

Advocates For Change



THE ADVOCATE

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ABOUT US

CORE VALUES: Equality – Humanity – Transparency – Trust – Reform – Fairness

VISION: Advocates For Change encourages and promotes educated, positive and judicious changes which benefit our community and society. AFC assists, informs, and educates those who are victimized, those constrained within the justice system, affected families, communities, the legal system, the legislature and others.

MISSION:

- To create a safe and healing environment for all people.
- To promote positive social, legislative, and institutional change.
- To provide information, education, and support to the general public, public officials and legislators.

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HOW THINGS CHANGE

A MESSAGE FROM THE AFC CHAIR

Thru the centuries prisons have been and still are a nightmare. A dungeon with a piece of moldy bread and bad water for diet was how people spent their time. Things are more comfortable in the prisons now but still, it is prison. People still come out with bad teeth, bad health and most certainly mentally damaged. What do they do to people in prison to have them so mentally unstable when they leave?

Two decades ago the legislators decided to fight the gangs and their misbehavior by doubling up the sentence time and putting in mandatory sentencing. Now the legislators see that this is not working and want to make changes. Enter the DA’s and victim advocates speaking loudly about how changes will reduce Community Safety. Statistics don’t prove Community Safety is better by keeping people in prison or on parole/probation for longer periods; just the opposite, it can make people worse.

There are many groups trying to correct the Legislative errors made 20-25 years ago. As we work hard to help you, you too can be involved. Write legislators, newspapers, and the governor, and whatever you do, don’t reoffend. That does not help. As AFC gets stories about really egregious things happening in the system, we try to relay them and get some movement for improvement. The heads of the CDOC departments are trying to turn things around as well. It’s a tough job with unbelievable pushback.

Yesterday, many heads of CDOC departments involved with those with a sex offense met with family and friends of those in the system at the first SOTMP Citizens Advocates Meeting. There was good attendance by the CDOC personnel and advocates, and many good questions and discussions.

AFC keeps trying. We get discouraged as we know you do but we have to pick ourselves up and keep trying. We have to look at the many successes we have had and the awareness of the problems we have brought, (at least at the legislative and DOC management level) by bringing the issues before them. I have learned from some legislators that now is a really good time to get some movement in the legislature. Both sides of the aisle are in agreement that something needs to be done with the SOMB and that their oversight is lacking. I guess the message here is get up, get going, pray, never give up and push ahead always looking for the next possible opening to improve your plight

Carolyn Turner, Chair, Advocates for Change

AFC is all volunteer; no one receives a salary. Conversely, our core Breakfast Action Group (BAG) members cover many of our expenses out of pocket; expenses which keep growing. We at AFC appreciate your support and renewing your memberships or donating on a timely basis. New members are always welcome.

Why We Were Late

For those of you asking why you haven't received a newsletter since December, here is why: frankly, there has been so many interesting meetings, rulings and developments of all sorts that we felt it necessary to wait to publish. In particular, the Sex Offender Management Board (SOMB) was up for its Sunset Review (more on that later) during this legislative session and we wanted to share with you the results of that event. Their review was literally "down to the wire" and was dealt with on the very last day of the legislative session which ended May 11th. As it happens, our delay turned out to be fortuitous as several court rulings affecting polygraphs and other things occurred during that same time. So, apologies for the delay but we believe it was worth it.

No Known Cure is Gone!

On March 18, 2016, the Sex Offender Management Board (SOMB) voted to remove the language "no known cure" from its guiding principles. The language was replaced with "...offenders are capable of change..." This is a huge victory in the treatment and management of persons convicted of a sex offense.

As part of its statutory mandate, the SOMB creates and promulgates the standards and guidelines for how therapists will manage and conduct treatment for those convicted and under supervision for a sexual offense. Parole, probation and the courts also use these standards and guidelines as the basis for most of their decisions regarding how to manage individuals convicted of a sex offense. Some call it the "bible" for the treatment and management of persons convicted of a sex offense. There is also a section in the standards and guidelines which deals with the polygraph examinations and how/when they are administered and the results needed.

The standards and guidelines begin with a list of "guiding principles" which sets the tone and philosophy from which the rest of the standards and guidelines are created. One could say the guiding principles sets the "attitude" for how parole/probation officers and therapists manage their clients. Since their creation, the guiding principles have maintained the philosophy that there was no known cure for those convicted of a sex offense and these individuals should be treated and managed accordingly. Colorado law, as part of its language creating the SOMB, also had this phrase. No Known Cure was the philosophy and attitude which created almost all of the rules, restrictions and guidelines currently in use. Some years ago, at the urging of advocacy groups such as AFC and other concerned citizens, the No Known Cure was removed from the statutory language because, among other reasons, there was no research to support such a philosophy. The SOMB, as part of its current revision of the standards and guidelines, has now caught up with Colorado law.

There was serious debate on these three words both in the legislature and with the SOMB with advocates on both sides of the issue arguing their case. Some argue that therapists, probation and parole officers who have worked for years under the no known cure philosophy will have a difficult time making the transition to this new attitude. At this writing the new guiding principles have yet to be distributed to the respective stakeholders but the news is out there and the changes are coming. The new phrase "offenders are capable of change" WILL BE the new philosophy and guiding principle going forward. It is simply a matter of time.

SOMB Sunset Review

As required by Colorado law, the Colorado Sex Offender Management Board (SOMB) MUST, periodically, report to the Colorado Legislature on its activities. This is called a "Sunset Review" and was most recently done during the just-ended legislative session. Reports were submitted, hearings were held (one went well into the night) and debate was extensive on what changes, if any, should be made to the SOMB, its policies and procedures and when its next review should occur. Amendments were added, debated and deleted to the bill reauthorizing the SOMB to continue. Advocates on both sides of the major issues spoke and were heard. The debate was spirited, the advocates passionate in their opinions and many battles were won and lost during the course of the review. The final bill sent to the governor (not yet signed as of this writing) is excerpted below in **bold** along with a brief discussion.

- Section 1 para (a) of the bill states: **The board shall develop, prescribe, and revise, as appropriate, a standard procedure to evaluate and identify adult sex offenders, including adult sex offenders with developmental disabilities. The procedures shall provide for an evaluation and identification of the adult sex offender and recommend management, monitoring, and treatment based upon existing research and shall incorporate the concepts of the Risk Need Responsivity or another evidence-based correctional model.** The words "existing research" above are significant as they require the SOMB to remove any policies, procedures or guiding principles that are not backed up by existing research demonstrating they are *effective* or *necessary*. There has been significant debate on many of the rules and restrictions which exist for persons convicted of a sex offense and whether or not the rules and restrictions are necessary, effective or even helpful. Now, the SOMB must reexamine all these rules, restrictions and treatment techniques and see if there is existing research to continue their existence. Risk Need Responsivity is the treatment model which must be incorporated into the SOMB Standards and Guidelines unless another evidence-based correctional model is found to be more effective. There is also a section, later in the bill, which makes these same requirements for dealing with juvenile offenders.
- **...the board shall develop a procedure for evaluating and identifying, on a case-by-case basis, reliably lower-risk sex offenders WHOSE RISK TO SEXUALLY REOFFEND MAY NOT BE FURTHER REDUCED BY PARTICIPATION IN TREATMENT...**(capital letters from the original bill). The external evaluations of both CDOC's SOTMP (Sex Offender Treatment and Monitoring Program) and the Colorado SOMB both stated that there are some low risk persons convicted of a sexual offense which would derive NO BENEFIT from participation in treatment. The SOMB has now been charged with the responsibility of creating a procedure for identifying these individuals. The bill does NOT stipulate what should be done with these individuals or whether they should be removed from treatment; only that they be "identified."
- **(II) (A) ONCE THE BOARD HAS APPROVED REVISED PORTIONS OF THE STANDARDS, THE BOARD SHALL MAKE EVERY EFFORT TO PUBLISH THE APPROVED PORTIONS.** Since their creation, parts of SOMB Standards and Guidelines have been added to, deleted from or rewritten as decided by the SOMB. Until now, the

policy of the SOMB appears to have been to wait for the next publication of the Standards & Guidelines for these revisions to reach the necessary "stakeholders" (treatment providers, probation/parole officers, etc.). The last publication of the S&G was in 2011. Since that last publication the SOMB has made significant changes to the Standards & Guidelines (as discussed in the article about "No Known Cure") yet these changes have yet to trickle down to the stakeholders. This clause requires the SOMB to create a mechanism (email anyone?) to disseminate these changes/revisions (ie. "approved portions") WITHOUT waiting until the next publication of the full document.

- **TO REVISE THE GUIDELINES AND STANDARDS..., THE BOARD SHALL ESTABLISH A COMMITTEE TO MAKE RECOMMENDATIONS TO THE BOARD. AT LEAST EIGHTY PERCENT OF THE MEMBERS OF THE COMMITTEE MUST BE APPROVED TREATMENT PROVIDERS.** There has been extensive debate on the composition and diversity of the SOMB in that many of its members represent law enforcement, victim advocacy groups, polygraphers, etc. These members are making decisions about the composition of the Standards and Guidelines as regards treatment and monitoring without the benefit of training as a therapist. This clause was inserted in several places including the treatment and monitoring of both adult and juvenile persons convicted of a sexual offense to ensure that those creating the standards and guidelines and standards are primarily those trained in such work. This same requirement is stated further down in the bill for those with a juvenile sex offense.
- **THE BOARD SHALL COMPLETE A REVISION OF THE GUIDELINES AND STANDARDS TO TREAT ADULT SEX OFFENDERS BY JULY 1, 2017.** Until now, the SOMB had no mandate on when its revision of the Standards and Guidelines must be completed. The current revision is well into its third year with no projected completion date established. The bill goes on to state that if the SOMB cannot complete its revision by the date above, it must present to the legislature the reasons why it cannot do so and set an estimated completion date.
- **THE REVISED GUIDELINES AND STANDARDS MUST BE CONSISTENT WITH THE RECOMMENDATIONS PROVIDED TO THE BOARD IN THE 2014 INDEPENDENT EVALUATION OF THE BOARD'S STANDARDS AND GUIDELINES FUNDED BY THE GENERAL ASSEMBLY IN 2013; EXCEPT THAT, IF THE STANDARDS ARE NOT CONSISTENT WITH THE 2014 INDEPENDENT EVALUATION, IN ITS ANNUAL REPORT TO THE GENERAL ASSEMBLY PURSUANT TO SECTION 16-11.7-109 (2), THE BOARD SHALL DESCRIBE ANY INCONSISTENCIES AND EXPLAIN THE EVIDENCE-BASED REASONS FOR THE INCONSISTENCIES.** A bit of history here: In about 2011, at the urging of advocacy groups and other concerned citizens, the Colorado Legislature created, funded and completed an "external" (an agency not attached to CDOC or Colorado government) evaluation of CDOC's Sex Offender Treatment and Monitoring Program

(SOTMP). The evaluation concluded that while some changes could be made to SOTMP's program, SOTMP was limited in what it could change on its own because of the SOMB Standards & Guidelines. Therefore, an external evaluation was created, funded and completed by the legislature of the SOMB and completed in 2014. This evaluation was evaluated by the SOMB which incorporated some of the changes recommended and rejected others. This clause states that if the SOMB has rejected any of the recommendations in the outside evaluation they must provide **evidence-based reasons** for doing so.

- **Data collection from treatment providers.** The question has been asked many times "are the treatment, rules and restrictions for persons convicted of a sex offense working?" SOMB, to this point, has never been required to conduct data collection to answer that question. Outside research abounds on which programs and rules work and which don't but SOMB has never collected research on the effectiveness of its own policies and procedures. This paragraph compels the SOMB to create a plan to collect such information from treatment providers, polygraphers, evaluators, etc. to make such a determination.
- **FOR OFFENDERS WHO BEGIN COMMUNITY SUPERVISION ON OR AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (2), THE SUPERVISING AGENCY OF EACH ADULT SEX OFFENDER AND JUVENILE WHO HAS COMMITTED A SEXUAL OFFENSE SHALL PROVIDE THE OFFENDER WITH A CHOICE OF TWO APPROPRIATE TREATMENT PROVIDER AGENCIES STAFFED BY APPROVED PROVIDERS UNLESS THE SUPERVISING AGENCY DOCUMENTS IN THE FILE THAT, BASED UPON THE NATURE OF THE PROGRAM OFFERED, THE NEEDS OF THE OFFENDER, OR THE PROXIMITY OF THE APPROPRIATE TREATMENT PROVIDER AGENCY, FEWER THAN TWO SUCH AGENCIES CAN MEET THE SPECIFIC NEEDS OF THE OFFENDER, ENSURE THE SAFETY OF THE PUBLIC, AND PROVIDE THE SUPERVISING AGENCY WITH REASONABLE ACCESS TO THE TREATMENT PROVIDER AGENCY AND THE OFFENDER DURING THE COURSE OF TREATMENT. ONCE SELECTED, THE TREATMENT PROVIDER AGENCY MAY NOT BE CHANGED BY THE OFFENDER WITHOUT THE APPROVAL OF THE COMMUNITY SUPERVISION TEAM, THE MULTIDISCIPLINARY TEAM, OR THE COURT.** This paragraph, in essence, says that persons convicted of a sexual offense can choose between TWO treatment providers instead of being "shotgunned" into one required by their P.O. *unless* this is not feasible for the reasons listed above. There are several other caveats: it must be an SOMB approved treatment provider and it does NOT appear to be retroactive; only for those sentenced after the date of this bill. Once the person convicted of a sexual offense has chosen a treatment provider, that individual cannot change their choice unless approved by the CST, MDT (for juveniles) or the court. So, choose well!
- While the SOMB is compelled to submit reports each year on its activities, the next Sunset Review will be in 2020.

Polygraphs

The polygraph is under attack again! Stories abound of judges not permitting polygraph failures to be the determining factor in probation or parole revocations (not that judges get involved in parole matters) and treatment providers (and polygraphers of course) making statements such as they cannot do good treatment without the polygraph. The courts recently dealt two more body blows to those in favor of the polygraph

Below is an article published on the California RSOL (Reform Sex Offender Laws) website which does a good job of explaining a ruling issued May 10th, 2016 by the 10th Circuit Court of Appeals (which has jurisdiction over Colorado). This ruling is hereinafter referred to (but not in the article) as the "Von Behren's decision":

The 10th Circuit Court of Appeals issued a decision today stating that a registrant's Fifth Amendment right to remain silent was violated when the government sought to return him to prison because he refused to answer questions regarding his sexual history during a polygraph exam. The questions the registrant refused to answer are (1) after the age of 18, did you engage in sexual activity with anyone under the age of 15, (2) have you had sexual contact with a family member or relative, (3) have you ever physically forced or threatened anyone to engage in sexual conduct with you and (4) have you ever had sexual contact with someone who was physically asleep or unconscious? The court noted that the registrant's affirmative answer to any one of these questions could have been interpreted as a confession of illegal conduct. The court also noted that the government's threat to revoke the registrant's probation for properly invoking his Fifth Amendment privilege is the type of compulsion the government may not impose. The court further noted that an individual is compelled "as soon as the government threatens him with a substantial penalty". In the case, the registrant was required to successfully complete a sex offender treatment program mandated by the Colorado Sex Offender Management Board. The registrant was required to sign an agreement that included a requirement to take a sexual history polygraph and allowed his treatment provider to report any sexual crimes discovered during the polygraph exam to appropriate authorities. When the registrant refused to answer sexual history questions during his polygraph exam, the treatment provider expelled him from the mandatory treatment program. This expulsion, in turn, subjected the registrant to potential revocation of his supervised release and a prison sentence. In its decision, the court noted that the terms of the sex offender treatment agreement were non-negotiable. The court also noted that its decision was based in part upon the registrant affirmatively asserting his Fifth Amendment right to remain silent during his polygraph exam. As a result of this decision, the registrant is not required to answer questions regarding his sexual history during a polygraph exam.

Two days later the Colorado Supreme Court issued a decision (Roberson) which stated that the defendant had a right to refuse, on 5th amendment grounds, to answer a question on whether or not he had viewed child pornography while on probation. It was a narrow decision and the CSC sent it back to

the district court to answer other questions about the maintenance polygraph and what are acceptable and unacceptable questions but the ruling did make clear that a person's probation could not be revoked for taking the 5th. In a related decision, the CSC ruled in Ruch that a defendant did not have the right to refuse sex offender treatment on the grounds of the 5th amendment. The court said that since the defendant had not yet been asked any incriminating questions at the time of his admission to the program, he did not have the right to refuse treatment. Another question left open by the courts was whether or not a treatment provider had the right to terminate someone from treatment as a result of their taking the 5th.

It will take some time for the SOMB, polygraphers and treatment providers to study the ramifications of these decisions. As you might guess, there are serious monetary as well as treatment issues at stake here and some will cling to whatever they can to keep themselves in the game. As usual, stay tuned.

Citizens Meeting

The first annual Citizen's Meeting specifically dedicated to the issue of sex offenses was held at the Women's Prison. This meeting, the first for a specific area of interest, was scheduled and dedicated to families and advocates of those with a sex offense. AFC and other advocate groups provided questions that were answered by Department of Corrections personnel. As the questions were answered, the audience was able to ask for further information on the topics being discussed. After the formal part of the meeting, the audience was invited to talk to the various representatives from DoC. This meeting is an opportunity to express concerns and learn from those that work in the department.

The meeting was very well attended by the many advocates who are interested in how things work and offering suggestions for changes that might work more effectively. In August there will be an advocates-specific meeting with the Parole Board where we hope to learn more about how that system really works.

AFC Meeting with the Parole Board

On Wednesday, March 2, 2016, AFC had the opportunity to meet with the Parole Board for one of their training sessions. There were five members of the Parole Board present along with some of their administrative people. AFC had nine members present. After introductions by the Parole Board, AFC members introduced themselves and each individual discussed issues important to them. AFC expressed the desire to learn from the Parole Board and in return AFC was able to educate them.

One member stated the fact that it wasn't AFC's objective to have everyone released but to give everyone fair treatment at the parole hearing. An issue addressed by AFC was the Lifetime Supervision Act and the intent of that law. It was explained that in the process of writing the LSA and the transcripts of the conversations leading to the bill, the intent was for individuals sentenced to prison under this law to go to prison, have treatment and be released at their bottom number.

We explained that this isn't happening. People wind up staying for many, many years past that bottom number.

The Parole Board considers housing and employment as another consideration for release to parole. AFC explained that with this population these two requirements by the Parole Board were hard to come by. Unless there is family or friends to support this process, most people returning to the community will need to do the work after release to find employers who hire felons and apartments with owners willing to rent.

One of our members is greatly concerned that so much emphasis is put on having treatment while in prison. The question asked and not yet adequately answered is "If people have to attend treatment classes after being paroled, why is it necessary to have treatment in prison?" This would equate to people on Probation only going to treatment on the outside. The results are the same.

Many issues were raised about the difficulties of parole for people in this population. Another topic that was unclear to AFC was about parole of an individual being "tabled." This means a certain requirement must be met before parole can happen, such as having housing prior to a parole decision. There were concerns raised about Case Managers not informing an inmate about being tabled and what that might imply.

The members of the Parole Board were very gracious to AFC and the dialogue was beneficial for both parties. Mr. Joe Morales, Parole Board Chair, was grateful for our participation and would like to meet with us again to pursue "Next Steps". This was a very welcome opportunity to express the concerns of so many and to work toward changes that might be beneficial to the parole process.

Parole Hearing Tapes

You can request your Parole Hearing tape by contacting Advocates for Change with your name, DOC #, Facility, Date and Time of the hearing. The charge for the tape is \$25.00 which must be included with your request. As appropriate, AFC may share valid concerns with the Parole Board. Please understand that perceptions may differ and AFC makes no agreement that any particular tape will be shared with the Parole Board.

Plans for Monthly Cost Survey

In an effort to better understand the financial costs required of those individuals who have been convicted / adjudicated of a sex offense, Advocates For Change (AFC) is in the process of developing a questionnaire for completion by registered citizens, or their family members, who are currently under supervision in Colorado. The survey is an effort to fill the void related to the lack of complete and accurate information presently available regarding the direct and collateral financial costs of a sex offense conviction / adjudication.

Plans are underway for two versions of the cost survey to be available on the AFC website in the immediate future. One version of the cost survey will be offered for online completion

and the second version of the cost survey will be available in PDF format. It will be possible for the PDF version to be printed, completed and returned to AFC via email or snail mail.

The cost questionnaire will take approximately twenty minutes to complete and does not require you to provide your name, only the name of your SOMB approved treatment provider / agency and phone / computer monitoring agency, if appropriate. The information collected will be reported solely in the aggregate, e.g. totals, averages, ranges.

AFC is looking forward to utilizing the information the cost survey will provide in its work to better advocate for those who have been convicted / adjudicated of a sex offense and their families.

Please watch the AFC website for the launch of the cost survey. For those who receive AFC Goggle Blasts, you will be notified via email of the launch of the questionnaire.

Email Addresses

Too often we hear from our membership that although they have been informed of recent court cases, rulings, etc., their supervision team members (P.O.'s, therapists, etc.) have not. In our continuing effort to educate people on the issues we care about, AFC will create an email list of probation officers, parole officers, treatment providers and individual therapists. AFC will then use this list to notify the above of recent court rulings, articles, SOMB revisions and other information we feel will better assist them in their work. AFC is asking its membership to send emails to us at advocates4changeafc@gmail.com with the email addresses of these individuals. Our membership deals with probation/parole officers and therapists on a daily basis. Send us their email addresses so we can put them "in the loop" of information.

Editorial Policy

The Advocate is published by Advocates for Change. We provide information on our efforts to affect change in legislation, treatment, and re-integration into the community, primarily for those who have been convicted of a sex offense. Nothing offered by AFC is intended to be legal advice, and any information provided should never be a substitute for obtaining counsel and/or conducting your own research.

Submissions from inmates/offenders, parolees, and members, are encouraged. Please limit articles to 300 words. The editor reserves the right to publish all, part or none of the contributions submitted. Send contributions for publication and/or comments on the newsletter to: Advocates for Change, Newsletter Editor, PO Box 103392, Denver, CO 80250.

PLEASE JOIN US

Membership Fee is \$20 for family membership, \$5 per year for returning citizens, and 8 stamps for those on the inside. Any additional donations are gratefully accepted.

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Please feel free to share an application with a friend or a family member. Call 720-329-9096, if you have any questions or comments.

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