

Chapter 4 – Evaluation, Child Contact Considerations, and Sentencing

In Colorado, when a person is convicted of a sex crime, several things usually happen.

- Your loved one participates in a sex offense-specific evaluation
- Limits are placed on your loved one’s contact with children
- Your loved one is given either a determinate or indeterminate sentence.

This chapter addresses each of these topics.

Key Terms

Sex offense specific evaluation - a formal process that a person with a sex offense must undergo to provide information to officials about that person’s risk and sex offense treatment needs.

No Contact with Children - upon conviction, individuals with a sex offense may not be allowed to have contact with any children, including their own children and siblings under the age of 18.

Own minor child - a person’s biological child or a child with whom there is a parental relationship.

Determinate vs. indeterminate sentence - sentences given to a person convicted of a sex crime can be for a set number of years or for an amount of time that can last up to a person’s lifetime

Sex Offender Management Board (SOMB) Standards and Guidelines - rules, written by the SOMB, that sex offense-specific treatment providers must follow under Colorado law. Probation and parole officers use these rules as guidelines.

Familial association - the idea that certain relationships, such as parent-child, are so important that they may be entitled to special protection under the Constitution.

Community Supervision Team (CST) - team made up of a probation or parole officer, treatment provider, polygraph provider, victim representative and others who provide supervision and support to the person with a sex offense.

4.1 Evaluation

When a case goes to trial, there is usually a delay between a guilty verdict and a sentencing hearing. The delay may be one to two months (or more) depending on the case and local practices. Typically, the judge will order the probation department to prepare a Presentence Investigation Report (***PSI*** or ***PSIR***) to summarize information about your loved one. The PSI may include recommendations for the sentence. As part of the PSI, the judge will also order a psychosexual evaluation (***PSE***, also known as an offense-specific evaluation or ***OSE***, sex offense-specific evaluation or ***SOSE***, or ***SOMB eval***) if an

individual was convicted of any counts that are sex offenses, or was previously convicted, **adjudicated**, or completed a **deferred judgment** for a sex offense.



Sometimes psychosexual evaluations and specific-issue polygraph examinations are done before conviction when a plea bargain is being considered.

The evaluation is a formal process that involves a clinical interview, psychological testing and questionnaires. During the evaluation process, the evaluator works with your loved one to assess initial treatment needs (issues that may have played a role in offending behavior), risk of re-offense (a statistical process using known client behaviors), and responsivity (how to tailor treatment interventions to the client's learning style, cultural background and strengths). This process can take place over several meetings or in one full day with a listed **SOMB evaluator**. The evaluator will use a structured process for the client to participate in the evaluation.

Evaluators are tasked with creating an accurate report that will assist with future treatment planning. Individuals will have an opportunity to discuss their offense (this may be the one time to discuss their perspectives of the offense with the criminal justice system). Additionally, clients will discuss their social history (childhood to adult life experiences) and sexual history. That will help the evaluator better understand how your loved one views their life, makes decisions, and communicates with others. The evaluator is also required to put in information about your loved ones' family associations and parental roles. All of this information is written in one report to assist the legal system with consequences for the offending sexual behavior and develop future treatment planning.



Alert

Your loved one's attorney can provide legal advice to your loved one on whether or not to participate in the PSI and/or PSE or decline to answer any questions based upon the constitutional rights to remain silent prior to and at a sentencing hearing.

Because evaluators are mandatory reporters, clients should seek legal advice from their attorney about whether or not to participate in all or parts of the evaluation that may be self-incriminating.

The purpose of the SOSE is to be a starting point for court decisions, treatment, and supervision. Evaluators are required to include information about risk factors in their report. The first risk assessment is considered to be a preliminary one, because a person's risk factors can decrease or increase over time.

Family Impact:

Individuals are required to pay for their evaluations. If an evaluation is requested by an attorney, it will be paid for with private funds. If the evaluation is conducted through probation, your loved one must still pay for the evaluation as part of their court ordered fees. In either case, family members might be asked to help with payment, if their loved one needs financial help.

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For loved ones who are granted probation, the judge will consider the evaluation results when making decisions about child contact and probation conditions. These decisions can have big impacts on families, especially if loved ones are allowed to stay in their own homes. See also 4.3 Sentencing.

In the beginning, the conditions of probation will be very restrictive, no matter what the evaluation report says. More information about probation conditions is provided in the Probation section (Section 6.2) of this guide.

What You Can Do:

The most helpful thing that families can do for their loved one is to maintain a supportive attitude during this part of the process.



TIP: If you have documentation, records or background information that might be relevant to the PSI or PSE process, talk to your loved one or his/her lawyer about whether to share this information.

The report contains sensitive information and is part of your loved one's confidential records. Even if you help to pay for the evaluation, the results of the evaluation will not be shared with you before the sentencing and possibly may never be shared with you.

Where to Find Help and Answers:

You can learn more about the official requirements of the sex offense-specific evaluation by going to the **SOMB Standards and Guidelines** (Section 2.000) which can be found on the internet. You may be able to find out more about how evaluation results are used by talking with your loved one's lawyer or contacting advocacy groups listed on the front inside cover of this guide.

4.2 Child Contact Considerations at the Time of Sentencing

No Contact with Any Child under the Age of 18, Including One's Own Children

One of the most difficult things that many families face is when loved ones with a sex offense are not allowed to have contact with any children, including their own children and siblings under the age of 18. Most decisions relating to contact with an individual's own minor child(ren) or siblings are made by the court. These restrictions usually occur through a court order, although other entities (e.g., the parole board, prison facilities, and treatment providers) may restrict child contact or ask your loved one to voluntarily stop having contact.

Constitutional Right to Familial Association: The law treats some categories of minor children differently based on the constitutional right to **familial association**. The Court makes the finding regarding whether a familial association exists. Some individuals may be allowed to have contact with their own child or minor sibling at the time they are sentenced by the court. Others will not be permitted to have contact because the court has found a potential risk to the minor child or sibling.

If someone is permitted to have contact with their **own minor child**(ren), it does not mean that person will be allowed to have contact with other children. As an example, even when loved ones are allowed

to live with their own children, they may not be able to attend school or extracurricular (e.g., sports, music) events with their children, host their children’s friends at the home, etc.

Importance of Risk Factors: It is important to understand that every case is different and the court is looking for the presence of **risk factors** (serious reasons) to decide whether or not individuals can have contact with their own children or minor siblings. For example, if a person has sexually abused one of his or her own minor children, contact with other minor (non-victim) children most likely will be prohibited. It is also important to know that your loved one may need to participate in additional assessments and/or polygraph tests to address any concerns the court may have related to child contact. In this case, your loved one will have to pay for these additional assessments.



Alert

It is important to know that the court may restrict your loved one from having contact with children, even when the crime of conviction does not involve a child.

Required Sex Offense-Specific Treatment in Colorado: In Colorado, there are specific laws that provide guidance to the courts for sentencing a person who has been convicted of a sex offense. Typically, your loved one must participate in court-ordered treatment (i.e., therapy) that is designed for someone who has committed a sex offense. The treatment agency will have its own specific rules and restrictions related to child contact that your loved one will be required to follow.

Conflicts Regarding Restrictions on Child Contact

Court and various agencies can impose restrictions on child contact through several different ways. The terms of these limits may be different from each other.

No contact with children requirements may be imposed by any one or more of the following:

- Court orders including
 - Bond conditions,
 - Mandatory Protection Orders, and/or
 - Probation conditions
 - Family court orders/conditions
- Parole directives
- The treatment contract with the SOMB sex offense treatment provider
- Facility wardens or **Sex Offender Treatment Monitoring Program** staff at the Department of Corrections



Alert

If there are inconsistencies between any of these restrictions, your loved one will be required to follow the strictest rule. Clients may wish to consult a lawyer for guidance on seeking modifications or changes of any *no contact with children* restriction.

No Contact with Other Minor Children

Once sentenced, individuals will not be permitted to have contact with other minor children if they are not currently serving in a parental role for those children. As your loved one progresses through treatment and probation or parole supervision, the child contact restriction may be adjusted or removed, if your loved one has met certain criteria set forth in the SOMB Standards.

Families should know that the timeline for any changes to allow contact are based on your loved one's behavior and depend on your loved one's progress in treatment and supervision. At any time restrictions may be increased or decreased. Every person is different and will have varying experiences and outcomes. If not modified during community supervision, the no contact with children restriction will end when your loved one's sentence is finished (including any period of parole). This is true even if your loved one is still on the sex offender registry.



Alert

Strictly speaking, once your loved one's sentence is discharged (finished) the *no contact* provisions no longer apply. However, **some municipalities and states have restrictions on child contact for individuals on the *sex offender registry* which will continue after supervision is finished.**

It is important to keep in mind that the rules restricting child contact are not the same nationwide. Therefore, if your loved one leaves Colorado and is accepted into supervision under Interstate Compact in another state, the restrictions on child contact may vary depending on the laws of that state.

Family Impact

Restrictions on contact with one's own child can be the most impactful restriction that people with sex offenses and their families experience during the course of community supervision and treatment. Families may face separation for a long period of time until the **Community Supervision Team** deems it appropriate and safe for contact with one's own child to occur before families are reunited.



TIP: The no-contact-with-children rule can have far-reaching effects:

- Where and with whom a loved-one is allowed to live, which may require setting up and supporting multiple households
- Who can visit, write, call, or otherwise interact with an individual inside the Department of Corrections or Community Corrections programs
- When/how your loved one is permitted to do tasks such as grocery shopping, getting a haircut, seeking medical care
- How an individual plans for foreseeable needs such as using a public restroom
- Whether your loved one can
 - attend public events such as concerts, movies, sporting events
 - go to public places such as restaurants, parks, recreation centers that may be frequented by children
 - date or marry individuals with minor children
 - attend family/friend events such as holiday dinners, Halloween, weddings, funerals, graduations, births

What You Can Do

Supporting your loved one while dealing with *No Contact Restrictions* can be challenging. Here are some ideas to consider.

Obtain as much information as you can about what the restrictions actually mean and how they will impact your family. It is okay to ask questions and seek examples about the things you do not understand. Request a copy of the Court Orders (such as bond restrictions) to read or ask your loved one's attorney to review the Orders with you. If you have concerns about any of the conditions, these concerns should be handled by your loved one's attorney.

Inform others who could be impacted by the child contact restrictions your loved one must follow. These people could include family members, friendly neighbors, family friends, and extended family members. Explain to children in the family why your loved one is restricted in contact with them. You may want to adjust your explanation to the age and relationship of the children to your loved one.

Here's one possible example: A mother explains to her toddlers that the reason that someone they love isn't living with them is that the person broke some rules and had to go to adult time out for a while. Another explanation to older children might be that their grandparent hurt someone and has to spend some time in jail. You must decide what information you feel your child(ren) should have and how best to tell them.



What Do You Say?

My adult son was sent to prison to serve an eleven year sentence for sexual assault when his son was only 4 months old. I maintained contact with his ex-wife and with our first grandchild. As my grandson got older he wanted to know where his dad was and why his dad was in prison.

I thought it was important to be on the same page as my grandson's mother. We agreed that she should determine when and how much my grandson should know. So, my response to his questions about his dad was always to tell him to ask his mom...and then I would let her know that my grandson had questions. I did talk about his dad when he visited, and when appropriate showed him pictures that his dad took of him when he was four months old.

--A Grandmother's Story



TIP: No Contact – When family members disagree:

The question of who should have contact with minor children can split a family. When family members disagree about who can and should have contact with the child(ren), you may wish to consult an attorney to see what options are available. Some family members might also find it helpful to speak with a licensed family therapist, who has experience in this area.

When your loved one is in treatment, consider signing up to be an **Approved Supervisor.** (See Approved Supervisor criteria in the SOMB *Standards and Guidelines*) For some situations, your loved one may be able to obtain an Approved Supervisor and **Safety Plan** that will permit exceptions to this rule, with guidelines for how to act. It may possible to obtain approval for limited contact such as by letter or telephone. These rules are made on a case-by-case basis.

Where to Find Help and Answers

- If the documents are available, read the bond conditions, written orders, and contracts that your loved one has signed. These can be obtained through your loved one or possibly through the court or through your loved one’s attorney.
- Loved ones may wish to consult an attorney about specific children, if they are in a parental role with the children and wish to have contact. For instance, a grandchild may or may not fall into this category.
- If your loved one is under supervision by pretrial services, probation or parole, ask the supervising officer for clarification about restrictions. Remember, the job of the supervising officer is to enforce the conditions that the court has ordered.
- When your loved one is in treatment, ask the SOMB therapist for clarification on issues that impact the family

4.3 Sentencing

After conviction by trial or through a plea bargain, your loved one will be sentenced during a sentencing hearing. The type of sentence (determinate vs. indeterminate) will depend upon the crime of conviction. The person you care about could be sentenced to probation, parole, community corrections, jail or Colorado Department of Corrections (prison), or some combination of these. Each of these outcomes can have different impacts on individuals and on entire families.



Alert

If your loved one has been convicted of a sex crime, there can be a delay of several months between the conviction and the sentencing hearing. Upon conviction, bail bonds expire. And if convicted of certain crimes, your loved one will be denied bail. In this case, your loved one may be required to spend this time in county jail. Each jail has its own rules about visits, putting money on your loved one’s account, etc.

If they have not done so already, family members may want to use this time to help their loved one put things in order. As a rule, it is a bit easier to get things done for loved ones while they are in jail than when they are in prison.

Types of Sentences – Determinate vs. Indeterminate

Colorado has **determinate** and **indeterminate** sentences for sex crimes. The type of sentence the judge must impose depends on the crime(s) of conviction. An indeterminate sentence is required for certain felony sex crimes with a date of offense after November 1, 1998 under *Colorado’s Lifetime Supervision Act* (LSA).

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- A determinate sentence is a sentence to a fixed number of years, such as “five (5) years.”
- An indeterminate sentence requires a minimum sentence but can be continued for the rest of a person’s life, such as “eight (8) years to life.”



TIP: Indeterminate sentences can be hard to understand.

Here are two examples of indeterminate sentences.

Indeterminate Probation:

If probation is imposed under the Lifetime Supervision Act (LSA), the term such as “ten (10) years to life” may be imposed. This means the probationer (the person on probation) must be on probation for at least 10 years, and could be on probation for more than 10 years. If the probationer has not had probation revoked and has not been resentenced to prison, after 10 years of supervision, the judge will decide whether to end or continue the probation. If probation is continued, the probationer stays on probation. The person will come before the judge again later and the judge will revisit the decision. However, it is possible that a person could be on probation for the rest of their life.

Indeterminate Prison and Parole:

If prison is imposed under the LSA, a sentence of, for example, “eight (8) years to life with twenty (20) years to life parole” means that after 8 years in prison, the parole board can decide whether to release the person onto parole or keep the person in prison longer.

If parole is granted by the parole board, the person must then complete 20 years on parole before the parole board can decide whether to end parole or keep the person on parole. If the parole board keeps the person on parole, the parolee will come before the parole board again later and the parole board again will decide whether to terminate or continue parole.

The Sentencing Hearing

If there was a trial ending in a conviction, both the prosecutor and the defense attorney will revisit the major points of the trial at the sentencing hearing. If your loved one has taken a plea bargain, the judge has the ability to reject the plea bargain, change the terms of the plea bargain, or accept the plea bargain as recommended by the district attorney. Both the prosecutor and the defense attorney present information to the judge which would have been provided if there had been a trial.

During the hearing, various individuals may be given the opportunity to make a statement:

- Victims have the right to make a statement.
- A parent or guardian of a minor can make a statement.
- Your loved one will be given the opportunity to make a statement.

The judge will make a decision based on the limits set by law and the judge’s assessment of the case. The sentence is then imposed.

If the sentence includes probation, your loved one will be instructed to report to the probation office that day for processing. If the sentence includes incarceration in, your loved one will be lead away from the court room in handcuffs to begin the sentence immediately.

Family Impact:

For many family members, the sentencing hearing and the time immediately following sentence are when reality sets in. These are extremely stressful, emotionally draining, and confusing times for family members.

For those who already have sat through an emotionally exhausting trial, the sentence hearing is a shortened replay of the trial with a known outcome. For family members who have not gone through a trial, the sentencing hearing may come as a shock. Family members may hear statements with disturbing details from the prosecutor that they have not heard before. In either case, the addition of the victim(s) statements adds to the pain of family members.

If your loved one is granted probation, what can be a long and difficult journey is about to begin. In most cases neither your loved one nor family members will have any idea what to expect. You and your loved one will be thrown into new and confusing territory, with strict rules and conditions applied to people convicted of sex crimes. Your loved one is expected to comply with all conditions immediately.

If the sentence involves incarceration, watching your loved one being led away in handcuffs can be a gut wrenching experience. For many family members whose loved one has never been convicted and sentenced to prison before, there is fear of what will happen to their loved one in prison. Family members fear for their loved one's safety. And family members fear for the future of their family and how others will treat them.

In the case of a prison sentence, family members may have to deal with their loved ones' finances, such as loans, car payments, selling of house, possible divorce proceedings. All of this starts immediately at sentencing. Extremely limited communication can make this situation very difficult, especially if there was no pre-planning.

What you can do:

Attending the sentencing hearing is a way that you can show support for your loved one. But recognize that it may be too difficult for some family members to be present at the hearing. Each family member may wish to write a letter to the judge, in support of your loved one. This may be particularly helpful if there is a possibility that your loved one will be granted probation. If you choose to write a letter, make sure to run it by your loved one's attorney.

Where to Find Help and Answers:

For details about what to expect at the sentencing hearing, talk with your loved one's attorney. You may be able to talk with others who have been through the process to get a general feel for what can happen. But every situation is different and what others experience can be very different than what you experience.

More information about each of the sentencing options is provided in **Part 2 – Serving the Sentence** of this document.