considered extremely important by experts in the sex offender field.⁵

⁵ *An Overview of Sex Offender Management*, Center for Sex Offender Management (2002).

Legal Framework

History of Regulation

Prior to the creation of the Sex Offender Management Board (Board), formerly the Sex Offender Treatment Board, 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 convicted sex offenders.

In 1992, the General Assembly recognized a need for consistent policies and standards regarding sex offender treatment and created the 12-member Board. The primary legislative mandate of the Board was to improve community safety and protect victims. The Board'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 re-offense, and evaluating whether the standards and systems developed by the Board were successful.

The *Colorado Standards and Guidelines for the Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders* were first published in 1996, and have since been revised in 1998, 1999, 2004, and 2008.

In 1995, the Department of Human Services and the Department of Institutions merged, and the Board position representing the Department of Institutions was dissolved, reducing the size of the Board to 11 members. In 1997, the General Assembly expanded the Board 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 Board and it was recognized that such expertise was needed.

In 1998, the General Assembly directed the Board 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 Board subsequently published 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.

In response to a federal mandate, in 1999, the General Assembly directed the Board to develop the criteria for community notification and to develop a tool to identify a sexually violent predator (SVP). In addition, the General Assembly directed the Board 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.

The General Assembly again expanded the membership of the Board in 1999. By adding a judge, the Board grew to 15 members. The Board was transferred out of the Office of Research and Statistics 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 Board to develop standards for the management of juvenile sex offenders and expanded the Board from 15 members to 21 members. The additional members were to provide the Board with the expertise necessary to develop comprehensive standards for juvenile sex offenders.

In response to a sunset review, the legislature mandated in 2001 that, to the extent possible, the membership of the Board should reflect both urban and rural areas.

Effective March 2003, the legislature directed the Board to collaborate with various agencies and stakeholders to develop informational materials and a statement about sex offenders, which the Colorado Department of Education would distribute to local schools. The Board published the *School Resource Guide Regarding Sex Offender Registration* in June 2003.

The membership of the Board increased again in 2007 with the addition of one county director of social services and two county commissioners, one commissioner representing a rural county and the other a suburban or urban county. That year, the legislature also added to the membership, a private criminal defense attorney with experience representing sex offenders.

The Board, originally 12-members, has more than doubled in size to a current total of 25 members.

Summary of Current Laws

In Colorado, the laws that govern the management of sex offenders are housed in Article 11.7, Title 16, Colorado Revised Statutes (C.R.S.). The Board creates and revises statewide standards for evaluating, identifying, treating and monitoring sex offenders in the criminal justice system.

Sex Offender Management Board

The Board consists of 25 members appointed by five state agencies and a private association, reflecting both urban and rural areas.⁶ While most members serve four-year terms, some members serve at the pleasure of the appointing officer, and all members serve without compensation.⁷ The Board seats are appointed as follows:⁸

- The Executive Director of the Colorado District Attorney's Council appoints one district attorney with juvenile and adult sex offender expertise.
- The Executive Director of the Department of Corrections appoints one member from that department.
- The Commissioner of the Department of Education appoints one member who has experience dealing with juvenile sex offenders in the public school system.
- The Chief Justice of the Supreme Court is directed to appoint the following:
 - One representative of the judicial department with juvenile sex offender expertise;*
 - One judge;*
 - One juvenile magistrate with juvenile sex offender expertise.
- The Executive Director of the Department of Human Services is directed to appoint the following:
 - One representative with expertise in child welfare and case management;*
 - One representative from the Division of Youth Corrections;*
 - One provider of out-of-home placement services with expertise in juvenile sex offender services.
- The Executive Director of the Department of Public Safety is directed to appoint the following:
 - One representative of the Department of Public Safety;*
 - Two licensed mental health professionals with adult sex offender expertise;
 - Two licensed mental health professionals with juvenile sex offender expertise;
 - One Community Corrections Board member;
 - One public defender with juvenile sex offender expertise;
 - One law enforcement member;
 - Three sex abuse experts representing victims;
 - One clinical polygraph examiner with juvenile sex offender expertise;
 - One private criminal defense attorney with experience representing sex offenders;
 - One county director of social services (in consultation with a statewide group representing counties); and
 - Two county commissioners, one representing a rural county and another representing an urban or a suburban county (in consultation with a statewide group representing counties).

⁶ § 16-11.7-103(1), C.R.S.

⁷ § 16-11.7-103(3), C.R.S.

⁸ § 16-11.7-103(1), C.R.S.

* These board members serve at the pleasure of the appointing officer.

From the Board membership, the Executive Director of the Department of Public Safety is directed to appoint a presiding officer who serves at the pleasure of the Executive Director.⁹

Table 1 charts the various appointments by agency and appointing authority.

Table 1
Number of Board Appointments by Agency

Agency	Appointing Officer	Number
Department of Public Safety	Executive Director	16
Department of Human Services	Executive Director	3
Judicial Department	Chief Justice of the Supreme Court	3
Colorado District Attorney's Council	Executive Director	1
Department of Corrections	Executive Director	1
Department of Education	Commissioner of Education	1
Total Members		25

Board Duties

The Board is directed by the General Assembly to perform the following duties:¹⁰

- Develop a procedure to evaluate and identify sex offenders;
- Recommend behavior management, monitoring and treatment of sex offenders;
- Develop and implement measures of success based upon a no-cure policy for intervention; and
- Develop and implement methods of intervention appropriate to the needs of sex offenders while maintaining victim safety as a priority.

The Board develops and implements guidelines and standards for the treatment of sex offenders who are on probation, incarcerated, on parole, or placed in community corrections.¹¹ Such treatment must be developed to follow an offender without interruption throughout the criminal justice system, including group and individual counseling, outpatient and inpatient treatment, or treatment in a therapeutic community corrections setting. Such treatment must also provide continued monitoring.

The Board develops a risk assessment screening instrument, created to determine whether the offender is likely to commit acts of an SVP.¹² In this assessment, the Board must include the risk of an offender who is more likely to engage in sexually violent predatory offenses due to a mental abnormality, psychosis, or a personality disorder. Anyone determined to be an SVP must register with the state and is subject to community notification.

⁹ § 16-11.7-103(2), C.R.S.

¹⁰ § 16-11.7-103(4)(a), C.R.S.

¹¹ § 16-11.7-103(4)(b), C.R.S.

¹² § 16-11.7-103(4)(c.5), C.R.S.

When an SVP is released into the community, the officer in charge must notify the local law enforcement agency where the SVP is planning to live.¹³ Local law enforcement notifies the Colorado Bureau of Investigation, and that agency adds the SVP to the central registry of persons required to register as sex offenders. Local law enforcement then holds community notification meetings according to the Board's *Criteria, Protocols and Procedures for Community Notification Regarding Sexually Violent Predators*.¹⁴ Local law enforcement extends invitations to the immediate neighborhood of the SVP and community organizations like schools, senior centers and recreational facilities. Residents who do not attend the community notification meeting may also request the SVP information from local law enforcement.

The Board must research and analyze the effectiveness of the procedures and programs it develops.¹⁵ The Board must develop a system of tracking offenders in the treatment programs and of monitoring behaviors and management of their offending behaviors, and the Board must include the tracking and monitoring results in the required analysis.

The Board also must develop criteria for measuring progress in treatment in order to determine whether an offender is safe to be:¹⁶

- Released from incarceration;
- Released to a lower level of supervision; or
- Discharged from probation or parole.

The Board is also required to research and analyze safety issues related to living arrangements and location of sex offenders within the community, including shared or structured living arrangements.¹⁷ Board members must consider safety issues related to sex offender residences near schools and day care centers. They must also consider safety issues related to public notification of sex offender residences. The Board is required to adopt guidelines regarding living arrangements and location of sex offenders.

It is the duty of the Board to develop procedures to evaluate and identify juvenile sex offenders.¹⁸ Such procedures must recommend behavior management, monitoring, treatment and compliance. It must develop methods of intervention appropriate to the offender, while maintaining victim safety as the priority.

The Board is also directed to develop standards and guidelines for juvenile sex offender programs and a system to measure the progress and success of juveniles in treatment.¹⁹ Such programs must be developed so all juvenile offenders in the juvenile justice system may access them.

¹³ § 16-13-903(3)(a), C.R.S.

¹⁴ § 16-13-905(1), C.R.S.

¹⁵ § 16-11.7-103(4)(d)(I), C.R.S.

¹⁶ § 16-11.7-103(4)(e), C.R.S.

¹⁷ § 16-11.7-103(4)(j), C.R.S.

¹⁸ § 16-11.7-103(4)(f), C.R.S.

¹⁹ §§ 16-11.7-103(4)(g) and (h), C.R.S.

The Board must research and analyze the effectiveness of evaluation, identification and treatment procedures and programs for juvenile sex offenders.²⁰ It must also develop and prescribe a system for implementation of the guidelines and standards and for tracking juvenile sex offenders. The Board must also develop a system for monitoring offender behaviors and adherence to prescribed behavioral changes. The results of tracking and behavioral monitoring must be used to develop the required analysis.

By July 2003, the Board was required to develop and implement a system to measure juvenile offender progress in treatment.²¹ The Board was also required to develop informational materials regarding sex offenders for schools to distribute to parents.²² Additionally, the Board was directed to develop a statement for public schools that explains to parents how to find law enforcement information about registered sex offenders. Public schools are required to provide this statement to parents at the beginning of each school year.

The Board and the individual members are immune from civil or criminal liability in the good faith performance of the duties of the Board.²³

Treatment Providers

All sex offender treatment must be given by a Board-approved provider.²⁴ The Department of Corrections, the Judicial Department, the Division of Criminal Justice, and the Department of Human Services are prohibited from employing or contracting with any person or entity to provide sex offender evaluations or treatment unless the person or entity conforms to the Board's standards.²⁵

Applicants for approved-provider status are required to submit to a background investigation, including a criminal history check and a reference check.²⁶ The Board may require applicants to pay a fee of no more than \$125 to cover the cost of a background investigation.

²⁰ § 16-11.7-103(4)(i), C.R.S.

²¹ § 16-11.7-103(4)(h), C.R.S.

²² § 16-11.7-103(k), C.R.S.

²³ § 16-11.7-103(5), C.R.S.

²⁴ §§ 16-11.7-105(1) and (2), C.R.S.

²⁵ § 16-11.7-106(1), C.R.S.

²⁶ § 16-11.7-106(2)(b), C.R.S.

Sex Offense Definition

A sex offense is defined in section 16-11.7-102, C.R.S., as constituting any of the following felonies or misdemeanors:

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

Sex Offender Sentencing

Each sex offender is required to undergo sex offense-specific treatment, appropriate to the offender based on a pre-sentencing evaluation and identification.²⁷ Treatment is defined in section 16-11.7-102, C.R.S., as therapy, monitoring and supervision of a sex offender that conforms to the standards created by the Board. Treatment may also be based on any subsequent recommendations made by the Department of Corrections, the Department of Human Services, the Judicial Department, or the Department of Public Safety. Sex offenders are required to pay for their own treatment. In addition to the required identification and evaluation for treatment, any sex offender considered for probation must also submit to an evaluation for risk and monitoring procedures.²⁸

²⁷ § 16-11.7-105(1), C.R.S.

²⁸ §§ 16-11.7-105(2) and 16-11.7-104(1), C.R.S.

Other Relevant Laws

Sex Offender Surcharge

Each adult sex offender is assessed a surcharge based on his or her conviction as follows:²⁹

- \$3,000 for a class 2 felony;
- \$2,000 for a class 3 felony;
- \$1,000 for a class 4 felony;
- \$750 for a class 5 felony;
- \$500 for a class 6 felony;
- \$400 for a class 1 misdemeanor;
- \$300 for a class 2 misdemeanor; and
- \$150 for a class 3 misdemeanor.

The court may waive all or a portion of the surcharge if it finds the offender is unable to pay.³⁰ Juveniles are assessed a surcharge which is half of the amount that would be paid by an adult offender.³¹

Lifetime Supervision

In the “Colorado Sex Offender Lifetime Supervision Act of 1998,” (Lifetime Supervision Act) the General Assembly declared that sex offenders are a danger to the public if released without treatment, but incarcerating sex offenders for life is too costly to the state and a waste of human potential.³² The General Assembly determined that since some sex offenders who receive treatment and supervision can function as safe, responsible, contributing members of society, a program under which sex offenders receive treatment and supervision, perhaps for their lifetime, is necessary for the safety, health, and welfare of this state.

Convicted sex offenders are sentenced for an indeterminate amount of time in prison, on parole, on probation, or in community corrections. The sentence depends on the level of the offense and can run anywhere from two years to life, to 20 years to life.³³ A sex offender who is sentenced to probation or released on parole under the Lifetime Supervision Act must participate in an intensive supervision program, which is the highest level of supervision available.³⁴ Such a program must minimize the risk to the public to the greatest extent possible and may include severely restricted activities, daily contacts with the parole or probation officer, monitored curfew, home visitation, employment visitations and monitoring, drug and alcohol screening, treatment referrals and monitoring, physiological monitoring, and payment of restitution.³⁵

²⁹ § 18-21-103(1), C.R.S.

³⁰ § 18-21-103(4), C.R.S.

³¹ § 18-21-103(1.5), C.R.S.

³² § 18-1.3-1001, C.R.S.

³³ § 18-1.3-1004, C.R.S.

³⁴ §§ 18-1.3-1005(1) and 1007(1)(a), C.R.S.

³⁵ §§ 18-1.3-1005(2) and 1007(2), C.R.S.

For a sex offender to be released to parole, the State Parole Board must determine that the sex offender has successfully progressed in treatment and would not be an undue threat to the community if released with the condition of accepting sex offender treatment and monitoring.³⁶ A sex offender on parole or probation may be released to a lower level of supervision or may be discharged from parole or probation if the Parole Board or court determines that the offender has successfully progressed in treatment and would not pose an undue threat to the community.³⁷ In making such a determination, the Parole Board must consider the recommendations of the Department of Corrections, and the offender's parole officer and treatment provider, and for an offender to be released from probation, the court must consider the recommendations of the offender's probation officer and treatment provider.

Community Notification

The Board must collaborate with other agencies to establish and revise the *Criteria, Protocols and Procedures for Community Notification Regarding Sexually Violent Predators*.³⁸ The Division of Criminal Justice of the Department of Public Safety is required to establish a Technical Assistance Team to help local law enforcement with community notification. In addition to its mandate to assist with SVP community notification, this team is also available to provide communities with general education about sex offenders.³⁹

Federal Laws

In 1994, the U.S. Congress passed the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Act (Wetterling Act), which requires states to implement a sex offender and crimes against children registry. In 1996, Megan's Law was added to amend the Wetterling Act. Megan's Law requires all states to establish a sex offender community notification system, including creating an Internet site containing state sex-offender information.

In 2006, the Adam Walsh Child Protection and Safety Act (Adam Walsh Act)⁴⁰ was passed in an attempt to reconcile inconsistencies among state sex offender registry laws and the problem of sex offenders who may be undetected because of such inconsistencies.

The Adam Walsh Act mandates specific sex offender registration requirements for all states and makes failure to register and update information a felony. The Office of Sex Offender Sentencing Monitoring, Apprehending, Registering, and Tracking was established to administer implementation of the Adam Walsh Act and to determine state compliance. Although all states were required to comply with the new requirements by July 2009, at the time this report was written, no states were fully compliant. In May 2009, the U.S. Attorney General granted a one-year extension to all states.

³⁶ § 18-1.3-1006(1)(a), C.R.S.

³⁷ §§ 18-1.3-1006(2)(a) and (3)(a), C.R.S.

³⁸ §§ 16-13-904(1)(b) and (c), C.R.S.

³⁹ § 16-13-904(2), C.R.S.

⁴⁰ 42 U.S.C. §16901, et seq.

Program Description and Administration

The primary goal of the Colorado Sex Offender Management Board (Board) is to improve public safety and protect Colorado citizens. The Board's main duties include developing and implementing standards and guidelines for the evaluation, treatment, behavioral monitoring, and management of sex offenders; approving treatment providers and maintaining a list of the approved providers (Approved Provider List); delisting treatment providers who do not adhere to the standards; investigating complaints against treatment providers; and assisting local law enforcement with community notification of sexually violent predators.

The Board endeavors to base the *Colorado Standards and Guidelines for the Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders* (Adult Standards) and the *Standards and Guidelines for the Evaluation, Assessment, Treatment and Supervision of Juveniles Who Have Committed Sexual Offenses* (Juvenile Standards) on best practices in the field of sex offender management and treatment. When clear, consistent research is not available, the Board bases its decisions on a governing philosophy of public safety and its guiding principles, which, for adult sex offenders, are:⁴¹

- 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 ongoing process. Progress in treatment and level of risk are not constant over time;
- Assignment to community supervision is a privilege, and sex offenders must be completely accountable for their behaviors;
- Sex offenders must waive confidentiality for evaluation, treatment, supervision and case management purposes;
- 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;
- A continuum of sex offender management and treatment options should be available in each community in the state;
- 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 principles and work together;

⁴¹ Colorado *Standards and Guidelines for the Treatment, Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders*, Colorado Sex Offender Management Board (2008), pp. 5-7.

-
- The management of sex offenders requires a coordinated team response;
 - Sex offender assessment, evaluation, treatment and behavioral monitoring should be non-discriminatory and humane, and bound by the rules of ethics and law; and
 - 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.

The Board consists of 25 members including representatives from mental health providers, victims' groups, criminal justice, probation, Department of Corrections, Department of Human Services, county social services, county commissioners, the Department of Education, and polygraph examiners. The Board meets once a month to hear committee reports, discuss policy issues, vote on revisions to the adult and juvenile standards, and hear appeals from providers who were not approved. Meetings are attended by many non-Board members including, but not limited to, probation officers, defense attorneys, sex offender treatment providers, and families of sex offenders. The Board encourages participation of non-Board members during its meetings.

The Board has also established, at its discretion, 17 working committees that meet as needed. The committees include staff, Board members, other experts, and representatives from various interested parties. The Board may recruit from certain agencies, organizations, professions or individuals if there is a need for specific expertise. The majority of the Board's work is accomplished at the committee level. The committee meetings are open meetings, and anyone is welcome to attend and participate. Committee meetings are posted on the website and announced during full Board meetings.

One of the Board committees, the Application Review Committee (ARC), is comprised entirely of Board members recruited by staff to represent treatment providers, evaluators, and polygraph examiners. ARC reviews provider applications and reviews provider complaints. If ARC does not approve an applicant, the provider may appeal the decision to the full Board. Providers must apply for continued placement on the approved provider list every three years.

Previously the Board was criticized for the length of time it took to process applications, but in recent years this process has been improved. In 2008, original applications took an average of five months to complete and renewals an average of three. This is an improvement from 2005 when original applications took an average of 13 months to approve and renewals took an average of 10 months to process.

The other Board committees include:

- Executive Committee;
- Training Committee;
- Adult Standards Revisions Committee;
- Juvenile Standards Revisions Committee;
- Best Practices Committee;
- Risk Discrimination Committee;
- Juvenile Developmental Disability Committee;
- Underserved Provider Committee;
- Domestic Violence/Sex Offender Crossover Committee;
- Housing Committee;
- Sex Offender Registration Legislative Work;
- Victim Advocacy Committee;
- Defense Bar Committee;
- Community Notification Technical Assistance Team;
- Adult Standards Effectiveness Committee; and
- Juvenile Standards Effectiveness Committee.

Some recent Board activities include:

- Revised and published the Adult and Juvenile Standards;
- Revised the Sexually Violent Predator tool;
- Began revising the Parental Risk Assessment tool;
- Initiated the rural provider project to increase the availability of sex offender providers in rural areas;
- Published a position paper on the Adam Walsh Act; and
- Published a position paper on residency restrictions.

Agency Fiscal Information

The Board is housed within the Division of Criminal Justice (Division), in the Department of Public Safety. The Division staff provides administrative and managerial support for the Board. Staff assists with community notification, handles inquiries and complaints, liaisons with the Board, coordinates and participates in Board and committee meetings, and coordinates trainings.

The Board is supported with General Fund dollars although it also receives cash funds and some federal grants. Table 2 summarizes the Board's various funding sources.

**Table 2
Funding Sources**

Funding Source	FY 04-05	FY 05-06	FY 06-07	FY 07-08	FY 08-09
Cash Funds	\$137,245	\$131,684	\$162,330	\$149,844	\$354,843
General Fund	\$293,299	\$300,969	\$343,777	\$342,785	\$158,225
Federal Grants	\$276,800	\$247,068	\$169,861	\$95,430	\$0
Total	\$707,344	\$679,721	\$675,968	\$588,059	\$513,068

The Board receives cash funds from a few sources. Each adult sex offender is assessed a surcharge upon conviction of a sex offense, and the Board is allocated a portion of the surcharge funds.

In 2007, the Division was granted the authority to charge a fee in exchange for training providers. Additionally, the Board charges treatment provider applicants for background investigations and for criminal history background checks.

Although not included in Table 2, the Board was awarded a federal grant, Comprehensive Approaches to Sex Offender Management (CASOM), in fiscal year 09-10. The grant amount is \$195,185 and will include a 0.7 FTE position. The goal of CASOM is to provide effective training to probation, parole and other personnel who provide supervision, case management or relapse prevention to non-incarcerated sex offenders or who are responsible for sex offender registration and compliance.

Table 3 summarizes the Board's expenditures over the last five fiscal years.

**Table 3
Board Expenditures**

	FY 04-05	FY 05-06	FY 06-07	FY 07-08	FY 08-09
Surcharge Funds	\$126,245	\$120,683	\$138,249	\$125,764	\$134,145
Community Notification	\$29,847	\$30,223	\$46,673	\$50,357	\$58,608
Lifetime Supervision	\$101,901	\$109,721	\$94,363	\$120,780	\$124,477
Juvenile Standards	\$161,551	\$161,025	\$173,797	\$171,648	\$171,758
Background Investigations	\$800	\$8,200	\$9,340	\$8,500	\$10,500
Training Fund	\$0	\$0	\$0	\$3,578	\$20,643
NCHIP* Federal Grant	\$27,799	\$26,316	\$37,427	\$14,174	\$0
CASOM Federal Grant	\$2,932	\$77,207	\$74,430	\$54,919	\$0
Total	\$451,075	\$533,375	\$574,279	\$549,720	\$520,131

* National Criminal History Improvement Program

Board and committee expenditures are broken out across multiple line items depending on the content of the meeting. For example, the Community Notification Technical Assistance Team meetings are billed to the community notification line item, while a Juvenile Developmental Disability Committee meeting would be billed to the juvenile standards line item.

Board expenditures have remained relatively stable over the last five fiscal years. During years when the Board was awarded federal grants, the expenditures rose to account for programs supported by these grants. Spending on community notification has increased steadily over the years reflecting increasing responsibilities.

Board staff is providing more training and technical assistance on community notification due to an increase in the number of sex offenders classified as Sexually Violent Predators (SVP).

Each jurisdiction collects from sex offenders a surcharge that is deposited into the Sex Offender Surcharge Fund. Table 4 charts the surcharge fund over the last five fiscal years.

Table 4
Sex Offender Surcharge Fund

Fiscal Year	Balance	Revenue	Appropriation
04-05	\$101,992	\$358,720	\$422,000
05-06	\$ 73,080	\$452,065	\$389,105
06-07	\$138,335	\$448,218	\$497,190
07-08	\$ 94,146	\$434,902	\$527,734
08-09	\$ 81,177	\$409,108	\$533,244

The Board is charged with submitting recommendations to the General Assembly for the allocation of the Sex Offender Surcharge Fund to the following agencies:

- Division of Criminal Justice for the administration and implementation of the standards;
- Judicial Department for direct services, such as pre-sentence sex offender evaluations, assessments and polygraphs;
- Department of Corrections to manage sex offender data collection, psychological and risk assessment test results and demographics for use in treatment planning and research; and
- Department of Human Services for training and technical assistance to counties, the Division of Youth Corrections, and the Division of Child Welfare.

Table 5 demonstrates allocation of surcharge funds as recommended by the Board over the last five fiscal years.

**Table 5
Allocations of the Surcharge Funds**

Agency	FY 04-05	FY 05-06	FY 06-07	FY 07-08	FY 08-09
Division of Criminal Justice	\$154,600	\$139,584	\$163,591	\$163,591	\$163,591
Judicial Department	\$195,400	\$172,245	\$275,029	\$275,029	\$302,029
Department of Corrections	\$30,000	\$26,445	\$29,618	\$29,618	\$29,311
Department of Human Services	\$42,000	\$33,718	\$37,764	\$37,764	\$38,250
Total	\$422,000	\$371,992	\$506,002	\$506,002	\$533,181

Table 6 outlines the Board staff over the last five fiscal years.

**Table 6
Full-Time Equivalent (FTE) Employees**

Fiscal Year	Federal FTE	State FTE	Total FTE
04-05	1.5	4.7	6.2
05-06	1.0	4.7	5.7
06-07	1.0	4.7	5.7
07-08	0.3	4.7	5.0
08-09	0	4.7	4.7

A Program Manager (General Professional VI, 0.85 FTE) co-manages the entire Office of Domestic Violence & Sex Offender Management (Office) with the Program Director for the Domestic Violence Offender Management Board and is the primary supervisor for the Sex Offender Management Unit (Unit) within the Office. The Program Manager is responsible for the daily operations of the Unit.

An Adult Standards and Community Notification Coordinator (General Professional IV, 0.95 FTE) is responsible for implementing the Adult Standards throughout the state, serves as the leading authority in regard to community notification of SVPs and the management of adult sex offenders, provides statewide training on Adult Standards, and maintains the approved provider list for adult sex offenders. This position also supervises the volunteer and contract staff of the Community Notification Technical Assistance Team.

A Juvenile Standards and Training Coordinator (General Professional IV, 1.0 FTE) is responsible for implementing the Juvenile Standards throughout the state, serves as the leading authority in regard to management of juvenile sex offenders, provides statewide training on Juvenile Standards, and maintains the approved provider list for juvenile sex offenders.

A Research Analyst (Statistical Analyst II, 0.65 FTE) is responsible for collecting and analyzing data related to the lifetime supervision of sex offenders and the Juvenile Standards, gathering and interpreting empirical research for the revisions of the Adult Standards, and researching and compiling data for various research reports.

The Board also has two Administrative Assistants (1.25 FTE) who provide administrative support to the Board including, among other duties, organizing and planning statewide trainings.

In addition to its employees, the Board also employs a contractor who conducts provider background investigations. This position is paid from cash funds collected from providers who pay \$100 for a background investigation.

The Board also employs a contractor who provides additional community notification training that is necessary to meet the current needs of the state. This position typically contracts for \$20,000 to \$24,000 per year in General Fund contract services at a rate of \$27.00 per hour plus travel expenses.

Provider Listing

In Colorado, mental health professionals who provide court-mandated treatment to or evaluations of convicted sex offenders must be approved by the Board and must adhere to the Adult and Juvenile Standards. Since polygraph examinations are commonly used in sex offense-specific treatment, the Board also approves and develops Adult and Juvenile Standards for polygraph examiners.

The Board publishes a list of approved treatment providers, evaluators, and polygraph examiners who meet the criteria set forth in the Adult and Juvenile Standards. In order to become an approved provider, an applicant must submit an application outlining his or her experience, training and credentials. For the criminal history check, the applicant must submit a complete set of fingerprints that are used to conduct a state criminal history check and a national criminal history check. An investigator also conducts a background investigation that goes beyond the scope of the criminal history check to verify the applicant's fitness to provide sex offender treatment. Providers renew every three years.

At one time, the Board listed Abel Screen Examiners and plethysmograph examiners, but since users of these devices must be certified or licensed by the manufacturers, the Board determined that it was duplicative to require these examiners to be listed as well.

As shown in Table 7, the Board approves different types of providers. A treatment provider provides sex offense-specific treatment to convicted sex offenders. An evaluator conducts sex offense-specific evaluations to develop treatment and management plans. A polygraph examiner conducts polygraph examinations which are used as a tool to assist in developing treatment and management plans, assuring compliance with treatment and probation agreements, and to help offenders overcome denial.

Table 7 represents the number of listed providers as of July 2009. The Board staff was unable to provide the number of listed providers over the last few years because of a problem with the database. Staff has created a new provider database that will track this information in the future.

Table 7
Listed Providers as of July 2009

Type	Adult	Juvenile	Total*
Treatment Providers (Full)	112	99	193
Treatment Providers (Associate)	51	39	77
Evaluators (Full)	55	35	90
Evaluators (Associate)	26	9	35
Polygraph Examiners (Full)	19	16	21
Polygraph Examiners (Associate)	2	3	3
Total	188	138	295

*Since some providers work with both adult and juvenile sex offenders, the adult and juvenile columns in the above table do not add up to the total number of providers. Additionally, treatment providers may also be approved as evaluators.

The Board approves treatment providers, evaluators and polygraph examiners at either the full operating or the associate level. Full operating level providers have accumulated the experience and expertise to treat sex offenders without supervision and to supervise associate level treatment providers.⁴² Associate level providers may provide sex offender treatment, but they must be supervised by a full operating level provider in good standing with the Board.⁴³ The supervisor must sign all treatment plans, evaluations and reports by the associate level provider. All applicants are initially approved at the associate level, with the exception of those out-of-state applicants who already have the necessary experience and expertise to work with the sex offender population.

⁴² Colorado Standards and Guidelines for the Treatment, Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders, Colorado Sex Offender Management Board (2008), p. 55.

⁴³ Colorado Standards and Guidelines for the Treatment, Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders, Colorado Sex Offender Management Board (2008), p. 51.

Individuals, who have not met the basic requirements for an associate level but are working toward meeting the necessary qualifications, must file an intent to apply with the Board.⁴⁴ They must also submit an agreement signed by a full operating level supervisor. All treatment plans, evaluations and reports by such an applicant must be reviewed and co-signed by a full operating level supervisor.

Associate level treatment providers must have the following qualifications:⁴⁵

- A baccalaureate degree in a behavioral science;
- Experience or training in counseling or therapy; and
- A professional mental health license or be listed as an unlicensed psychotherapist in good standing.

Applicants are also required to have completed, within the past five years, a minimum of 100 clinical contact hours of supervised co-therapy with sex offenders and 50 hours of sex offense-specific training and victim issues training.

For treatment providers who work with the developmentally disabled population, 25 of the 100 clinical contact hours of supervised co-therapy must be with developmentally disabled sex offenders, and 10 of the 50 hours of training must be dedicated to the treatment of sex offenders with developmental disabilities.

An applicant who would like to move from the associate level to the full operating level must submit a letter from his or her supervisor recommending such a change.⁴⁶ The applicant must also be an approved associate level provider in good standing and must have completed, within the past five years, 1,000 hours of clinical experience in sex offense-specific treatment and evaluation, half of which must be in direct clinical contact with sex offenders, and must complete an additional 60 hours of direct clinical contact co-therapy teamed with a full operating treatment provider.

Similarly, to move to the full operating level, treatment providers who work with developmentally disabled sex offenders must have completed 25 percent of the required hours with developmentally disabled sex offenders. Applicants are also required to have completed within the last five years 100 hours of sex offense-specific training and victim issues training. For providers who work with the developmentally disabled, 20 of the hours must be specific to the treatment of sex offenders with developmental disabilities.

⁴⁴ Colorado *Standards and Guidelines for the Treatment, Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders*, Colorado Sex Offender Management Board (2008), p. 50-51.

⁴⁵ Colorado *Standards and Guidelines for the Treatment, Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders*, Colorado Sex Offender Management Board (2008), p. 52.

⁴⁶ Colorado *Standards and Guidelines for the Treatment, Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders*, Colorado Sex Offender Management Board (2008), p. 55-56.

Table 8 outlines the provider applications and background investigations reviewed by the Board over the last three calendar years. All providers must submit to a background investigation.

**Table 8
Provider Listing Applicants
By Calendar Year**

Type	2006	2007	2008
New Approvals	17	34	55
Renewals	68	76	64
Change of Level	1	2	7
Denied	2	1	3
Background Investigations	111	87	108

Complaints/Disciplinary Actions

The Board accepts complaints against providers from anyone. Most of the complaints received by the Board come from convicted sex offenders in treatment, relatives of convicted sex offenders, other treatment providers, and probation officers. Sex offenders and families of sex offenders on parole and on probation appear less likely to complain than those incarcerated in the Department of Corrections (DOC), and juveniles who are in sex offense-specific treatment very rarely complain about their providers.

Additionally, complaints from offenders in the sex offender treatment program in DOC, typically involve the program as a whole and not particular treatment providers. The Board has determined that it approves and develops adult and juvenile standards for individual providers and not entire treatment programs. For this reason, the Board considers such complaints outside of its jurisdiction and redirects these complaints back to the DOC grievance and dispute resolution process.

All complaints are reviewed by the Vice Chair who determines whether or not Board intervention may be appropriate.⁴⁷ The Vice Chair forwards a recommendation to the Application Review Committee (ARC), for review and action. ARC reviews all complaints for action even those in which the Vice Chair recommends no action.

⁴⁷ Colorado Standards and Guidelines for the Treatment, Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders, Colorado Sex Offender Management Board (2008), p. 172.

The Board only has jurisdiction over individuals on the approved provider list who have violated the adult or juvenile standards. Complaints that are not within Board jurisdiction are forwarded to the appropriate agency. For example, if a complaint is made against a listed treatment provider who is also a licensed social worker, and ARC determines that the complaint does not cite any violations of the adult or juvenile standards but may violate laws governing the practice of social work, ARC would forward the complaint to the Colorado State Board of Social Work Examiners.

When complaints are received by ARC, a written notice is sent to the complainant and the identified provider is notified.⁴⁸ ARC may request more information from the complainant, request a response from the provider, initiate an investigation, or hold a hearing requesting both parties to appear, which may include appearance by conference call in the case of a complaint by a DOC inmate.

The ARC may take any of the following actions:

- Dismiss the complaint if it is unfounded;
- Work to find a resolution;
- Send a letter of admonition including recommendations for changes in services, additional training, or additional supervision; or
- Remove the provider from the approved provider list.

After reviewing a complaint, the Board sends the complainant and the provider a written notice of ARC's findings.⁴⁹ The Board also sends a notice of the right to appeal ARC's decision within 30 days and to request a hearing. Appeals are made to the full Board. All hearings are scheduled with the full Board in conjunction with its regularly scheduled meetings. Hearings are 45 minutes long, held in open session, and recorded. Upon making a final decision, the Board notifies both parties in writing.

Table 9 shows the total number of complaints against providers and subsequent investigations initiated by the Board over the last three years.

**Table 9
Complaints**

Calendar Year	Complaints	Investigations
2006	10	5
2007	27	4
2008	18	1

⁴⁸ Colorado *Standards and Guidelines for the Treatment, Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders*, Colorado Sex Offender Management Board (2008), p. 173.

⁴⁹ Colorado *Standards and Guidelines for the Treatment, Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders*, Colorado Sex Offender Management Board (2008), p. 174.

Table 10 highlights the Board's disciplinary actions against providers during the last three calendar years.

Table 10
Final Board Actions by Calendar Year
Sex Offender Providers

Actions	2006	2007	2008
Removed from List	1	1	0
Sanctioned	1	1	2
Dismissed	8	25	16
Total	10	27	18

The Board dismisses complaints when no adult or juvenile standards are violated, the complaint is unsubstantiated, or the complaint is outside its jurisdiction.

Analysis and Recommendations

Recommendation 1 – Continue the Sex Offender Management Board for five years, until 2015.

The Sex Offender Management Board (Board) was created in 1992 to bring consistency to the treatment of sex offenders across the state. As reported in the 2000 sunset review of the Board, “Anecdotal evidence suggests that some therapists who treated sex offenders engaged in inappropriate and ill-advised treatment programs.” The development and implementation of the standards, which include standards for treatment providers, evaluators, plethysmograph examiners, Abel Screen examiners, and polygraph examiners, is the primary means by which statewide consistency is achieved, to the extent that it is achieved.

Because creation of the treatment standards is one of the primary duties of the Board, the question of the efficacy of treatment and the impact of treatment on recidivism is an important consideration in evaluating the Board. Unfortunately, the impact of treatment remains elusive as was the case in the 2000 sunset review.

The Board has many supporters and some detractors. However, the great majority of stakeholders who provided input into this sunset review believe that the Board should be continued by the General Assembly. Notably, a citizens group provided significant input and substantial recommendations for reform of the Board. Even so, this group also recommends the continuation of the Board stating that the Board:

serves a legitimate and necessary role in standardizing practices in sex offender management that represent developing aspects of the mental health and criminal justice professions.⁵⁰

It seems clear that the public policy goal of creating treatment standards for the management of sex offenders has been achieved and is successful when compared to the hodgepodge approach that existed throughout Colorado before the creation of the Board. Thus, to sunset the Board and the subsequent consequences to the standards would be a large step backward for the state.

Another alternative to the Board and its work is the incarceration of sex offenders without treatment. This approach is severely flawed. First, most of these offenders will eventually be released into the community and community safety could be compromised. Sex offenders might receive no treatment at all, or they may receive less effective treatment.

⁵⁰ Diane McDaniel, Editor, *An Independent Sunset Report on Colorado's Sex Offender Management Board*, Et Alia Paralegal Service (2009), p. v.

Second, the cost of imprisonment is higher than the cost of supervision on probation or parole. The estimated annual costs per offender are \$3,700 for probation, \$9,162 for parole, and \$19,232 for imprisonment.

As part of this sunset review, Department of Regulatory Agencies (DORA) staff attended sex offender treatment group therapy and talked with other offenders who were on probation, parole, and one offender who had successfully completed treatment in prison. All of these individuals believe that treatment is important and necessary. Interestingly, some offenders interviewed who live in shared living arrangements conduct voluntary weekend groups (absent an approved treatment provider) as a tool for support. One group member stated to DORA staff that the termination of the Board and treatment would essentially mean a prison sentence for most offenders.

The Board does not only create standards for treatment. It brings together experts and officials from different state agencies who work together to create a consistent approach to managing sex offenders throughout the criminal justice system and in the community. This approach is good public policy. Otherwise, different agencies and professionals may be working at cross purposes, creating a haphazard system in which dangerous sex offenders could slip through the cracks.

In fact, the Board, as a body of experts in the field of sex offenses, could be a useful resource for legislators when considering new or changes to current legislation. Creating a means for open communication between the Board and the legislature could improve public safety by providing authoritative guidance regarding residency restrictions, community notification and registration laws.

Moreover, the Board standards and guidelines are constantly being revised based on best practices and emerging research. This work is highly regarded in the field, and professionals from all over the state who work in sex offender management, from social workers to probation officers, rely on the standards and guidelines in their everyday work with sex offenders. Eliminating the Board would mean that these standards and guidelines would no longer continue to be improved. While some jurisdictions might continue to provide excellent sex offender management, many would not. Probation officers and treatment providers in rural areas may not have the support or training to create quality supervision and treatment of sex offenders in their areas which would put public health, safety and welfare of the state at risk.

In conclusion, this sunset review recommends that the Board be continued by the General Assembly. However, the review identifies a number of areas in which functions of the Board can be improved. The following recommendations seek to identify those areas and offer suggestions for improvement. These recommendations primarily address the Adult Standards. Throughout the review process, stakeholders expressed support of the Juvenile Standards.

Recommendation 2 - The Board should study and determine whether and to what extent the treatment of sex offenders and other Board policies, including the no-cure policy, work, and present the report to the General Assembly no later than December 1, 2011.

This recommendation essentially repeats and expands upon a recommendation made in the 2000 sunset review.

Efficacy of the Treatment Standards

The Board standards define sex offense-specific treatment as:⁵¹

... a long-term comprehensive set of planned therapeutic experiences and interventions to change sexually abusive thoughts and behaviors. Such treatment specifically addresses the occurrence and dynamics of sexually deviant behavior and utilizes specific strategies to promote change. Sex offense-specific programming focuses on the concrete details of the actual behavior, the fantasies, the arousal, planning, the denial and the rationalizations. Due to the difficulties inherent in treating sex offenders and the potential threat to community safety, sex-offense specific treatment should continue for several years, followed by a lengthy period of aftercare and monitoring. Much more importance is given to the meeting of all treatment goals than the passage of a specific amount of time, since the offenders make progress in treatment at different rates. The primary treatment modalities for sex offense-specific treatment is group therapy for the offenders. Adjunct modalities may include partner or couples therapy, psycho-education, and/or individual therapy. However, such adjunct therapies by themselves do not constitute sex offense-specific treatment.

Section 16-11.7-103(4)(d), Colorado Revised Statutes (C.R.S.), requires the Board to evaluate the system of programs developed by the Board to track offenders. The Board has not completed this evaluation in large part due to lack of funding. The Board requested funding through the state budget process in fiscal year 98-99 to comply with the legislative mandate but did not receive the funds. However, the Division of Criminal Justice (Division) received a federal grant in fiscal year 99-00 and began the system evaluation. The Division staff report that the next phase of the evaluation is in the planning stage and that data collection could occur in fiscal year 09-10.

One 2003 study conducted by the Division suggests that further analysis of offender treatment may yield positive findings. The Division's *Evaluation of Colorado's Prison Therapeutic Community for Sex Offenders: A Report of Findings* concluded that participation in treatment is significantly associated with success on parole.⁵²

⁵¹ Colorado *Standards and Guidelines for the Treatment, Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders*, Colorado Sex Offender Management Board (2008), p. 19.

⁵² Kerry Lowden and Nicole Hetz, et al., *Evaluation of Colorado's Prison Therapeutic Community for Sex Offenders: A Report of Findings*, Office of Research and Statistics, Division of Criminal Justice (2003), p. 113.

To be sure, there is much professional literature on the subject of sex offender management and treatment. Some experts contend that no conclusions can be drawn about treatment effectiveness because of a lack of scientific rigor in the available research. As an example, a long-term study in California exploring the impact of treatment interventions on recidivism rates for sex offenders concluded that no significant differences in recidivism rates were found between the treated sex offenders and the untreated comparison groups overall. Although the study used a research design that appears solid, the authors nonetheless drew attention to a variety of limitations and warned against drawing broad conclusions that treatment for sex offenders is not effective.⁵³

One factor that may impact any analysis of the effectiveness of treatment is re-offense as distinct from re-arrest. Experts seem to agree that sex crimes are underreported. Thus, according to some, recidivism rates that are derived from arrest records are underestimates of the actual number of sex offenses committed by adult sex offenders. Further, some research indicates that recidivism rates steadily increase as offenders are followed for longer periods of time.⁵⁴ Chart 1 below depicts what is termed the “criminal justice funnel” regarding sex offenses.

Chart 1*



The data referred to in this sex offender criminal justice funnel come from various research sources and are summarized by Kim English, Director of the Research Unit, Colorado Division of Criminal Justice, Department of Public Safety 02/27/06.

Source: www.thewatchhouse.org

**Hands-on sex offense” means the offender has physical contact with the victim, such as molestation or rape, but not exhibitionism or voyeurism.

⁵³ *Understanding Treatment For Adults And Juveniles Who Commit Sex Offenses*, Center for Sex Offender Management (2006), p. 10.

⁵⁴ Stephen Brake, Ph.D. and Greig Veeder, M.S.W., *Re-Offense Rates of Adult Sex Offenders*, Retrieved September 16, 2009 from <http://www.thewatchhouse.org/research.html>

Thus, it is difficult to draw definitive conclusions from individual studies about the effects of treatment. About half of the studies suggest treatment may be effective in reducing recidivism and about half, including arguably the best designed studies, suggest treatment is statistically ineffective at reducing recidivism.⁵⁵

Most professional stakeholders who participated in this sunset review were not willing to conclude that Colorado's sex offender treatment approach reduces recidivism. In fact, in arguing for the continuation of the "no-cure" philosophy expressed in statute, a number of respected professionals stated flatly that there is no evidence that treatment works.⁵⁶

Such responses from professionals whose work is to provide treatment to sex offenders begs the question: Why work at something that may be a pre-determined failure? An understanding of Colorado's treatment model, known as the Containment Model, is helpful in answering this question.

The Containment Model can be envisioned as a triangle within which the sex offender exists. The three points of the triangle represent the polygrapher, the judicial officer, and the treatment provider. The offender is located within this triangle and is therefore contained by the three entities who work together in a coordinated fashion.

This model is consistent with the Board's third guiding principle which states the highest priority of the standards and guidelines is community safety. The containment approach is part research and part theory – an evolving social experiment that operationalizes the best empirical data and human experience.⁵⁷

A number of stakeholders interviewed during this sunset review were dismissive of the value of the treatment component of the model with respect to changing sex offender behavior. Although it appears that many do not believe that adult sex offenders can be prevented from re-offending, all of these professionals believe that treatment is important.

The value of treatment, in the view of many, lies in the dialogue with the sex offender and the subsequent information that the offender reveals about his or her activities, fantasies, and methods employed to commit sex offenses. Such information can be used to develop polygraph examinations to determine if the offender is forthcoming with information or is being deceptive. Thus, this interaction between treatment provider and polygrapher informs the probation/parole officer who is the ultimate authority over the sex offender on whether the offender's parole or probation is revoked. The same dynamic applies to offenders who are incarcerated but the final outcome for these offenders is whether they are recommended for parole.

⁵⁵ Stephen Brake, Ph.D. & Greig Veeder, M.S.W., *The Effectiveness of Treatment for Adult Sex Offenders*. Retrieved July 31, 2009, from <http://www.thewatchhouse.org/research.html>

⁵⁶ Letter dated July 20, 2009, from Stephen Brake, Ph.D., et al., to Bruce Harrelson, Director, Office of Policy, Research and Regulatory Reform, Department of Regulatory Agencies.

⁵⁷ Kim English (1998), "The Containment Approach: An Aggressive Strategy for the Community Management of Adult Sex Offenders," *Psychology, Public Policy, and Law* 4 (1/2), p. 218.

In contrast, other experts believe that there is sound evidence that treatment can reduce recidivism.⁵⁸ In particular, cognitive-behavioral treatment programs and the use of relapse prevention as a long-term behavior management strategy – rather than cure – appears to be the preferred model for treatment of sexual offenders.⁵⁹

One meta-analysis conducted in 2002⁶⁰ examined 43 studies and found that the:

- Average rate of sexual recidivism for treated sex offenders was 12.3 percent;
- Average rate of sexual recidivism for untreated sex offenders was 16.8 percent;
- Average rate of general recidivism for treated sex offenders was 27.9 percent; and
- Average rate of general recidivism for untreated sex offenders was 39.2 percent.

No-Cure

One of the most controversial issues related to treatment of sex offenders in Colorado is the “no-cure” approach to sex offender management. The Boards’ organic statute speaks to this approach asserting that sex offenders are extremely habituated. The statute goes on to direct the Board to develop standards based upon the knowledge that there is no known cure for the propensity to commit sex abuse.⁶¹

Opponents point to recidivism studies that demonstrate that 75-95 percent of offenders do not recidivate. These studies, opponents claim, destroy the validity of the “no-cure” model. Further, they argue that the very use of cognitive-behavioral therapy to effect behavioral change, not to “cure,” creates an internal contradiction in Colorado’s treatment scheme. According to opponents, this contradiction creates a system that prevents offenders from benefiting from treatment and re-integrating into society as functioning individuals who have learned to manage their behavior.

DORA staff could not reach an evidence-based conclusion on the efficacy of the “no-cure” treatment approach based on available resources. However, a thorough study of this approach should be conducted as part of the recommended study of the efficacy of the standards. Indeed, it appears that the standards and the “no-cure” philosophy may be inextricably linked.

In conclusion, given the continuation of the Board, now in its 17th year of existence, the question of the efficacy of its standards is more important than ever. Even if the Board cannot answer the primary question, a rigorous study of the standards might reveal where the standards are weak and if the Containment Model is the best approach at all.

⁵⁸ John Q. LaFond, *Preventing Sexual Violence: How Society Should Cope with Sex Offenders*, American Psychological Association, (2005), p. 82.

⁵⁹ *Understanding Treatment for Adults and Juveniles Who Have Committed Sex Offenses*, U.S. Department of Justice, Office of Justice Programs, Center for Sex Offender Management (2006), p. 3.

⁶⁰ K.R. Hanson, A. Gordon, A.J.R. Harris, J.K. Marques, W. Murphy, V.L. Quinsey, and M.C. Seto (2002), “First Report of the Collaborative Outcome Data Project on the Effectiveness of Psychological Treatment for Sex Offenders,” *Sexual Abuse: A Journal of Research and Treatment* 14 (2), pp. 169-194.

⁶¹ § 16-11.7-103(4)(a), C.R.S.

Beyond the efficacy of the standards as a treatment approach, the standards have been criticized as paying lip service to defendants as individuals. The failure of the standards to address the defendant's post-sentencing rights is labeled as a glaring error.⁶² The Board has formed a committee with the defense community to address these concerns and seek resolution in both policy and practice.

For all of the above reasons, it is imperative that the Board evaluate the effectiveness of its treatment standards and report its findings to the General Assembly.

Recommendation 3 – Require the Division of Criminal Justice to promulgate treatment standards, Lifetime Supervision Criteria, and the requirements to be listed as an approved provider by rule.

The Board is a very powerful entity with the ability to significantly impact the lives and freedom of individuals who fall under the Board's purview. However, the Board's activities, such as the treatment standards, the *Lifetime Supervision Criteria*, and the requirements to be listed as an approved treatment provider, evaluator or polygraph examiner are not subject to a formal public hearing.

In fairness, The Board points out that it has routinely conducted public hearings on standards revisions including the use of video conferencing sites in Colorado Springs, Durango, Greeley, and Grand Junction. The Board's rejoinder is true and its efforts are commendable given that the law requires no such outreach.

However, there are many differences between the Board's voluntary efforts and the recommended promulgation of rules under the Administrative Procedure Act (APA).

As examples, the APA requires that rules be filed with the Secretary of State before a public hearing and notice of the hearing is provided through the Colorado Register. In addition, under the provisions of the APA, citizens may enter formal comments and testimony regarding proposed rules at the rulemaking hearing. Finally, Legislative Legal Services reviews promulgated rules to ascertain, among other things, the promulgating agency's statutory authority to promulgate the rules. This is an important part of the process because certain rules, within a body of rules, may fall outside the statutory authority granted by the General Assembly.

⁶² Phil Cherner (2004), "Felony Sex Offender Sentencing," *The Colorado Lawyer* 33 (12), p. 11. Retrieved on September 22, 2009 from http://www.cobar.org/tcl/tcl_articles.cfm?articleid=3956

Application of the formal process of the APA will improve transparency and allow a thorough hearing on more controversial positions of the Board raised by stakeholders during this sunset review including:

- Use of polygraph. In 2003, the National Academy of Sciences set the median accuracy of polygraphs at 89 percent with a range of 70 to 99 percent. The use of an instrument with such a wide degree of reliability has been questioned by many.
- Use of plethysmograph and Abel Screen. These are invasive, controversial and questionable. Some experts question the reliability of these instruments.

In addition to the above examples, a number of stakeholders, including some mental health providers, object to the philosophy that treatment must be based on a belief that sex offenders are incurable. Again, the requirement to implement such philosophies through formal rulemaking will create a more vigorous debate with all stakeholders provided equal opportunity for input.

Further, The Colorado Sex Offender Lifetime Supervision Act of 1998, contains a requirement that the Board, in collaboration with the Department of Corrections, the Judicial Branch and the Parole Board create criteria for release from incarceration, reduction in supervision, and discharge of sex offenders.⁶³ The General Assembly's intent for creating the Colorado Sex Offender Lifetime Supervision Act of 1998 seems straightforward as expressed in the legislative declaration:⁶⁴

The general assembly hereby finds that the majority of persons who commit sex offenses, if incarcerated or supervised without treatment, will continue to present a danger to the public when released from incarceration and supervision. The general assembly also finds that keeping all sex offenders in lifetime incarceration imposes an unacceptably high cost in both state dollars and loss of human potential. The general assembly further finds that some sex offenders respond well to treatment and can function as safe, responsible, and contributing members of society, so long as they receive treatment and supervision. The general assembly therefore declares that a program under which sex offenders may receive treatment and supervision for the rest of their lives, if necessary, is necessary for the safety, health, and welfare of the state.

⁶³ § 18-1.3-1009, C.R.S.

⁶⁴ § 18-1.3-1001, C.R.S.

The Board created the criteria and the criteria are included as an addendum to the standards. However, some of the criteria or Board commentary contained in the criteria appear to be at odds with the legislative declaration of the Lifetime Supervision Act. As examples, the Board's *Lifetime Supervision Criteria* states:

- Progress in treatment is not linear, incremental, static, nor reliable and must be consistently re-assessed.
- Progress indicated by repetitive testing over extended periods of time may be invalid due to deception, habituation, and socially desirable responsiveness.
- Offenders who indicate that they no longer need any treatment, behavioral monitoring or after care of any kind have **not** (emphasis original) successfully progressed in treatment or completed it. These offenders continue to pose a risk to the community and should not be discharged from lifetime supervision.
- Regarding criteria for successful treatment in prison, the Board requires that the offender must have a plan to establish at least one approved support person.

In analyzing its own criteria, the Board states, “although these criteria are written in a format that indicates what offenders must do to be released, move to lower levels of supervision, discharged or to demonstrate successful progress in treatment, this does not imply that **any** (emphasis added) or all sex offenders on lifetime supervision will be able to meet the criteria for any of these reductions in levels of containment for complete treatment.”

These criteria are extremely important to society and to the offenders who must comply with them. As in the other examples in this recommendation, these criteria should be presented in a public hearing.

Finally, the Board's standards raise significant concerns with members of Colorado's legal community interviewed during the conduct of this sunset review. As an example, offenders in treatment have significant confidentiality concerns.

Consider this scenario: A defendant charged with a sex offense elects to go to trial. During trial, he does not testify. He is convicted, sentenced to probation, and launches an appeal. As a condition of probation, he must participate in sex offender group therapy. If he denies or refuses to discuss the facts of the offense (as they appear in the police reports and according to the victim), he will be sanctioned under the *Standards* for his denial.

Assuming the case is on appeal, no competent counsel would allow the defendant to make incriminating statements in a sex offender treatment group that could be used against the defendant if he is awarded a new trial. In addition, a defendant who testified at trial and proclaimed his innocence would be subjecting himself to a perjury prosecution if he says something contrary in the treatment group. Even defendants who do not appeal risk prosecution for unadjudicated crimes they disclose in treatment. On the other hand, failure to disclose in a group could be a violation of the treatment regimen.⁶⁵

In sum, although the Board makes a good faith effort to develop meaningful policies for the management of sex offenders, the standards, guidelines and criteria created by the Board should be presented to the public and debated through the rulemaking processes established by the APA. Such rulemaking hearings not only give the public access to the process, hearings afford experts the opportunity to provide viewpoints the Board may not have considered. In addition, requiring the promulgation of rules in accordance with the APA creates additional oversight by the legislature that evaluates if agency rules fall within the agency's statutory authority.

Since the General Assembly did not grant the Board rulemaking authority, the logical agency to promulgate the standards, *Lifetime Supervision Criteria*, and the requirements to be on the approved provider list is the Division of Criminal Justice (Division). The Division has limited rulemaking authority,⁶⁶ and the Division is directed to carry out the duties prescribed in Article 11.7, the standardized treatment program for sex offenders.⁶⁷ Therefore, the Division's rulemaking authority can be expanded by the General Assembly to incorporate the various standards and criteria required to be developed by the Board. It follows, then, if this recommendation is adopted, the Board would continue to develop the standards and criteria as required by statute, but it would then present any standards and criteria as well any amendments to the standards and criteria to the Division to be promulgated by rule.

Therefore, to effectuate this recommendation, section 24-33.5-503, C.R.S., should be amended to direct the Division to promulgate rules and regulations to establish the treatment standards for sex offenders, the *Lifetime Supervision Criteria*, and the requirements to be listed as a treatment provider.

⁶⁵ Phil Cherner (2004), "Felony Sex Offender Sentencing," *The Colorado Lawyer* 33 (12), p. 11. Retrieved on September 22, 2009 from http://www.cobar.org/tcl/tcl_articles.cfm?articleid=3956

⁶⁶ § 24-33.5-503(1)(i), C.R.S.

⁶⁷ § 24-33.5-503(1)(l), C.R.S.

Recommendation 4 – Complaints, investigations and discipline of treatment providers should be administered by the Department of Regulatory Agencies.

One of the most important functions of a regulatory board is to investigate complaints against regulated practitioners and to impose discipline upon practitioners who are found to have violated the law. The importance of this regulatory function is reflected in the sunset statutory criterion that directs this review to examine whether complaint, investigations, and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession.⁶⁸

Colorado law provides no clear authority for the Board to investigate complaints or discipline providers. Section 16-11.7-106(2)(d), C.R.S., requires that the Board use information obtained from state and national criminal history checks and a Board background investigation to determine whether to approve a provider for placement on the approved provider list or to continue such placement as part of renewal.

Presumably, this authority extends to the authority to deny approval; although virtually all occupational/professional regulatory boards are granted specific statutory authority to deny.

Beyond denial, regulatory boards typically have an array of disciplinary options including specific statutory authority to receive complaints and conduct investigations. Boards have administrative subpoena authority and the ability to revoke, suspend, or place on probation licensees (or providers in this instance) who have violated the practice standards.

The Board was given no such authority. However, as this sunset review has established, the Board does receive complaints, conduct investigations and discipline providers. The Board has created this authority for itself through the Board standards. Standard 8.000 addresses denial of placement on the provider list. Appendix F, Sex Offender Management Board Administrative Policies, addresses complaints against treatment providers, evaluators, plethysmograph or Abel Screen examiners or clinical polygraph examiners. Appendix F further identifies disciplinary options including removal (typically known as revocation) from the provider list or issuance of a letter of admonition.

This review describes the Board's complaint and disciplinary process beginning on page 26. In addition, the Board has created an appeal process in the standards. Essentially, an appeal would be made of an Application Review Committee decision. Such appeal is made to the full Board.

⁶⁸ § 24-34-104(9)(b)(VII), C.R.S

While the Board is to be commended for its efforts to create a process by which complaints can be registered against providers, the existing process could be greatly improved. Improvements are needed throughout and extend from the complaint stage to the appeal stage. Before examining process improvements, though, two fundamental and potentially fatal flaws exist in the conceptual framework of discipline by the Board.

First, given that the General Assembly grants other boards specific statutory authority to handle complaints and impose discipline, the legality of the Board's process could be questioned and found lacking.

Second, the appeal process is compromised because appeals are heard by essentially the same body that imposes the agency action. A Board sub-committee, the Application Review Committee, makes the determination that is subject to appeal. It is fundamentally unfair to the appellant to have that sub-committee's decision appealed to the very Board of which each sub-committee member is a part.

As part of this sunset review, DORA staff reviewed more than 50 complaints (some complaints contained allegations against multiple individuals such as a polygrapher and a treatment provider). Complaint files reviewed covered the years 2004-2008.

In the sample study, 31 complaints were made by Department of Corrections' inmates. DORA found only five instances in which the Board appeared to conduct any type of investigation.

Some complaints were rightfully not investigated because the complaint did not concern providers. As an example, complaints were submitted to the Board concerning inability to get treatment in prison, an area that the Board cannot impact. However, the Board failed to investigate cases in which the inmate provided the specific standards that were violated and the name of the treatment provider or polygrapher. It is not clear why some type of investigation should not be opened when enough details are provided to establish the possibility that an infraction by an approved provider has occurred.

Many Investigations Are Not Thorough

Of the complaints that DORA reviewed that were not generated by DOC inmates, the Board conducted investigations in 13 instances. Six of the investigations occurred in 2004 and 2005.

The investigations that DORA reviewed tended to be perfunctory in nature. Shortcomings in the investigations included:

- Lack of investigatory reviews of the treatment provider's notes even though such material is not confidential. This material could provide valuable information including application of the standards.
- Lack of interviews with persons who may have personal knowledge relevant to the complaint. Investigations tend to involve taking a statement from the provider only.

One investigation is particularly illustrative of the investigatory weaknesses:

- Board staff insisted that a recalcitrant investigator interview the complainant after checking with DORA and finding that investigations always involve such an interview.
- Inappropriate investigatory conclusions were in the case file in which the investigator remarked that the complainant/offender was a “typical, manipulative, sociopath.” Although the investigator correctly clarified that those comments represented his or her personal opinion, and, by implication that the investigator lacked any credential to make such a diagnosis, such comments are inappropriate in an investigation and could impact the Board’s assessment of the complaint.
- Complaint asserted that the treatment provider questioned why the offender did not commit suicide given his problems. The provider’s response appeared to admit that he or she may have confronted the offender as stated in the complaint. However, the investigation did not continue and failed to determine if, in fact, evidence existed establishing that the conduct of the therapist included suggesting that the offender commit suicide as asserted by the complainant.

Another case file included a letter from a complainant, who was a victim’s rights advocate, expressing disappointment over the Board investigation and the lack of contact with the complainant or the victim.

Yet another stakeholder who is a member of the criminal justice community expressed concerns that the Board appears reluctant to investigate complaints and that a complainant must have extensive knowledge of the system in order to get the Board to investigate. DORA staff experienced this directly when attempting to access the complaint process on-line through the Board web site. A citizen must surf to and through the standards in order to find any information on filing a complaint. Such information, including the complaint form, should be easily accessible on the Board’s main web page.

More citizen frustration may be created because the Board is inconsistent in responding to complaints. As an example, some complaints were rejected because the complainant did not identify specific standards that were violated. In other instances, the Board did investigate although no standards were identified. Further, the Board rejects complaints that include identified standards because the complainant did not provide evidence that the standard had been violated. Surely, it is the role of the Board to gather the evidence if the complainant identifies the provider, the standard(s) violated, and a description of the alleged violation.

Many individuals (including family members) appear to fear retribution for making any type of complaint. Sex offenders and families of sex offenders on parole and on probation appear less likely to complain than those in DOC, and juveniles who are in sex offender treatment appear not to complain at all. This is a valid concern as any type of treatment revocation can lead to swift imprisonment. As an example, staff reviewed one complaint against a treatment provider in which the offender, who was on probation at the time of the complaint, was revoked from probation and imprisoned before the Board investigation was complete. Shortly thereafter, the Board dismissed the complaint.

One solution that could improve the complaint and disciplinary processes is to grant the Board the full range of disciplinary options and increase staffing to conduct investigations. The primary shortcoming of this approach is the cost associated with such changes to the Board's functions. Typically, such activities are cash-funded and there are approximately 300 approved providers to share the costs. Further, costs can fluctuate greatly if the Board is required to litigate.

Fortunately, the infrastructure for complaint handling, investigation, discipline and appeal already exists at DORA and could be used efficiently by the Board for complaints against treatment providers. Recall that treatment providers are required by law to be licensed as a psychologist, social worker, professional counselor, marriage and family therapist or listed as an unlicensed psychotherapist with the appropriate mental health board at DORA.

Each of the mental health regulatory boards already has authority over practitioners with full disciplinary authority. Importantly, DORA's Division of Registrations includes a centralized investigation unit that responds to requests for investigations by DORA boards. Finally, the statutes governing these regulatory boards provide for appeals of final agency actions to the Colorado Court of Appeals, the appropriate appellate body.

The primary argument against this recommendation is that sex offender treatment is different than traditional psychotherapy and members of the mental health boards lack the needed expertise to evaluate the conduct of sex offender treatment providers. This position intuitively seems to make sense but it does not hold up to critical analysis.

Although treatment of sex offenders is unique in many ways, the treatment modality is not incomprehensible to persons of average intelligence and certainly is understandable to mental health professionals who sit on state regulatory boards.

The Center for Sex Offender Management finds that many of the broad goals of treatment are fairly standard, such as addressing denial, identifying and managing risk factors, enhancing empathy for victims, and developing prosocial skills.⁶⁹ DORA staff attended sex offender group treatment and noted that the primary treatment modality is cognitive-behavioral; treatment that professional psychotherapists would understand.

Thus, this sunset review concludes that all complaints against treatment providers should be referred to and investigated by the appropriate mental health regulatory board in DORA. Further, the results of the DORA investigation should be shared with the Sex Offender Management Board. This process will allow for competent investigations, disciplinary action against the practitioner's professional license by the licensing board and will allow the Board to take any action permitted by law against the sex offender treatment provider.

⁶⁹ *Understanding Treatment for Adults and Juveniles Who Have Committed Sex Offenses*, U. S. Department of Justice, Office of Justice Programs, Center For Sex Offender Management (2006), p. 2.

Recommendation 5 – Schedule the Sex Offender Treatment and Monitoring Program in the Department of Corrections for sunset review in 2012.

The Board's standards apply to the treatment of offenders incarcerated in DOC facilities. As of April 8, 2009, 5,083 sex offenders were incarcerated in DOC. This number represents the great majority of known sex offenders in Colorado. To a great degree, then, the efficacy of the standards can best be known by evaluating the treatment outcomes of these offenders. Unlike parole or probation, inmates do not have to participate in treatment. Pursuit of treatment in prison is voluntary. Treatment should be available in prison for a number of reasons including that some evidence suggests that patients who choose treatment are more likely to benefit.⁷⁰

However, the Board has determined that it lacks jurisdiction over the DOC's SOTMP, even though treatment standards 3.600 – 3.650 address treatment of sex offenders within the DOC:

- In general, treatment must conform to standards;
- Treatment must be provided by approved treatment providers;
- Offender must receive offense-specific evaluation if not conducted pre-sentence;
- Treatment should be by male/female co-therapy teams; and,
- Treatment providers and polygraphers should work closely together.

The Board asserts that those standards establish Board jurisdiction over approved providers but not the SOTMP. This distinction appears reasonable in light of the common sense requirements of organizing state government. The DOC mission is complex and oversight by another entity like the Board would be difficult to implement and could be quite likely counterproductive.

In conjunction with this sunset review, DORA received over 60 pieces of correspondence from incarcerated offenders, offenders who progressed through treatment and out of prison, and family members of incarcerated offenders. Some highlights of the communication received include:

- Facility Unable or Refuses to Provide Treatment - 25%
- Lack of Oversight by the Board/Regulations Not Enforced - 23%
- Inmates Terminated From Treatment Unjustly - 29%
- Grievance Process Unfair - 29%
- Quality of Treatment/Therapists - 29%
- Refusal by Parole Board Despite Completion of Treatment/Favorable Recommendation - 21%

⁷⁰ John Q. LaFond, *Preventing Sexual Violence: How Society Should Cope with Sex Offenders*, American Psychological Association (2005), p. 240, citing Winick.

In prison, being terminated from treatment can have serious consequences for inmates since many sex offenders are sentenced to lifetime supervision and must progress successfully through the treatment program at DOC in order to be released into the community. The SOTMP has a policy that, in order to remain in treatment, inmates must participate in treatment. The program also has a long waiting list, and spots in treatment are prioritized for those who are motivated to make progress in treatment. Additionally, the program requires offenders to be compliant outside of therapy, within the general population of the prison, because the treatment providers evaluate progress in treatment by how well a sex offender is practicing on the outside what he or she has learned in treatment.

Lifetime Supervision of Sex Offenders Reports

Currently, the most comprehensive body of information concerning treatment of sex offenders is found in a series of reports titled, *Lifetime Supervision of Sex Offenders*. This report is published annually by the DOC, Colorado Department of Public Safety, and State Judicial Department. This sunset review included a review of said reports for the fiscal years 04-05 through 07-08.

As an example, the *Lifetime Supervision of Sex Offenders* annual report dated November 01, 2008 reported that there is a wait list of 259 inmates for treatment; 280 inmates are reported as having participated in treatment; and 149 inmates are reported as still in treatment.

In a case brought against the DOC, regarding an inmate's termination from the SOTMP, the federal court ruled that incarcerated offenders have a liberty interest in receiving treatment. The court ordered that removal from treatment is subject to due process.⁷¹

Sex offenders are serving more prison time and are the second fastest-growing group of offenders in our prison system. If treatment is effective in reducing sex crimes, then the money spent on it for prisoners is a good investment.⁷²

One study, conducted in 2003, by the Division of Criminal Justice found the Sex Offender Treatment Management Program "to be clearly minimally staffed and that therapists' schedules are so full that therapists literally run from one activity to another."⁷³

Given the court's finding that inmates have a liberty interest in receiving treatment and the number of inmates who reported their inability to receive treatment, and the findings of the Division of Criminal Justice, a sunset review of the SOTMP could reasonably be expected to provide analysis of the effectiveness of Colorado's prison-based treatment program and recommendations for improvement as appropriate.

⁷¹ Findings of Fact and Conclusions of Law at 35, *Beebe v. Stommel*, (D. Colo. 2006) (No. 02-CV-01893-WYD-BNB).

⁷² John Q. LaFond, *Preventing Sexual Violence: How Society Should Cope with Sex Offenders*, American Psychological Association (2005), p. 63.

⁷³ Kerry Lowden and Nicole Hetz, et al, *Evaluation of Colorado's Prison Therapeutic Community for Sex Offenders*, Office of Research and Statistics, Division of Criminal Justice (2003), p. 66.

Recommendation 6 – Require the Board to produce and present an annual report to the General Assembly beginning on December 1, 2012.

The Board may be Colorado's most important resource on the treatment and management of sex offenders.

In June 2009 the Board published a document titled "*White Paper on the Use of Residency Restrictions as a Sex Offender Management Strategy.*" The study was prepared at the Board's initiative to address continuing concerns about residency restriction laws.

The Board publication brought evidence-based research to bear on the question of reintegration of sex offenders into the community and the benefit of residency restrictions as a means of enhancing community safety. The Board is persuasive in arguing that although approximately 30 states have enacted residency restrictions, research shows that such restrictions are, in fact, counterproductive because residency restrictions may destabilize offenders and increase the risk of recidivism.

In particular, the Board found that local jurisdictions in Colorado that have enacted residency restrictions may have created a situation in which offenders fail to register or "go underground." These outcomes, the Board argues, decrease public safety because, among other reasons, the restrictions create environments in which offenders do not have stable housing, secure employment, and positive systems and resources.⁷⁴

Compilation of this type of research is not only useful to policymakers, it provides an added benefit of promoting innovation by treatment providers. Possibly in response to the Board's research regarding re-integration of offenders into the community, experienced treatment providers are already proposing creative solutions to the reintegration problem. The proposal for the creation of a multi-resident facility is an example of solutions based on empirical evidence.

This facility is envisioned as a collaborative, government-supported non-profit initiative to monitor repeat sex offenders. The program envisions rigorous monitoring and treatment of offenders. Residents will go to work, pay taxes and earn money to cover the costs of their lives and management."⁷⁵

⁷⁴ Cathy Rodriguez, *Residency Restrictions: Implementation Considerations for Local Government*, Working Together for a Safer Tomorrow, Board Conference, July 9, 2010.

⁷⁵ The Watch House. *The Watch House Solves: "Where Can Sex Offenders Live?"* Retrieved July 17, 2009, from <http://www.thewatchhouse.org/about.html>

Thus, evidence-based research is a critical component in the development of effective policies to enhance community protection and reduce offenses. To that end, this sunset review recommends that the Board's duties be amended to include a requirement that the Board produce an annual report to the General Assembly. This report should provide the General Assembly with a broad spectrum of data including:

- Impact of treatment;
- Number of providers;
- Number of offenders in treatment (probation, parole, prison);
- Number of offenders who have completed treatment (probation, parole, prison);
- Number of offenders who have had their probation revoked; and
- Number of offenders who have had their parole revoked.

In addition to data describing the landscape of sex offender treatment and management in Colorado, the recommended annual report should aid the General Assembly by providing evidence-based analysis and recommendations regarding existing laws, pending legislation, and legislation that are needed to effectively treat offenders and protect the community.

Regardless of merit, reports that are simply compiled, published and filed do little or nothing to improve government. To avoid this, the Board should be required by statute to present the annual report to the Judiciary Committees of both houses of the Colorado General Assembly.

Recommendation 7 – Amend the statute to allow the Board members to elect the presiding officers of the Board.

The Board is a multi-disciplinary team of experts who meet to determine important matters regarding the treatment and management of sex offenders in the state. Currently the presiding officer (Chair) of the Board is appointed by and serves at the pleasure of the Executive Director of the Department of Public Safety.

The Chair has the following duties on the Board:⁷⁶

- Nominates the Vice Chair;
- Presides over meetings;
- Signs documents and correspondence;
- Calls special meetings;
- Establishes committees and task groups;
- Appoints chairs of committees;
- Enforces ethics and conflict of interest provisions of the Board's bylaws;
- Addresses the media and public; and
- Serves as the chair of the adult advisory board.

⁷⁶ Colorado Sex Offender Management Board Bylaws p. 4.

The Board endorses the Chair's selection of Vice Chair by a vote.

It is unusual for the officers of a regulatory board to be appointed. Most regulatory boards elect the board leadership. While the Board is not typical of regulatory boards, its primary purpose is to regulate the profession of sex offender treatment providers. Other boards that regulate similar professions, including the Board of Medical Examiners⁷⁷ and the mental health boards,⁷⁸ elect the presiding officers of the boards.

As a majority of the members on the Board are appointed by the Department of Public Safety, much of the control of the Board is already determined by the Department. Allowing the Board to elect the Chair would provide the Board with more independence and control. As the Board members are the experts in the field of sex offender management, the members are well suited to determine the leadership and the direction of the Board. Allowing the Board to choose its own leadership would improve Board cohesion, commitment and participation.

Amend section 16-11.7-103(2), C.R.S., to allow the Board to elect the Chair and Vice Chair to serve for two years.

Recommendation 8 - Authorize the Board to collect necessary data from approved providers.

The Board has little data on sex offenders undergoing treatment in Colorado. It seems reasonable that the Board would want to know elementary facts such as:

- The number of offenders in treatment who are on probation and parole;
- The number of offenders who complete treatment; and
- The number of offenders whose probation or parole are revoked because of treatment violations and the nature of those violations.

Such data must be gathered from the providers that the Board approves. There appears to be some ambiguity around the statutory authority of the Board to require providers to provide information.

To correct this problem, the Board should be empowered to require such information from providers, in a form and manner prescribed by the Board, as it deems necessary to carry out the Board's statutory duties.

In addition, the statute should be amended to provide that failure to provide requested information to the Board is grounds for removal of the provider's approval as a treatment provider.

⁷⁷ § 12-36-103(4), C.R.S.

⁷⁸ § 12-43-203(2)(a)(I), C.R.S.

Administrative Recommendation 1 - The Board should regulate plethysmograph examiners and Abel Screen examiners.

In 2008, the Board discontinued its listing of approved plethysmograph examiners and Abel Assessment for Sexual Interest (Abel Screen) examiners. The Board's reasoning for this decision relied on manufacturer training of users as a duplication of the state regulatory function.⁷⁹

The fact that the manufacturer of these instruments provides training to customers does not have significant bearing on the use and misuse of the products subsequent to the training.

Both instruments purportedly measure an individual's sexual attraction to children. The significance of such a finding warrants state oversight concerning use of the instruments.

In sum, the importance of these instruments in the evaluation of sex offenders requires that the Board re-instate its oversight in these areas.

Administrative Recommendation 2 - Seek to amend the sunset review bill to include any technical changes necessary to the statute.

During the course of the sunset review, both the Division and researchers found several places in the statute that need to be updated and clarified to reflect current practices, conventions, and a general update of the statute.

Recommendations of this nature do not rise to the level of protecting the health, safety, and welfare of the public, but an unambiguous law makes for more efficient implementation. The entire statute, including every one of its provisions, is commonly only examined by the General Assembly during a sunset review. Therefore, the Board and the Division should review the entire statute and prepare an omnibus amendment to the sunset review bill which will rectify all identified technical problems.

⁷⁹ *Lifetime Supervision of Sex Offenders Annual Report*, Colorado Department of Corrections, Colorado Department of Public Safety, State Judicial Department (2008), p. 32.