Resource Guide
for Families of Adults
Accused, Charged or Convicted
of Sexual Offenses in Colorado

Part 1
Supporting Your Loved One
from Arrest to Sentencing

Final Draft
02/23/2019
A NOTE TO FAMILIES: The beginning point in the process is one where you may feel totally alone. No one you know has something like this going on. And it’s the beginning of a process where you often feel the need to hide from friends and families. But in truth, these people may be an important life line for you. You need as much support as you can get.

One source for support is through advocacy groups available in the area. The people involved with advocacy have a long experience in this area and can help guide you, give you information, and be support for your family. The advocacy groups can’t give legal advice but can help you understand what is happening to help you through the process. You don’t have to walk this road alone.

PARTIAL LIST OF COLORADO AND NATIONAL RESOURCES

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<td><a href="http://www.csor-home.org/">http://www.csor-home.org/</a></td>
</tr>
<tr>
<td>PO Box 103392</td>
<td>Susan Walker, M.A.</td>
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<tr>
<td>Denver CO 80250</td>
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<td>AFC Response Line: (720) 329-9096</td>
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<td><strong>Key areas:</strong> links to possible sources of information</td>
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WHO PREPARED THIS GUIDE

In response to concerns raised by family members to the Sex Offender Management Board, a committee was convened to focus on family education, engagement and support. The committee is facilitated by family members and includes: family members, registered citizens, advocates for people with sexual offenses, advocates for people who have been sexually victimized, community and prison-based therapists, probation and parole representatives, and Sex Offender Management Board members and staff.
DISCLAIMERS

LEGAL: This guide does not serve as legal advice. Because sexual offense cases involve complex and technical areas of Colorado criminal law that change frequently, you may wish to consider a lawyer who specializes not only in criminal defense but also has some expertise in handling sexual offense cases.

MENTAL HEALTH: Your family may be impacted significantly by this challenging experience. There will be difficult moments. You are encouraged to reach out to mental health providers who are trained and experienced in working with issues that impact a family in which sexual abuse allegations are present.
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Introduction

When your loved one is accused, charged or convicted of a sex offense and lands in the Colorado legal system, you may feel at a loss as to what to do, how to be supportive, where to go to find answers to your many questions, how to understand the maze of systems your loved one will face, and how to get the emotional support you and your family need. Your family may experience a wide range of feelings. Family members may react differently from each other and their reactions may puzzle you. There are no absolute answers to the many issues that families will face. But this guide is meant to be a starting point.

How to Use this Guide

This guide has been prepared to answer many of your questions, to provide resources, to validate the emotional upheaval that your family may experience, and to guide you as your loved one goes through the legal system. Individuals accused, charged or convicted of a sexual offense in Colorado will face several complex areas of Colorado criminal law. During your loved one’s journey through the criminal justice system, you will be introduced to a great deal of information that may be overwhelming and confusing.

This guide consists of three main parts, plus some additional information:
- Part 1 – Supporting Your Loved One from Arrest to Sentencing
- Part 2 – Serving the Sentence
- Part 3 – Information from System Officials

Each chapter in Parts 1 and 2 is written from a family member perspective. These chapters include
- Key Terms - short definitions of some of the important terms that may be new to you.
- Overview
- Family Impact - What your family may face and feel
- What You Can Do - Opportunities for family engagement
- Where to Find Answers and Help
- More Information (about the system or process)

Each Chapter in Part 3 provides information from an agency point of view.

Additional information is included in Key Terms, the Glossary, Appendices, and Flowchart and Call-out Boxes.

Key Terms: At the beginning of each chapter, Glossary: The legal system is complex and some of the terms and concepts may be new to you, (such as the difference between parole and probation). These will be designated by red italic type throughout the guide. You will find definitions and explanatory notes of these terms and concepts and in the glossary at the back of the guide.
Appendices: Every situation is different. The appendices provide more detailed information about certain topics that may be of concern to some families, but not others.

Flowchart: A simplified flowchart of many of the most common events in the legal system is also at the back of this guide. The actual series of events that people experience may be very different.

Call Out Boxes: Throughout this guide you will find Quick Tips, Alerts, and Personal Stories to help you and your family through this journey.
Part 1

Supporting Your Loved One from Arrest to Sentencing

Chapter 1 – The Arrest

Chapter 2 – Jail and Bail Bond

Chapter 3 – Moving through the Court System

Chapter 4 – Evaluation, Child Contact Considerations, and Sentencing
Chapter 1 - The Arrest

An arrest can happen quickly and without warning. Law enforcement (police officers, sheriff deputies, probation/parole officers, prosecutors, etc.) can arrest a person anywhere and at any time if there is probable cause to believe a crime has been committed by the person under arrest.

This chapter talks about

- Some things that can happen during an arrest
- What happens if there is suspected abuse and neglect of a child or an at-risk adult
- Finding a Lawyer
- More detailed information about the arrest process

Key Terms

**Law Enforcement** – Refers to a large group of people with the legal power to make an arrest or execute a search warrant.

**Mandatory Reporter** – Certain professionals who are required by law to make reports to the police or social/human services when they are made aware of suspected abuse and neglect of a child or an at-risk adult.

**Miranda Rights** – An advisement of legal rights including the right to have a lawyer present and the right to refuse to say anything to the police or other law enforcement officers and not have that silence used against you at trial.

**Probable Cause** – When facts and circumstances within the arresting officer’s knowledge are sufficient to support a reasonable belief that a crime has been or is being committed by the person arrested.

**Warrant** – A written court order

- An arrest warrant is a written court order requiring any law enforcement officer to arrest the person named in the order.
- A search warrant is a written court order requiring any law enforcement officer to search the person, premises, place, property, or thing described in the search warrant and to seize any property described or identified in the search warrant.

**Summons** – A written order or notice directing that a person appears before a designated court at a stated time and place and answer to a charge or charges against that person.

Physical Circumstances of Arrest

An arrest may happen during an interview or appointment with law enforcement, as part of a traffic stop, or anywhere else a person may be located including at work or at home. The arrest can be a traumatic event as it may be startling or unexpected. The arrest may involve force, handcuffs or other restraints, and the use of dogs or military style SWAT teams. It may occur in front of children or other vulnerable individuals, relatives, coworkers and employers, and/or other friends and neighbors. Resisting arrest or becoming combative with law enforcement can result in additional charges.
Friends and family may not find out that the arrest has occurred until after their loved one has been taken to a local jail/detention center. Even then, it may be hours or days before the arrestee (person who was arrested) is able to contact concerned parties. As part of being booked into a jail, an arrestee will typically be separated from his/her telephone, wallet, and other sources of telephone numbers and other contact information. Contact the local jail or the website for the jail for rules regarding contact.

**What Do We Mean by the Term Law Enforcement?**

This term *law enforcement* is used to refer to a large group of people with the legal power to make an arrest or execute a search warrant. Law enforcement includes but is not limited to police officers, sheriff deputies, probation and parole officers, prosecutors. Members of law enforcement may or may not carry a gun or other weapons as part of their job. If you cannot determine whether someone is law enforcement, you may want to ask to see their badge and/or call 9-1-1 to confirm their identity.

**Medical Issues**

The person who is arrested may initially be taken to a medical facility if concerns about that person’s physical or mental health arise during the course of the arrest. Some local jail/detention centers have their own medical departments, while others rely on public medical facilities. If the person has been arrested and taken to a medical facility, the person may be handcuffed or restrained, supervised by law enforcement, and be prohibited visitation or other contacts ordinarily allowed in medical buildings. Once cleared by medical personnel, they will be transported to the local jail.
Family Impact:
At the time of your loved one’s arrest, you may be in a state of confusion and have no idea about what just happened. You may not be aware of the sex offense laws that now have you and your family tied to the judicial system.

Many family members are left asking “What do we do now?” Family members may be experiencing disbelief, anger, fear, or paralysis in making decisions to take steps to care for themselves.

When a person is arrested and charged with a sex crime, restrictions that impact the whole family can begin immediately. At this point, a serious allegation has been made, which could result either in the accused person being restricted from the home or in children being removed from the home for their protection. In addition, items such as computers, cell phones and other personal items may be seized by law enforcement.

The arrest is just the beginning of what is often a long and challenging process. The stakes are high and the consequences can be very severe for those accused and convicted of a sex offense and for those who support them.

If Your Family Member’s Case Involves a Dependency and Neglect Action
When the person who has been victimized and the person who is accused are members of the same family, your experiences may involve the Department of Human Services/Social Services in Colorado. There may be many reasons why this occurs. See Appendix A of this guide for more information about Dependency and Neglect cases.

MANDATORY REPORTERS - Certain professionals are required by law to make reports to the police or social/human services when they are made aware of suspected abuse and neglect of a child or an at-risk adult. Examples of professionals who must report include doctors, nurses, mental health providers, teachers, school counselors, prosecutors, probation officers and victim advocates. These reports may lead to criminal or civil actions.
What You Can Do:

Find a Lawyer for Your Loved One
Choosing a lawyer may be the most important thing you can do for your loved one. You will want a criminal defense lawyer with experience in dealing with sex offense cases. Sexual offense cases involve complex areas of Colorado criminal law.

Public Defender - Your loved one could qualify for a public defender, if certain financial requirements are met or if your loved one is in jail and unable to post bail. To find out more, visit the website of the Colorado State Public Defender at http://www.coloradodefenders.us/ or see the Section on Apply for a Public Defender in Part 2 of this family guide.

Private Attorney - If you have access to the internet, a good place to start is The Colorado Criminal Defense Bar’s website at https://ccdb.org. The Colorado Defense Bar’s website includes a Find A Lawyer feature. On the home page you will see a Find a Lawyer button. Scroll down to the Areas of Practice drop down box to find lawyers with experience in defending those charged with a sex crime.

Another approach is to get referrals from people you trust or people who have been in a similar situation. You might find such people through local advocacy groups listed at the end of this section.

YOU MAY WANT YOUR OWN LAWYER
Be aware - as a family member, you may want to consult your own lawyer. The lawyer representing your loved one is not hired to represent you or your best interests.

You also might want to talk with lawyers on the phone or in person to see who would be a good fit for your loved one’s situation. Most lawyers will not charge for an initial consultation. If you do hire a lawyer for your loved one, remember that no matter who pays the bill, the lawyer is bound to do what is best for the client – the person who is
charged with the offense. That means the lawyer may not be able to tell you certain things about the case, even if you are paying for the lawyer, if it is not in the client’s best interest to do so or if there are other court orders, privileges, or ethical rules that prevent them from sharing information with you.

**Other Potential Lawyers in a Criminal Case** – In addition to a criminal defense attorney, there may be other lawyers involved when a sexual crime has been alleged. Your loved one may have more than one type of lawyer. Other people or agencies may have lawyers.

Types of lawyers can include

- **Civil Domestic Relations or Dependency & Neglect (D&N) Attorneys**
- **Guardian ad litem (GAL)**
- **Prosecutor/District Attorney (DA)**

**When the Defendant Has Multiple Lawyers** - Even when multiple lawyers are representing the defendant in different ways, they will not be allowed to share information with each other without the explicit permission of their client. For example, a criminal defendant who is also a party to a Dependency & Neglect (D&N) case may need to get advice from both lawyers about the rights to remain silent and the consequences of exercising those rights in both the D&N and criminal cases.

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**Take Care of Yourself and Your Other Family Members**

When a family member is accused of a sexual crime, the mental health of family and friends can be impacted. Feelings of confusion, shock, anger, and being powerless are common. When a loved one is arrested you may not be able to talk to that person immediately. As a result, you may not know what to believe, have feelings that are difficult to handle, or do things that may cause you and others more problems.

People wishing to support a loved one who has been arrested may choose to seek legal advice. Even so, it may not be possible to prevent family separation, job loss, illness, money problems, loss of friends, jail, negative feelings, and other issues affecting mental health. Lawyers, police, therapists, and other professionals seek to make sure that victims are protected and that the community is safe. While these professionals may be able to provide you certain information, they may not be able to give you all the answers and the emotional support you need.
Family members can learn about bail, bond conditions, community rules, and create a to-do list. You can get information from the Sex Offender Management Board (SOMB) about treatment and supervision required for a person who is convicted of a sex offense. But you should know that many decisions will be made that are beyond your control and ability to influence. This may leave you feeling helpless and anxious which may impact your ability to work and function.

Try to stay positive as you visit loved ones in jail, see them in Court, hear many opinions, and face tough questions. It will be hard to hear people say harsh things about your loved one. And it will be hard to accept that at times the person you support may not tell the truth, may blame others, or may make excuses. Staying positive will be hard, but going to work and doing things to feel useful may help you through the process.

If your loved one is accused or convicted of a sexual crime, you may become involved in the legal process. You may be impacted by the bond conditions set by the court. When supporting a loved one accused of a sexual crime you may be asked questions about your past. This may bring up difficult memories. You may benefit from talking to a therapist. Helping your loved one may require you help yourself first.

There are actions you can take to help you stay grounded. For example, you can gather information, share your story with people you trust, talk to professionals, and let your extended family and friends know you are in a stressful situation.

It may take a while for you to figure out who you feel you can trust. Pay attention to your thoughts, feelings, and behavior. Know that there are people who understand and can help. Other parents, friends, support groups, and help groups are available (see page 10 for suggested resources). You are not alone. Reach out and you can be supported.

TIP - Family members can seek emotional and mental support.

Some options:
- Talk with people you trust
- Contact support/advocacy groups for individuals accused/convicted of a sex crime (see page x)
- Check in with your Employee Assistance Program at work for counseling
- Talk to your faith-based leader or spiritual advisor
- Rely on your social support system
- Try to maintain balance in your life
- Find stress busting strategies that work for you (for example, engage in regular exercise or guided meditation)

TIP –When talking to professionals about your feelings.

Keep in mind that certain professionals are mandatory reporters. That means anyone who learns case-specific information can be called into Court to testify.

When talking to professionals, speak about your emotions and experiences related to your loved one’s arrest but not the facts of the case. There may be professionals willing to consult on “what if” situations who are not required to report when they are not provided with specific details. Talking to the professional about his or her duties in advance may be helpful.
Where to Find Help and Answers:
In the beginning, you may feel totally alone. No one you know has something like this going on. And it’s during the beginning of a process where you often feel the need to hide from friends and families. But in truth, these people may be an important life line for you. You need as much support as you can get.

One source for support is through advocacy groups available in the area. The people involved with advocacy have a long experience in this area and can help guide you, give you information, and be support for your family. The advocacy groups can’t give legal advice but can help you understand the process to help you through the process. You don’t have to walk this road alone.

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**More about When an Arrest and/or Investigation Can Occur**
An arrest or investigation may occur long after the alleged crime, especially for crimes of a sexual nature as many have lengthy or no statute of limitations. This means charges may be brought many decades after the events in question. Sometimes a long investigation happens before an arrest and sometimes there is a finding of probable cause based upon bare allegations. Occasionally, a new arrest occurs based on previous allegations that did not result in an earlier arrest or trial.
TALKING WITH LAW ENFORCEMENT

Be aware that law enforcement may want to interview you and your family members (this may include your children) as witnesses or sources of information. You may want to consult your own lawyer. The lawyer representing your loved one is not hired to represent your best interests.

Arrest Warrants
Sometimes an arrest is authorized by a warrant obtained by law enforcement in advance. If the warrant includes a bail amount, it is possible for a person to bond out of jail immediately by posting the necessary bail. Occasionally, there may be an opportunity for a person to turn him/herself in on the warrant by reporting to law enforcement thereby avoiding a public arrest.

If there is no arrest warrant, law enforcement may arrest someone first and then must provide a sworn written summary to the courts explaining why they believe there was probable cause for the warrantless arrest. A judge or magistrate will then review the probable cause statement to decide whether it is sufficient to justify the arrest and the continued detention of the person.

This probable cause review occurs when a person first appears before a judge following arrest and is often done at the same time as an initial bail hearing. It is generally a paper review and the judge considers the claims in the sworn statement rather than taking testimony from live witnesses. Local practices vary on how quickly the arrestee will be seen by a judge but it is usually within 72 hours of the arrest. Although not common, a person is sometimes released from custody based on lack of probable cause. If additional evidence is generated to substantiate probable cause, the person may be subject to re-arrest later for the same crimes. If probable cause for the continued detention of the arrestee is found, the court will set a deadline for the filing of formal charges by the prosecutor.

Searches and Search Warrants
Law enforcement officials are allowed to conduct a limited search of the suspect and surroundings incident to arrest but some searches of people, objects, or places require a warrant or the consent of the owner or occupant. Law enforcement may have a search warrant and execute it before, after, or during an arrest. Warrants and other court orders may permit searches of mobile devices including smartphones and computers, residences, vehicles, and even the seizure of bodily fluids and other forensic evidence. They may authorize the seizure of items that belong to someone other than the arrestee.

If someone believes a warrant is invalid or based on false information, the individual should seek advice from a lawyer about whether there is a remedy. However, it may be impossible to stop law enforcement from executing the warrant immediately. If property is seized or damaged or a person is injured during the execution of a warrant, it may be helpful to get legal advice about whether there is any recourse
since it may or may not be possible to sue law enforcement in a civil lawsuit. Questions about the legality of searches should be directed to a criminal defense lawyer.

**Miranda Rights**

Law enforcement may or may not be required to read a suspect *Miranda Rights* at the time of arrest but an arrestee has a right to remain silent and to request the presence or appointment of a lawyer.

Usually, law enforcement is supposed to provide this advisement when a person is under arrest or in the custody of law enforcement and before the person is questioned about a possible crime. If the person refuses to waive his/her *Miranda* rights, all questioning about any criminal behavior must stop.

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**MIRANDA RIGHTS ARE NOT ALWAYS REQUIRED**

There are times when law enforcement officials may not be required to give a *Miranda* advisement.

**Alert**

For example

- when they are talking to someone over the telephone or
- if the person starts talking without being asked any questions.

This is a technical area of law and failure to give a *Miranda* advisement may or may not prevent the government’s use of certain evidence at trial. It will be necessary to get advice from a lawyer to determine whether there are any legal issues related to *Miranda* rights in a specific case.

**Summons**

Although less common in cases involving claims of harm to other people, a prosecution may also be initiated by the service of a *summons* without arrest or the need for a bail. If that happens, the person will be ordered to report to the courthouse at a particular date and time to commence the criminal case. A failure to appear at that time will result in the issuance of a warrant for that person’s arrest.
Chapter 2 - Jail and Bail Bond

When you get the phone call from jail and this is your first experience with the legal system, you will probably be in shock, confused about what to do, and anxious about the safety of your loved one.

This chapter talks about

- 2.1 - Supporting a loved one in county jail
- 2.2 - Arranging for bail bond.

Key Terms

**Bail** – Means a security required by a court for the release of a person in custody set to provide reasonable assurance of public safety and court appearance.

**Bond** – Means a promise entered into by a person in custody by which that person binds him/herself to comply with the conditions of the bail bond.

**Collateral Requirement** – Is financial requirement attached to a bail bond by a judge. The judge may specify that the bond be posted with cash, property, and/or surety (through a bail bondsman).

**Pretrial Supervision** – In some counties in Colorado, the court will order as a condition of the bail bond that a person be supervised by the Pre-Trial Supervision unit, meaning that the person may have to meet with or call the unit as required and follow their rules.

**Protection Order** – In Colorado, at the first appearance in any criminal case, the court is required to issue a Mandatory Protection Order (MPO). The MPO is a temporary court order issued to prohibit an individual from carrying out a particular action, especially approaching or contacting a specified person.

2.1 Supporting a Loved One in County Jail

Your first exposure to the legal system may very well be the phone call you get from your loved in a county jail (in some areas it is called a detention facility). The county jail is under the control of the local sheriff. Jails house inmates serving misdemeanor sentences and pretrial detainees who have been arrested and committed to the custody of the sheriff.

It is important to know that conversations with friends, family, and relatives are usually not considered privileged or confidential. So if you discuss the case with your loved one or other witnesses, you may become a witness in the case and be questioned and/or subpoenaed to court hearings or at trial. Your possessions, including computers and other devices and phone and email records, may also be subject to a subpoena or seized with a warrant.
Kicking into Crisis Mode

Phone Call from Jail
It's a beautiful springtime in the Rockies sort of day when I get a call from my adult son who tells me he's in county jail, arrested for a sexual assault. He sounds panicky and says "his life is over". After three hours of questioning, he is exhausted, desperate, and alone in his cell and has been placed on suicide watch.

What do I do?
As I try to talk him down and reassure him that we will help him, my mind spins out of control. I have no idea what help looks like. No one in our close family has ever been touched by the criminal justice system; never needed a lawyer for anything other than setting up our wills. But I tell him I will rally the family and show up at the county jail to see what can be done. I kick into crisis mode.

I call the only lawyer I know who says he doesn’t handle criminal cases and suggests that my son will be safer in jail where he can be watched than released on bond. I'm not reassured. Fortunately, a family member recommends a criminal lawyer who is contacted and strongly urges the family to secure bond for his release because he believes he is safer surrounded by family. That turns out to be a good call. He takes his case and recommends a bondsman. Family members scurry to round up the 10% of the total bond amount in cash.

Concern, fear, and bewilderment are rampant among the family, as we hover outside the jail. We are in shock. Our world has just been turned upside down.

Coping as a Family
As the news goes public on TV and in the newspaper, family members are not only dealing with their own emotions but also with negative and positive responses from relatives and friends. Our family reacted individually in so many different ways, all normal, I suppose, but it was difficult to go through. These early days in the system are raw, brutal, exhausting, and at times debilitating for family members. Ultimately, a support group and therapy would ultimately be a lifesaver for us as a family.

-- One Mom’s Story
**Family Impact:**
Finding out that a loved one or family member is in jail can be an emotional and confusing time. It can put some families into a state of upheaval. The family member who receives the call may enlist the support of other family members while others may choose to go it alone or keep the arrest within the immediate family. With sex offense crimes, family members may experience shame, denial, self-criticism, and the shunning of the family by others in their social circle.

**What You Can Do:**

**Maintain Contact with Your Loved One in Jail**
During this period of custody in jail, your loved one may be in shock, depressed, or panicked. If you feel you can be supportive, (meaning if you feel emotionally strong enough, are not too angry to deal with the situation, or are not limited by legal matters) it is extremely important for family members to maintain contact with their loved one in jail for your loved one’s mental and emotional health. The longer a person is in custody without support, the more vulnerable that person may be to violence, self-harm or suicide. If your loved one says things like “my life is over” or “I have nothing to live for”, or actually talks of hurting himself, consider asking the jail to put your loved one on suicide watch.

**Where to Find Help and Answers:**
Each county/city jail has its own website with rules of contact, hours for visits, how to schedule visits, and the process for putting money on the adult’s spending account. It is best to check online or in-person at the jail for their rules. For more details, see Appendix B - Searching for a person who is in custody.

There may be a phone number for the jail, but in larger cities you may be put on hold for a long time before you can talk to a person. Keep in mind that some days or certain times of day can be busier than others. Information on the jail’s website may be helpful as well, including how to post bail and information about additional jail booking fees that must be paid before a person can be released on bail.
Legal Matters
1. Has an attorney been retained in case this circumstance occurred and what were the specifics?
2. What is the procedure for finding out why the person was arrested? Is there a bond set? When is the Court Hearing?
3. Does the person have access to a notary?

Personal Matters
4. What happens to a vehicle that is on a meter or parked on the street? Does someone have instructions and a key to take care of this?
5. Does someone have access to bank accounts, power of attorney, personal financial obligations, etc. for this person?
6. What about access to the place of residence to take care of personal property?
7. Are there pets that need care?
8. Has the employer been contacted? What should the employer be told?
9. Who else should be contacted? Where is the contact information for those people?
10. Who is their doctor? Are they on prescription medications?
11. Who can take possession of personal items in jail property, such as cell phone, house keys?
12. Who has access to electronic items, such as a cell phone or personal computer? Are there passwords that limit access?
13. Who is the Go-to-person and what is their phone number?

2.2 Bail Bond
During this period of custody, while the person waits to see if bail has been granted, family members may have contact with their loved one in the county jail.

If your loved one is granted bail, there may be a financial or collateral requirement and the judge may require the person to comply with conditions of pre-trial supervision such as GPS ankle monitoring or urinalyses (UA’s). Sometimes there may be a fee for the GPS, urinalyses tests, etc.

Violation of bail conditions may result in going back to jail and loss of the posted bond. Your loved one may not be allowed to drink alcohol or use marijuana. There may be protection orders preventing your family member from having contact with children or an alleged victim. In addition, violations could result in new criminal charges being filed.

Family Impact:
The impact of the bail/bond process on the family may include providing money to cover the cost of the bond and/or collateral, booking fees, and pre-trial supervision related costs.
Impact may also include being present at a bond court hearing. Family members and supporters are allowed to attend court hearings and are encouraged to do so. This might mean taking time off from work and arranging daycare. There may be many delays in the court and the bond process. It may take several hours or days of your time.

MEDICAL NEEDS

It is important to make sure the court is made aware of serious medical needs to make sure your loved one’s needs are met if they return to jail.

What You Can Do:
At a bond hearing, it may be useful to the defense attorney to know if there are family members and supporters of the accused person in the courtroom. The defense attorney can notify the judge if those individuals can provide security or stability to your loved one in the community, while waiting for the case to come to court. This information might impact the judge’s decision in setting the bail amount.

Additionally, family members can bring documentation of support such as:

- A letter from your loved one’s employer;
- Proof of residence;
- Proof of income; and/or
- Any records related to ongoing medical care, including medications.

Bringing such documentation to the court hearings shows the court your family member has ties to the community. Documents showing that your loved one has stable housing, a job, can maintain sobriety, or will be receiving mental health care, shows the court that your relative will attend the court hearings and stay out of trouble in the community. This information may be important when the court decides what bond conditions to require.

If the full bail amount can be paid to the court, then that person can be released from jail until the court hearing. If the bail cannot be paid, they must remain in custody. Once all requirements set by the court are met and the case is over, then the bail money is returned.

If you cannot pay the bond amount in cash, another option is to get a bail bond company to post the bond and secure your family member’s release from jail until the court hearing. There is a set fee, usually 10% of the bail amount, as well as a collateral requirement. The bail bondsman then pays the court the bail money.

If the accused person fails to appear in court, any cash/collateral is at risk of being forfeited to the bail bond company, even if that individual returns for later court hearings.
If the court orders things like GPS tracking or urinalysis as a condition of bond, your loved one will be required to pay for it. Family members may be asked to pick up these costs if their loved one is unable to do so.

**Where to Find Help and Answers:**
- Most jail or detention centers post information on finding a bondsman.
- The internet is a good place to search for bondsman.
- You can also ask your loved one’s lawyer.

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**TIP – Consider these questions when looking for a bondsman:**

1. Do they have a current bail license?
   Check online at Colorado’s Department of Regulatory Agency.
   https://www.colorado.gov/pacific/dora

2. Do they come recommended from someone you trust?

3. Do they have a good reputation?

4. What locations do they serve?

5. Are they available 24/7?

6. How long have they been in business?

7. How many bonds have they written?
Chapter 3 – Moving through the Court System

The Colorado Court System is complicated and can be confusing, particularly for people new to the legal system. To give family members a better understanding of how the court system works, this section provides an overview of common court proceedings including

- 3.1 - Common court settings (various types of courts and hearings)
- 3.2 - Plea bargain or trial
- 3.3 - If there is a trial
- 3.4 - More information about Pretrial court Processes
- 3.5 - More detailed information about the trial

This chapter is not meant as legal advice, and is not intended to cover all possible outcomes in a case. For specific issues that arise with regard to your loved one please consult an attorney who is knowledgeable in these matters.

Key Terms

Charges – Are the criminal legal accusations being made against your loved one by the prosecutor.

Counts – Refer to the number of separate charges brought against your loved one. Sometimes the same behavior can constitute multiple crimes and therefore multiple counts.

Hearing – Refers to an event at the courthouse where your loved one, his/her criminal defense attorney, the prosecutor, and sometimes the alleged victim will appear before the judge.

Immediate Detention – May occur after a person is found guilty at trial or pleads guilty to a crime. If the judge refuses to or is legally unable to continue the bail bond until the sentencing hearing, the convicted person will be arrested in the courtroom and taken to the jail by a Sheriff’s deputy.

Plea Bargain – Is a contract between the prosecutor and the person accused of a crime. It usually means the accused person will give up the right to a trial and other constitutional rights and the prosecutor will dismiss some or all of the original charges. A judge must approve the agreement.

Sentencing Process – Refers to a series of events triggered by a person being found guilty at trial or pleading guilty to a crime. When the conviction is for a sex offense, there are many steps that happen over several months before the sentence is given.

3.1 Common Criminal Court Settings

The Colorado Judicial Branch houses the Colorado Court System and the Probation Departments. There are 22 Judicial Districts in Colorado. Each district is independently governed and under the purview of their Chief Judge and Chief Probation Officer. The Chief Judge oversees the court proceedings of that judicial district and the Chief Probation Officer oversees the probation department. Typically, the case remains within the trial court and jurisdiction where the charges were filed and the same trial court determines next steps along with sentencing. If at end of the case your family member is found guilty and convicted and the court grants a probation sentence, your loved one will be supervised by the probation department in the jurisdiction in which your loved one was convicted. But if sentenced to
prison under the Colorado Department of Corrections (CDOC), the facility where your loved one will be incarcerated will be determined by CDOC.

**Trial Courts**

**District Courts** hear civil cases in any amount, as well as domestic relations, felony criminal, juvenile, probate, and mental health cases. District court decisions may be appealed to the Colorado Court of Appeals (and for some limited issues, directly to the Colorado Supreme Court).

**County Courts** handle civil cases under $35,000, misdemeanors, traffic infractions, felony complaints (which may be sent to district court), protection orders, and small claims. County court decisions may be appealed to the district court.

**Appellate Courts**

The Colorado Supreme Court is the court of last resort in Colorado's state court system. The Supreme Court decides whether it will further review cases already considered by the Court of Appeals, although it declines to consider most cases. In some instances, the parties can directly petition the Supreme Court regarding a lower court's decision.

The Colorado Court of Appeals is usually the first and only appellate court to review decisions of the district courts, Denver Probate Court, and Denver Juvenile Court. The Court of Appeals also reviews decisions of several state administrative agencies. Its determination of an appeal is final unless the Colorado Supreme Court agrees to review the matter.

**Common Criminal Court Pre-trial Events**

Moving through the court system involves several steps or events:

- Advisement Hearing (Initial Appearance in Court)
- Hearings for Felony Cases
  - Preliminary Hearing
  - Mandatory Dispositional Hearing
- Arraignment

![Typical Pre-Trial Court Settings Diagram]

[Diagram showing the flow of pre-trial court settings, including Initial Appearance in Court, Preliminary Hearing, Bound over for Trial, Arraignment, Plea of Guilty or No Contest, Dismissal (No Probable Cause), Plea of Not Guilty or Plea of Not Guilty by Reason of Mental Disease or Defect, Motion, Begin Trial Process, and Dismissal]
Advisement
At a hearing called an advisement, there are many topics that may be handled by the court. For example, when someone is arrested or charged with a crime they must be advised of certain rights such as the right to counsel and the right to remain silent. This hearing is often the first time the defendant will appear before any judge on the case. The advisement judge may or may not be the same judge who ultimately hears the case.

Using a Public Defender. If the person is in custody, a free lawyer called a public defender may be appointed by the court to represent him/her at this time. Bail bond requirements may also be discussed. If the person was appointed a public defender but then posts bond, if s/he would like to request that the public defender continue to work as his/her lawyer, the person will be required to provide an affidavit under penalty of perjury and information about his/her financial resources to the local public defender’s office so that their staff can determine if the person will still financially qualify for a public defender. A defendant may also hire a private criminal defense attorney at any time.

Hearings Specific to Felony Cases

Preliminary Hearing. If charges have been filed on a felony case, the defendant is often entitled to a preliminary hearing in which a judge hears testimony and decides if there is probable cause for all of the crimes charged.

Mandatory Dispositional Conference (MDC). In some felony cases, the defendant is not entitled to a preliminary hearing. In those cases, the law requires a setting where the parties may begin a plea negotiation process. The dispositional conference allows the court to monitor the status of the case but usually takes no substantive steps.

Court Presiding over the Advisements, Preliminary Hearing, and Mandatory Dispositional Conference. In many jurisdictions, these early hearings are heard by Magistrates are appointed by the judges or they may be heard by County Court Judges. Once these hearings have been conducted, however, felony charges must be handled by a District Court Judge.

Arraignment. An Arraignment is a hearing in which the defendant may enter a plea of guilty or not guilty. No evidence is presented at an arraignment. A plea of not guilty starts a six-month deadline for purposes of the right to a speedy trial although it is common for defendants to waive their speedy trial right later in the process and for the defense to ask that the trial date be postponed so that the criminal defense attorney can do more work to be prepared to go to trial.

Family Impact
The court proceedings leading up to sentencing can stretch the emotional and financial limits of families. While your loved one should be able to get information from his or her lawyer, you may feel left in the dark. Keep in mind that attorney-client privilege extends only to your loved one. It does not extend to you, even if you are the person who is paying for the legal defense. As a result, you may be excluded from meetings between your loved one and his/her lawyer. If you are called on to testify in court, you could be asked about any information that has been shared with you.
Please Wait Outside

The trips to the courthouse were beginning to feel routine. There seemed to be one hearing after another. We knew what time to leave the house, where to park, how to go through security, how to get to the right courtroom, and where to sit in the courtroom.

But today was different. Our son's attorney came out of the courtroom and met us at the door. He told us the judge had written a sequestration order. He said that because my wife and I might be called on to testify in the future, we would have to wait outside of the courtroom. The court did not want us to be influenced by what other witnesses said. This took us completely off guard.

We wanted to be there for our son, in the courtroom, sitting in silent support. Instead, we found a hard bench in the hall, as close to the courtroom as possible and waited for the hearing to end. Since we couldn't be in the courtroom, we wanted to be where our son could see us as he left the courtroom.

We weren't the only ones. Some members of the victim's family had to leave the courtroom, too. But they had a room where they could go to sit in private. When the hearing was over, the rest of the people on the victim's side left the courtroom first. The attorney had warned us that the victim's family would leave first and that we would have to wait in the building until they had left. Even though we tried to look the other way, we could feel their angry stares. It was hard not to glare back, but our son's attorney told us not to do anything that could be considered aggressive.

Finally, our son came out of the courtroom with his attorney. He nodded and smiled when he saw us. It was his way of saying, “Thanks for being here.”

--A Dad’s Story

What You Can Do

During court proceedings, family members may be limited to showing support for their loved one by attending various hearings and court appearances while your loved one works with his or her attorney to resolve the case. Depending on your situation, your loved one’s attorney may encourage family members to attend hearings or urge them not to come. You must make the decision about what feels right for you and your family. Keep in mind that the judge can order that potential witnesses not be allowed in the courtroom, if evidence is being presented. (Also see Section 3.3 If There Is a Trial –What You Can Do.)
Where to Find Help and Answers
Depending upon the nature of the crime, penalties can be severe. For details about sexual offense consequences, please consult an 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 another person’s experience may not be similar to your experience.

3.2 Plea Bargain or Trial
If charges are not dropped, your loved one will face a difficult decision: Take a plea bargain or go to trial. Accepting a plea bargain usually involves pleading guilty in exchange for reduced charges or punishment. The laws governing sentencing for people with sex offenses are very complicated and can be very confusing. For this reason, your loved one should consult a lawyer at the earliest possible time in the process. This is your loved one’s decision to make, but that decision will impact the family.

Family Impact:
The only way a person can clear his or her name is to go to trial and be found not guilty of all charges and all counts against them. However, the outcome of a trial is uncertain. The trial and the time leading up to that trial can take many months or years. When the time frame stretches out, the emotional toll on the family can increase and legal expenses can mount-up.

If the person charged with the sex offense takes the plea bargain (usually for a lesser charge) and the judge accepts the plea agreement, there will be tradeoffs. Accepting a plea bargain may take less time and cost less in legal fees than going to trial. In some cases, felony charges may be reduced to misdemeanors. However, your loved one may be labeled a sex offender, face mandatory sentencing, and most likely be required to register on the Sex Offender Registry. Having a love one on the Sex Offender Registry can have uncomfortable and sometimes very difficult consequences for family members and friends. See Part 2–Chapter 13–Sex Offender Registry for more information.
In addition, by accepting a plea bargain, your loved one will be giving up certain rights to appeal the conviction in the future and may be subject to immediate detention.

Regardless of which path your loved one chooses (plea bargain or trial), the court proceedings leading up to sentencing can stretch the emotional and financial limits of families.

**POSSIBILITY OF IMMEDIATE DETENTION**

Be aware that for some offenses requiring jail or prison time, the law requires that the person taking the plea be taken into custody from the courtroom, immediately after accepting the plea agreement.
**What You Can Do:**

Your loved one may welcome help in putting a back-up plan in place. If your loved one has been in jail, you may have already put some back-up provisions in place. If not, you can talk with your loved one about what needs to be done to take care of things such as a home or vehicle, in the event your loved one is sentenced to jail, community corrections, or prison.

**TIP – Consider these questions, when helping your loved put a back-up plan in place:**

1. Who is the *Go-to-person* and what is their phone number?
2. Does someone have access to bank accounts, power of attorney, personal financial obligations (bills), etc. for this person?
3. What about access to the place of residence to take care of personal property? Or pets?
4. Does someone have instructions and a key to take care of your loved one’s vehicle?
5. Has the employer been contacted? What should the employer be told?
6. Who else should be contacted? Where is the contact information for those people?
7. Who is their doctor? Are they on prescription medications?
8. Who has access to electronic items, such as a personal computer? Are there passwords that limit access?

**Where to Find Help and Answers**

Depending upon the nature of the crime, penalties can be severe. For details about sexual offense consequences, please consult an 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 another person’s experience may not be similar to your experience.

**3.3 If There Is a Trial**

When the trial court sets a date for a case to go to trial, the judge expects both the prosecution and defense to do all they can to be ready to go to trial as scheduled. It is very common, however, for trials to be continued and rescheduled for a later date. A typical felony jury trial in Colorado lasts for most of one work week, although the jury is allowed to deliberate for any amount of time. Some trials take multiple weeks to complete.
The typical stages of a trial include

1. **Jury selection.** Also known as *voir dire*, the attorneys on both sides ask the judge to excuse potential jurors whom they believe will not be fair and impartial.

2. **Opening statements.** Both sides may present an outline of the evidence they expect the jury to hear.

3. **Presentation of evidence and witnesses.** The prosecution presents its case first. Then, the defense can cross-examine the state's witnesses before putting forth its own.

4. **Jury instructions.** At the end of the evidence, the judge gives the jury instructions on the law and how to reach a verdict.

5. **Closing arguments.** Both sides summarize the evidence presented and the points that have been made.

6. **Jury instructions and Verdict.** The jury meets and reviews the evidence in secret during deliberations. If the jury has questions, they will submit them to the judge in writing and the judge may summon the defendant and lawyers back to the courtroom to discuss how to answer the jury's questions. If the jurors can reach a decision, the jury will return a verdict of not guilty or guilty on each count. If the jury cannot reach a decision, usually after additional guidance from the judge, the judge may declare a mistrial on that count, meaning no decision has been reached and the state may try again to convict the defendant in another trial in the next 90 days. A not guilty verdict on all counts means that your loved one is acquitted of the crimes charged and is free to go. A guilty verdict moves the proceedings into the sentencing phase.

7. **Sentencing.** The judge can sentence your loved one immediately after the trial or, more frequently, set sentencing for another date a few months later.

**Family Impact**

By the time the trial date arrives, family members trying to support their loved one have already experienced emotional and financial strain. During the trial, both the emotional and financial strains continue.

Trials can last several days. Family members can be faced with needing time off from work or getting help to care for children, elderly family members, and sick or disabled family members. These needs can cause more strain on family budgets. Family members may also be asked to help their loved one pay the additional attorney’s fees and expert witness fees that come with a trial. These fees are very expensive.

Family members can be divided in their feelings about supporting the accused person. Those who support their loved one may face criticism from other family members, friends, or the public. In some cases, your love one’s trial may be covered by the news. These situations are emotionally painful for family members.
The Many Costs of a Trial

A Trial is Public
When my younger brother decided to go to trial in his sex assault case, my heart sank. Somehow, I knew that a trial would be incredibly painful for our family...and cost a lot. All of the dirty details would be out there -- for all the world to see. And I was right. Already the family was taking sides. And the trial was several months away. Even many years after the trial, there is a split in our family that may never be fixed. I decided to be there for him at the trial even though I was pissed that he had caused so much pain for so many...and it was going to go on and on. He was my brother and this was the first time in his life he had been accused of a major screw up.

A Trial is Expensive
My brother couldn’t afford a lawyer so my parents took out a second mortgage on their house so that they could get a lawyer who had handled sex assault cases. Trials can be very expensive. My parents paid not only for the lawyer’s time, but also had to pay for copying, subpoenas, and other court costs. Looking back, my parents paid out close to $100,000.00. My brother thought about taking a plea deal, but decided against it when he found out that if he took a plea, he would give up any chance to appeal. Appeals are expensive, too, but that’s another story.

A Trial Is Emotionally Exhausting for the Family
The trial lasted several agonizing days. I wish someone had prepared us for the things that happen in a trial, things that tear your heart apart and leave you feeling raw. The hardest part was sitting through the prosecution’s portrayal of my brother as a monster, an evil person, a predator. I worried about my parents as they listened to the prosecutor rip my brother to shreds. It was especially hard on my dad since my brother is his namesake and worked with him in his business. The business carries the family name. My Dad has not been the same ever since. The other hard part was sitting opposite the victim, her family and supporters, feeling their anger, pain and resentment directed toward my brother and us as well. I went home every night exhausted and depressed.
We kept to ourselves during the trial, staying inside, not answering phone calls or emails. My family sat on the defendant’s side and the reporters sat right behind us to watch our reactions and listen to our comments. So, the family wrote notes to each other

A Trial Changes You
I thought I knew how the system worked – that the trial was about finding the truth but I was wrong. It’s about winning and doing whatever possible to make the other side lose. Now many years after the trial, I still get sick to my stomach when certain sounds, sights, and stories trigger those miserable days at trial. I can’t watch TV trials, fake or real, in the same way as before. I know in my heart I will never be able to serve on a jury.

-- A Sister’s Story
What You Can Do
Attending the trial is a way that you can show support for your loved one. But, remember that everything you do or say reflects on the person you care about. If there is a complaint about your expression or behavior – even if it is a misinterpretation – the judge may order you to leave the courtroom.

**TIP – Things to know when attending the trial**

**Communicating with the Lawyers**
- If possible, talk to the trial lawyer(s) in advance so they know you will be there and find out if they have any specific preferences or advice about the trial. You will not be able to talk to the lawyer during the trial proceedings and they may be busy attending to other matters on breaks. Be respectful and patient; write a note or ask the lawyer(s) in advance about the best way to communicate. If they have an investigator, paralegal or other staff supporting their work, it may be best to communicate with that person.
- If you have a question about the sequestration order or believe you have witnessed a violation of the order, talk to your loved one’s lawyer or his/her staff.

**What to Wear**
- Business clothes. Lawyers will be in suits. Family and friends should wear nice, clean clothes. Some people think of it as what to wear for church.
- Avoid clothes with words on them. Anything that could be offensive to anyone could hurt your loved one’s case or cause you to be removed from the courtroom.

**Electronic Devices in the Courtroom**
- Turn off ringers for cell phones or other devices and be mindful if there are signs indicating the judge prohibits certain devices or objects like food or drink in the courtroom.
- Generally, no photography or recording is permitted.
- Avoid sending text messages, email or using internet-based apps.

**How to Behave in the Courtroom**
- Be on time. Bring Kleenex
- If possible, get advice on where you should sit from your loved one’s attorney. Under no circumstance do you want your choice of seating location or behavior in the courtroom to be interpreted as threatening, intimidating, or hostile to anyone.
- Look serious in the courtroom, especially in front of the jury because they will be scrutinizing your loved one’s presentation as well as yours. The time to joke or relax is at night, when you are away from the courtroom, or at least during breaks when the jury is gone.
- Do not talk or make faces in court or people may accuse you of trying to influence witnesses.
- Stand up when judge or jury comes in or leaves the courtroom unless the judge asks you to remain seated.

**How to Behave in the Courthouse and Nearby Community**
- Avoid contact with witnesses or jurors in restroom or cafeteria.
- If you are a witness, you may be under a sequestration order.
- Tell the lawyer a member of the lawyer’s staff if anything strange happens.
- Members of the public may be able to attend the trial. If you have questions about this, ask at clerk’s office or your loved one’s lawyer.
You can be additional eyes and ears for your loved one’s attorney. Pay attention to the behavior of others in the courtroom and notify lawyers who cannot see what is happening in the public seating gallery. If you have difficulty hearing, you might be able to request amplification equipment from the judge’s staff or order transcripts of what is said during the trial.

Where to Find Help and Answers
Depending upon the nature of the crime, penalties can be severe. For details about sexual offense consequences, please consult an 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 another person’s experience may not be similar to your experience.

3.4 More Detailed Information about Pretrial Court Proceedings
This section provides in depth information about the following areas:

- Advisement Hearing
- Hearings for Felony Cases
  - Preliminary Hearing
  - Mandatory Dispositional Conference (MDC)
- Arraignment

Advisement Hearing
At a hearing called an advisement, there are many topics that may be handled by the court. For example, when someone is arrested or charged with a crime they must be advised of certain rights such as the right to counsel and the right to remain silent. This hearing is often the first time the defendant will appear before any judge on the case. The advisement judge may or may not be the same judge who ultimately hears the case.

If charges have not yet been filed and the person is in custody, the court must review the government’s claim that there is probable cause to support the arrest. The person usually has a right to a bail hearing.

The court may also issue protection orders (also known as restraining orders) and/or bond conditions limiting what the defendant may do. The defendant or anyone who assists the defendant may be charged with new crimes or held in contempt of court if a violation of the protection order occurs.

![TIP - Protection Orders and Bond Conditions can impact family members, even though they are directed at your loved one.]

Some examples are:
- Prohibiting in-person, telephone, and/or 3rd party contact with specific people or types of people (such as all persons under age 18)
- Restricting where the person may go in the community
- Disallowing the use of alcohol or drugs
- Requiring GPS monitoring and/or random urinalysis (UAs).
If charges have been filed, the court must notify the defendant about each part of the crime charged and the possible sentence that may result. If a defense lawyer is retained or appointed at or prior to an advisement hearing, the lawyer will often waive the judge’s reading of rights, charges, and penalties and instead may privately advise the client about these matters.

Often other arrestees may be present in the courtroom and many defendants may be seen by the judge during group advisements in the early stages of a case. When the charges include a sex offense, the attorneys may speak privately with the judge to avoid revealing the nature of charged crimes in open court. In some areas, the defendant may appear by video from the jail for the advisement proceedings while the judge and public are in the courtroom. The lawyers may be with the defendant or in the courtroom.

A person may have more than one advisement hearing – for example, one advisement is given after an arrest on a sworn statement of probable cause and another advisement will occur if charges are filed at a later time.

**Hearings Specific to Felony Cases**

**Preliminary Hearing**

If charges have been filed on a felony case, the defendant is often entitled to a preliminary hearing in which a judge hears testimony and determines if there is probable cause for all of the crimes charged. If the court finds a lack of probable cause for certain charges, those counts are dismissed. Each count carries sentencing.

The preliminary hearing is different from the probable cause review that must happen as part of an arrest. In a preliminary hearing, the evaluation of the evidence for probable cause is specific to the elements of the crimes actually charged. Another difference is that the probable cause review at arrest is a review of paperwork, but the preliminary hearing involves testimony from live witnesses in open court.
Evidence in a Preliminary Hearing. The prosecution has the burden of proof to establish probable cause at the preliminary hearing. In most cases, the witnesses who testify are called by the prosecution and cross-examined by the defense attorney. Because the defendant has the right to remain silent, the prosecution is not allowed to call the defendant as a witness at the preliminary hearing.

Because of the limited scope of the hearing, it is common for the defense attorney to choose not to present evidence and instead wait for trial to reveal evidence that shows the defendant is innocent or that otherwise raises reasonable doubts about the guilt of the defendant. Defendants are almost never called to testify as witnesses by the defense attorney at a preliminary hearing.

The rules of evidence are not strictly applied at such hearings and most of the evidence at the hearing may be hearsay, often reported by the detective or other law enforcement officer who headed up the case investigation. At this stage, the judge usually cannot consider evidence that the accuser is not truthful or merely contradicts the accusation. Instead, the judge is assessing whether there is any evidence to support the charges. Questions of witness credibility are almost always left for the jury to decide at a trial.

Another Chance to Modify Bail. Often, the court will hear requests to modify bail at the time of the preliminary hearing, especially if the court has had an opportunity to learn more about the nature of the allegations and relative strengths and weaknesses of the evidence in the case. It is rare, but the government may ask the court to hold the defendant without setting a bail.

Sequestration at a Preliminary Hearing. Because preliminary hearings require live testimony from witnesses, the court may enter sequestration orders prohibiting potential witnesses from hearing or learning about the testimony of other witnesses. The defendant is the only potential witness who always has a right to be present, although in some rare circumstances that person may be excused as well.

Waiving the Preliminary Hearing. It is also routine for the preliminary hearing to be waived. Often the hearing is waived for purposes related to plea bargaining. For example, if the defendant agrees to waive the preliminary hearing, the prosecution may agree to extend an initial plea offer or continue negotiations until a certain point in the case.

Mandatory Dispositional Hearing
In some felony cases, the defendant is not entitled to a preliminary hearing. In those cases, the law requires a setting (called a dispo hearing) where the parties will begin a plea negotiation process. The dispo hearing allows the court to monitor the status of the case but usually takes no other steps.

Different Courts Preside over Different Types of Hearings
In many jurisdictions, these early hearings are heard by Magistrates, who are appointed by the judges, or they may be heard by County Court Judges. Once these hearings have been conducted, however, felony charges must be handled by a District Court Judge. If the case began in the County Court, after the preliminary hearing, a waiver of the preliminary hearing, or a mandatory dispositional hearing, the
Magistrate or County Court judge will turn over the case to the District Court. The District Court will then handle the case through the end. Both the County and District courts are usually located within the same courthouse but in different courtrooms.

Arraignment

An arraignment is a hearing in which the defendant may enter a plea of guilty or not guilty. It is not a hearing where evidence is presented. An arraignment may be continued to a later date if allowed by the judge. Sometimes both parties ask the judge to delay the arraignment to allow additional time to have plea negotiations. Courts use many different names for these court dates like dispo hearing, status, or pretrial conference.

It is also possible for a defendant to tender a not guilty plea and then have a later court date, where the person may be permitted to change the plea to a guilty plea.

What Not Guilty Means

In a criminal case, a plea of not guilty is a legal process to tell the prosecution that the defendant is exercising constitutional rights to a trial in which the government must prove all of the elements of each of the crimes charged beyond a reasonable doubt. By pleading not guilty, the defendant is not necessarily saying she or he did not commit the crime or did not do anything wrong. The defendant is saying that the government is required to provide evidence that prove the crimes charged were committed.

A plea of not guilty starts the speedy trial clock. Colorado requires all cases to be tried within six months of a defendant offering a not guilty plea at arraignment. There are many exceptions to the six-month rule. One exception is when the court grants a defense motion to continue the trial date. If the prosecutor makes a motion to continue the trial, however, the law requires that a new trial setting be within the speedy trial deadline. It is very normal for a sexual offense trial to be continued at least once and for cases to take more than one year to resolve from the time of arrest.

Misdemeanor vs. Felony

In a misdemeanor case, the first court date may be an arraignment where the defendant has the option to tender a not guilty plea. This is not possible in a felony case, if the charges originated in the County Court. In a felony case, the arraignment cannot happen until a defendant appears before a District Court judge. If the defendant was indicted by a grand jury (which is rare in Colorado), the first court date may also be an arraignment.

Plea Bargain Negotiations

Judges and prosecutors have different policies concerning arraignment or other stages in a case. Individual or local requirements and practices affect the defendant’s ability to enter into a plea bargain. There may be cutoff dates or deadlines for plea offers linked to stages in the legal process like arraignment. At times, refusing to take an offer by that cutoff date means there will never be another offer in the case. But this restriction varies by jurisdiction, by prosecutor, by judge, and by
circumstances. For example, if new information comes to light later in the case that bears on plea bargaining considerations, there may be an opportunity for the judge to allow a plea bargain.

If the parties have reached a plea agreement by the time of arraignment, the arraignment is an opportunity to enter the guilty plea and propose the plea bargain to the judge. The judge must approve any plea agreement. In a sexual offense case involving a victim, the victim or the victim’s representative must be consulted by the prosecution about any potential plea offers. The victim or victim’s representative also has a right to address the judge concerning whether to accept or reject the plea offer and to express his/her wishes to the judge at any sentencing hearing. It is very rare for the parties to reach a plea agreement in a sexual offense case at an initial arraignment.

**Plea Hearing (for a Plea Bargain)**

When a plea bargain is reached between the parties, things can change very quickly. For example, you may go to the courthouse expecting for there to be a motions’ hearing in anticipation of a jury trial but when you arrive, the prosecutor may be making a new plea bargain offer to the defendant. Depending on a number of considerations, including whether the prosecutor has already discussed the potential plea bargain offer with the victim, potential deadlines from the prosecutor or the judge, and the decisions of the defendant, the hearing may be immediately converted to a plea hearing. Where there is an agreement but other steps need to be taken to prepare for a plea hearing (e.g., if the victim wishes to be present), court dates may also be vacated and rescheduled and new plea hearing date may be set.

Prior to the plea hearing, the prosecutor and criminal defense attorney will have formalized the plea bargain, usually in writing. The parties (prosecutor and defendant) will sign a contract describing their agreement in most cases although in some jurisdictions the agreement is only stated out loud as part of the court record and transcribed by the court reporter. The defendant and criminal defense attorney will also review paperwork that is sometimes called a Rule 11 because it is based on Rule 11 of the Colorado Rules of Criminal Procedure. The Rule 11 describes all of the legal rights that a defendant is required to give up in order to plead guilty to a crime. This step is taken to ensure that the defendant understands what he or she is doing, pleads guilty voluntarily and without coercion (even though it is understood that a defendant is always under pressure whenever a guilty plea is entered), and knows what legal rights s/he is waiving and what the prosecutor would have been required to prove if the case had gone to trial.

The plea hearing will usually take at least 10-20 minutes while the judge reviews this paperwork with the defendant out loud in open court to make sure s/he wants to go forward with the plea bargain and to ensure that the judge or criminal defense attorney have answered any questions that the defendant has about what s/he is doing. The prosecutor will also provide a **factual basis** to the judge for the guilty plea, usually a summary of the often graphic allegations that led to the criminal charges. Occasionally, the parties will **waive the factual basis** to facilitate a plea bargain to a crime that is not supported by actual events but that both parties have agreed to (for example, to plea bargain to a charge that does not require prison).
For some judges, it is very important that the defendant take responsibility and admit to the factual basis at the time of the plea bargain. Other judges may allow the defendant to plead no contest or enter an Alford plea, pleas where the defendant can maintain innocence despite pleading guilty. Legally, there is no difference between a guilty plea, no contest plea, or Alford plea but judges, prosecutors, defendants, and victims can have strong feelings about the language used in court so the label used on the plea may also be part of the plea bargaining process. The SOMB requires an admission of responsibility to criminal sexual behavior before someone can successfully complete sex offense-specific treatment no matter what label was used at the time of their plea bargain. Your loved one should discuss any wishes and concerns about the type of plea with the criminal defense attorney.

**Presentence Investigation Report**

Even when a plea agreement is reached, the case is usually continued out several months for a formal sentencing hearing. This delay is to give the probation department time to prepare a presentence investigation report (PSI or PSIR) for the judge. When a person is convicted of a sex offense, the PSI will often include a mental health report called a psychosexual evaluation or PSE. The PSE is also known as a sex offense-specific evaluation (SOSE or OSE). The PSE must comply with the requirements of the Sex Offender Management Board (SOMB). Before sentencing, a defendant has constitutional rights to remain silent and may wish to consult with his or her attorney for advice on whether or not to participate in whole or in part in the PSI and/or PSE. More information about these reports can be found in Section 4.1 Evaluation.

### 3.5 More Detailed Information about the Trial

**The Trial Date**

When the trial court sets a date for a case to go to trial, the judge expects both the prosecution and defense to do all they can to be ready to go to trial as scheduled. Depending on how complicated the evidence is, how many witnesses there are, the court’s practices, and the strategies of the lawyers, a judge may schedule a trial for as little as one day to as much as several weeks or months. A typical felony jury trial in Colorado lasts for most of one work week, although the jury is allowed to deliberate for any amount of time.

It is very common, however, for trials to be continued and rescheduled for a later date. A trial may be continued many times. Either side may ask for a continuance of the trial but the judge alone decides whether to grant the continuance.

**TIP: About a No Contest Plea**

Judges can decide whether they will accept a No Contest plea in their courtrooms. But it is important to know that the SOMB requires an admission of responsibility to criminal sexual behavior before someone can successfully complete sex offense-specific treatment no matter what was included in the plea bargain.

Your loved one should discuss any wishes and concerns about the type of plea with the criminal defense attorney.
A few examples of reasons a judge may allow a trial to be continued include:

- an important witness is unavailable for the trial date because of medical issues or military service;
- new information has come to light that the lawyers need additional time to investigate (e.g., the results of lab tests on physical evidence, a new witness has been identified, a witness has provided new or different information);
- the lawyers and judge need more time to file motions or hold hearings to resolve legal issues that will impact the trial;
- there are too many trials scheduled for the same day and another trial will be held instead.

The Jury Trial

Although a defendant may choose to have the case heard by a judge or a jury, most criminal cases that go to trial result in jury trials. In Colorado, if the most serious crime charged is a felony, there must be 12 jurors and, if it is a misdemeanor, there must be 6 jurors. Judges will often select one or more alternate jurors as well depending on the length of the trial. The identities of the alternate jurors will not be known to the jury during the trial until the court sends the jury to deliberate. The alternate jurors will only participate in the deliberations and verdict if one of the primary jurors is excused for some reason during the trial.

The Parts of a Jury Trial

The main parts of a Jury Trial include the following:

- Pretrial Readiness or Status Conference
- Jury Selection
- Opening Statement
- Evidence: Testimony and Exhibits
- Closing Argument
- Jury Instructions
- Jury Deliberations
- Verdict

More information is given for each of the parts of a jury trial is discussed below.

Pretrial Readiness or Status Conference

Some judges set a final pretrial hearing a few days before the trial is scheduled. The purposes of the pretrial hearing are to begin to confirm with the lawyers that they are ready to proceed with the trial, consider unresolved legal questions or discuss new developments in the case, hear motions to continue the trial, and do final logistical planning for the trial. Depending on the jurisdiction, this may be a last opportunity to resolve the case with a plea bargain instead of a trial but some judges refuse to accept a deal this close to trial. If a trial date is going to be continued, it often happens at this status conference.
**Motions In Limine**

On the morning of trial, the judge may take up additional legal matters with the lawyers. This may involve housekeeping and logistics or legal rulings that will guide how the trial will be conducted. These motions are called *in limine* motions.

**Sequestration**

Judges often enter an order of *sequestration* during a trial. Frequently the sequestration order means that all witnesses must stay out of the courtroom during the trial and may not discuss their testimony with any other potential witnesses in the case either before or after they testify.

However, the judge can make case-specific rules as part of a sequestration order. For example the judge can allow expert witnesses to remain in the courtroom to watch the testimony of other witnesses so that expert witness can advise the lawyer who is calling them. The judge also sometimes allows witnesses whose testimony is completed to remain in the courtroom to watch other parts of the trial such as closing argument or the verdict. Frequently, judges will make special exceptions to the sequestration order for the victim or witnesses who are aligned with the victim so that they can watch more of the trial.

The prosecution is required to have a waiting room at the courthouse where the alleged victim can be, separate from the defendant. They may allow other witnesses to wait in this room as well. The defense may or may not have access to private space near the courtroom so defense witnesses may be required to wait in the public hallway outside the courtroom.

**Jury Selection**

Members of the public are mailed jury summons ordering them to report to the courthouse for jury duty. Although some people will be excused or rescheduled by court staff, on the day of the trial (or sometimes in advance in an exceptionally lengthy or complex case) they will report to the jury commissioner at the courthouse. After some initial screening by court staff to ensure the potential jurors are legally eligible to serve (for example, they still live in the jurisdiction where the case is being heard), they are assigned a number and escorted to the courtroom by the judge’s staff.

In Colorado, jurors are not selected, but rather are *deselected*. They may be excused if the judge agrees there is a legal reason for them not to serve. Each side is also allocated a certain number of peremptory challenges which they may use to excuse people that they do not want to sit on the jury even if there is not a legal reason requiring their excusal. Peremptory challenges may not be used to discriminate on the basis of race or gender but can be for almost any reason at all. The lawyers are not required to use all of their peremptory challenges.

After the jury is picked, the judge will do an orientation and explain the trial process to the jury and give them some initial instructions. For example, jurors may be told not to talk to the lawyers or witnesses, view any media, or do internet research about the case.
Opening Statement
Both the prosecutor and defense attorney are allowed to give an opening statement at the beginning of the trial. The opening statement is not evidence in the case. Instead, it is an opportunity for the lawyers to give an overview of the evidence they believe will be presented at trial. The judge usually sets a time limit for the opening statements. The prosecution always goes first. Although it is rarely done, the defense attorney may reserve opening statement until after the prosecution has presented all of its evidence.

Evidence: Testimony and Exhibits
Evidence in a trial is presented through testimony from live witnesses and the use of exhibits. Sometimes the exhibits will be audio or video recordings and those may be played for the jury. Exhibits can also be physical objects, photographs, etc.

What Evidence Is Allowed. All of the evidence must meet the requirements of the Colorado Rules of Evidence and the Colorado and Federal Constitutions. If lawyers believe the evidence is inadmissible, they are required to make an objection. The judge then rules on the objection and decides whether certain testimony or evidence may be considered by the jury. When the judge says sustained, they are agreeing with the lawyer’s objection. When the judge says overruled, they are rejecting the objection. The judge’s decisions on the objections are controlling during the trial but, if the judge makes a mistake in admitting or excluding evidence, this can later be challenged in an appeal.

Why a Lawyer May Make Many Objections. To improve the chance of winning on appeal, a lawyer may continue to make objections repeatedly even when the judge has indicated s/he will probably overrule such objections. Sometimes the lawyers will make legal arguments at the judge’s bench so the jury (and the audience) cannot hear what they are saying. Other times, the judge may send the jury to the jury room so there can be a longer discussion about the legal issues in open court.

Questioning the Witnesses. When lawyers for one side call a witness to the stand to testify, the witness must take an oath to tell the truth. The lawyers who called the witness get to question the witness first. It does not matter if the witness is more supportive of the prosecution or defense, or if the witness believes the defendant is guilty or innocent. The first round of questioning is called Direct Examination and is usually done through open-ended questions (“What did you see?”). After Direct, a lawyer for the other side is allowed to Cross Examine the witness on the same general topics discussed on Direct and may ask leading questions (“You saw Sally leave the room, right?”). The lawyer who called the witness is then given a chance to Re-Direct the witness with more open-ended questions and sometimes the opposing lawyer is also permitted to Re-Cross the witness.

Jurors May Ask Questions. In Colorado, jurors are allowed to ask questions. Typically, the questions are written down and discussed by the lawyers and judge at the bench. If the judge believes the question is proper under the Rules of Evidence, the judge will ask the witness the question. Very rarely, the judge may also ask a question of a witness.
Prosecution Goes First. Because the prosecution has the entire burden of proving guilt in a criminal trial beyond a reasonable doubt, the prosecution must present their evidence first. The main prosecution case is called the case in chief.

When the prosecution has finished presenting its case-in-chief, they will tell the judge they rest. The prosecution is never allowed to call the defendant as a witness in its case-in-chief. After the prosecution has rested, the judge is required to advise the defendant of his/her right to testify.

The Defense Can Choose to Present Evidence or Not. The defense is never required to present any evidence and if, after hearing all the prosecution evidence, they decide not to present evidence, the evidence phase of the trial is over. If the defense presents evidence (this is sometimes called putting on a case), however, the prosecution may be allowed to present additional evidence later in rebuttal.

For all witnesses, including the defendant, if a person testifies, the jury may be informed of any prior felony convictions that the person has. During this advisement, the judge will notify the defendant if any of his/her prior felony convictions may be discussed if the defendant decides to testify.

The Defendant Decides Whether or Not to Testify. The defense attorney and the defendant should have discussed the decision to testify before the trial and have a plan. But the defendant will not be required to make a final decision about whether to testify, until all of the other evidence has been presented. The defendant alone makes the final decision about whether or not to testify, no matter what advice his/her defense attorney has provided. After hearing the prosecution’s evidence, the defendant is allowed to change his/her mind about testifying no matter what the plan. If the defendant decides to testify, the prosecution will be allowed to Cross Examine him/her, and the defense attorney will be allowed to ask questions on Re-Direct.

Jury Instructions
After all of the evidence is over, the judge usually meets with the lawyers outside the presence of the jury to finalize the jury instructions. The jury instructions are documents which will be provided to the jury orally and in writing. They are many pages of text that describe the legal rules that the jury is supposed to apply to the facts of the case. After the instructions are made final, the jury returns to the courtroom and the judge reads the instructions.

Closing Argument
The lawyers are then given a chance to argue their side of the case. These arguments are usually time-limited. The lawyers will make arguments about what evidence the jury should find believable and about whether the evidence presented does or does not constitute proof beyond a reasonable doubt.

Because the prosecution has the burden of proof, they make the first closing argument and are also allowed to give a rebuttal closing argument.

After the closing arguments, the judge will identify the alternate jurors and give them instructions and then send the rest of the jury to deliberate.
**Deliberations**
The jury alone decides which witnesses to believe and whether the factual elements of the crimes charged have been proven beyond a reasonable doubt.

**Jury Can Take as Much Time as Needed.** The jury can deliberate for as short or as long as it wants and the deliberation process is held in a private place. If questions arise during the deliberations, the jury will send the question in writing to the judge. The judge will usually meet with the lawyers and the defendant to decide how to answer the question.

**Decision Must Be Unanimous.** If the jury cannot reach a unanimous (every person agrees) decision on any of the charges, they will tell the judge. The judge may ask them to continue deliberating and try again. If they appear to be deadlocked, the judge may declare a **mistrial**. A mistrial on a count means that the defendant has not been convicted of that charge. If there is a mistrial because the jury was not unanimous, however, the prosecution has ninety (90) days to schedule a new trial with a new jury and try again to get a conviction.

**While the Jury Deliberates.** The lawyers and defendant will be required to stay nearby in case there are questions or a verdict. If the defendant is in custody during the trial, the judge may require the defendant to return to the jail or a holding cell while the jury deliberates.

**Verdict**
Sometimes the judge will delay the reading of a verdict to allow an alleged victim or other witnesses to be present when the verdict is read. But you should stay nearby if you want to be present to hear the verdict. Typically, the jury foreperson will give the verdicts in writing to the judge and the judge will read the verdicts for each count.

- If the defendant is found **not guilty** of all the charges, the case will be dismissed and any bond will be **discharged**. A defendant who has been in jail will be released unless that person is being held on another case.
- A defendant who is found **guilty** of any of the charges will face sentencing on those charges and have an automatic right to appeal the conviction.

After the verdict is read, the jury will be given instructions and will be discharged. After the trial, jurors can decide if they want to speak with the lawyers on either side or anyone else about their deliberation process. It is improper for anyone to harass a juror.

**Bond after Conviction**
Most bail bonds expire as soon as a defendant is convicted of any crime. At that time the judge must decide whether to return the defendant to jail or to authorize a new or continued bail bond until sentencing. Sometimes the judge will agree to continue the bail bond if there is a written consent of surety from the bondsman indicating that they are willing to stay on the bond until sentencing. The defendant and defense lawyer should have a plan and make sure they have a consent of surety if they want to ask the judge to continue a money bond.
For certain convictions, the judge has no choice and must revoke the bail bond and put the defendant in jail before sentencing. The judge cannot grant bail after a conviction for the following crimes or a conviction of attempt to commit the following crimes:

- any felony sexual assault committed against a child who was under age 15 at the time of the assault,
- any felony sexual assault involving the use of a deadly weapon,
- certain crimes classified as crimes of violence in Colorado,
- other specific nonsexual crimes identified in law.

**Between Conviction and Sentencing**

When a sexual offense 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 the defendant and to make recommendations for the sentence.

In certain cases, 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) as part of the PSI. The judge will order the PSE:

- if the defendant was convicted of any counts that are sex offenses, or
- if the defendant was previously convicted, adjudicated, or completed a deferred judgment for a sex offense.

The defendant’s attorney can provide legal advice to the defendant on whether or not to participate in the PSI and/or PSE. The defendant may decide not to answer any questions based upon the constitutional rights to remain silent before and at a sentencing hearing.

A convicted person who remains on bond may be required to report immediately to the probation department, where that person will be asked to fill out PSI paperwork and may be given a referral to a SOMB evaluator in the community to complete the PSE. A person who is taken into immediate detention following conviction, will be contacted by the probation department inside the jail through an interview with a probation officer and possibly given a packet of paperwork prior to the PSI interview. If your loved one chooses to participate in the PSE, s/he will be interviewed and tested by an SOMB evaluator in a private area inside the jail. The PSE process will take from several hours to multiple days. When the PSE is completed, it will be provided to the PSI writer in the probation office and be submitted to the judge as part of the PSI.

Even if your loved one elects to participate in the PSI and PSE assessments, s/he should seek advice from his/her criminal defense attorney about whether to complete all or part of the PSI paperwork and/or provide statements for a psychosexual evaluation or instead invoke his/her constitutional rights to remain silent prior to sentencing.
These reports may take weeks or months to prepare and will include a victim impact statement from the victim. If you have documentation, records or background information that might be relevant to the PSI or PSE process or sentencing, talk to your loved one or your loved one’s lawyer about whether to provide this information to the criminal defense lawyer.

**Sentencing Hearing**

The length of a sentencing hearing varies greatly from minutes to multiple hours and may depend on numerous factors which may include:

- the complexity of the case,
- the number of victims or other witnesses who address the court and the amount of time the judge allows them to speak,
- whether the defendant chooses to speak (a decision that may be impacted by whether the defendant is appealing any convictions in the case),
- whether the judge has discretion over the details of the sentence or the sentence is decided by the terms of a plea bargain.

A sentencing hearing can be a very emotional event for the victim and defendant and their support systems, even when the likely outcome is known.

The judge and attorneys and, in some cases, the victim or victim representative, where applicable, will receive the PSI and PSE reports at least three (3) business days prior to the sentencing hearing although these documents are not usually available as public records. At the sentencing hearing, there will be an opportunity for the criminal defense attorney to alert the judge to any errors in the documents. If someone is sentenced to prison, these reports will also be sent to the Colorado Department of Corrections (CDOC). If the defendant has a high school diploma, it is important that this educational history is accurately reflected in any PSI because it can impact classification decisions at the CDOC.

At a sentencing hearing, the victim or victim’s legal representative, if applicable, has the right make a statement to the judge about any plea bargain and the sentence. The defendant also has the right to make a statement (allocution) but has an equivalent right to remain silent and not have his/her silence used against him/her by the Judge. Your loved one should seek advice from his/her criminal defense attorney about whether to make a statement and, if so, the content of the statement. The prosecutor or criminal defense attorney will make arguments and may also invite other people to make statements and tender letters or other information to the judge. It is a good idea to seek advice from your loved one or his/her defense attorney about whether or not you should make a statement or write a letter to the Judge and the subjects to discuss in that statement. For example, although you may believe the contemplated sentence is unjust, expressing your opinion to the judge may not serve your loved one’s goal of receiving a more lenient or shorter sentence.

Depending on the crime of conviction and any agreements in the plea bargain, the judge may or may not be able to make a decision about the sentence imposed – in other words, the sentence may be mandatory under the law. The judge will have the power to decide to accept or reject any plea bargain and, if accepted, will impose a sentence consistent with the requirements of the plea bargain.
Sexually Violent Predator Considerations.

Finally, for some felony sex offense convictions, the PSI/PSE process will include a screening of the defendant which the judge will consider to determine if s/he has the status of Sexually Violent Predator (SVP). Although the term SVP is used in many states, in Colorado it refers to the harshest level of sex offender registration requirements including mandatory lifetime registration with no opportunity to petition to stop registering, a requirement to register at least four times per year with local law enforcement, having one’s photograph on state and federal registration websites, and the possibility of public community notification meetings each time the registrant moves to a new address.

The decision on SVP status, if applicable, may be made at the sentencing hearing or the judge may schedule yet another hearing for further argument on whether or not to designate the person as an SVP. There are grounds to challenge the imposition of SVP status in every case and, if imposed, the designation may also be appealed or challenged in a post-conviction motion pursuant to Colorado Rule of Criminal Procedure 35(c). Similarly, in cases where there is a dispute about the amount of restitution or other specific issues like a motion for new trial, the judge may schedule additional future hearings.

Reconsideration or Modification of Sentence

Some plea bargains require a specific sentence but in cases where there was a conviction after a trial or where the judge had discretion to choose some or all aspects of the sentence, there is a process for the defendant to ask the judge to modify the sentence. The court must receive this request within 126 days (18 weeks) of the sentence being imposed or after resolution of the appeal.

Moreover, unless forbidden by the plea bargain contract, either the defendant or the prosecution can ask the judge to modify the terms or length of a sentence to probation at any time while the defendant is still on probation. If the probationary sentence is indeterminate (such as “10 years to life” or “20 years to life”), the judge cannot terminate the probationary sentence until the minimum number of years (10 years or 20 years) has elapsed.

If a probation officer asks a defendant to voluntarily agree to new or additional conditions of probation, or to agree to extend the length of the probationary sentence and the defendant is uncertain about whether to agree, the defendant should consult a criminal defense attorney to get advice about his or her options. A defendant who is financially eligible can seek representation from the local public defender to get advice about such a request. A defendant may also consult a private attorney.

Appeal

Every criminal conviction at trial may be appealed to a higher court. A misdemeanor conviction after trial in the County Court may be appealed to the District Court. A conviction in the District Court may be appealed to the Court of Appeals. There can also be appeals of sentences and occasionally other legal issues such as SVP status, although direct appeals of cases where there has been a plea bargain are rare.

The prosecution represents the government in appeals to the District Court but the Colorado Attorney General’s Office usually handles appeals to the Court of Appeals. After the first level of appeal, either side can ask the Colorado Supreme Court or United States Supreme Court to review the decision on
appeal by filing a special request called a Petition for Writ of Certiorari. The Supreme Courts refuse to review most cases.

Unlike the trial process, almost all of the appeal process happens in writing. The only legal issues that can be raised in an appeal are things that happened in the trial court and the appellate court is only reviewing whether or not the trial judge made a mistake. For example, if the judge overruled an objection and the jury heard improper evidence, or the judge made a mistake in how the jury was instructed, these are the types of issues that can be raised in an appeal. Claims like an argument that the criminal defense attorney failed to adequately investigate the case or that there is newly discovered evidence of innocence are rarely appropriate to raise in an appeal.

The appellate lawyer is usually, but not always, a different person from the trial lawyer who handled the case in the trial court. It is important for the defendant to talk to his or her criminal defense attorney about whether the attorney will be appealing any conviction and who will be responsible for perfecting an appeal.

If a person becomes financially eligible for the public defender following sentencing, or is already eligible for the public defender and would like to be represented by the public defender on appeal, the trial lawyer (whether a private lawyer or public defender) must contact the public defender’s office as soon as possible. Early contact is important because the initial deadlines to file a Notice of Appeal are triggered by the imposition of the sentence.

The regional public defender offices (assigned to each courthouse) handle misdemeanor appeals to the District Court and the Appellate Division of the Office of the State Public Defender handles appeals to the Colorado Court of Appeals and Colorado Supreme Court. Contact information for each of these offices is available here: http://www.coloradodefenders.us/

A form required by the Appellate Division no later than twenty (20) days after sentencing indicating the information needed for the Office of the State Public Defender to file an appeal is available here: http://www.coloradodefenders.us/wp-content/uploads/2017/12/Appeal-Packet-12-2017.pdf

The appellate lawyer will initiate the appeal, contact the client to explain the process and answer any questions, and wait for the transcripts to be prepared. Because the appeal is based on the record in the trial court, most decisions about the issues to raise in the appeal will be based on information in the transcripts and other court records and exhibits. The appellate lawyer then files an Opening Brief, the government files an Answer Brief in response, and the appellate lawyer may file a Reply Brief. Because all of these briefs are in writing and based on a written record, there are very rarely court dates while the case is on appeal.

Occasionally the Court of Appeals and Colorado Supreme Court will agree to allow the parties to make oral arguments. These are short time-limited arguments (often each side is allowed less than 30 minutes total to argue) to the appellate judges and usually the defendant is not required to be present. Appellate judges rule in writing as well and their orders can either be private or public. If the orders are public,
they can have precedential value and will require trial judges to follow their rulings in future cases. If they are private, their interpretation of the law will only apply to the defendant’s case.

Appeals can be lengthy and, depending on the issues and the case, will often take years, and occasionally even a decade or more. For a defendant who has been convicted of a sex offense, it is important to talk to the appellate lawyer about whether the defendant should participate in certain aspects of their sentence, such as answering incriminating questions about the case that is on appeal in sex offense-specific treatment, or instead invoking their constitutional rights to remain silent as to those questions while the case is on appeal.

If the appeal is not successful, the defendant will continue serving their sentence. If the defendant wins the appeal, there are many possible remedies the appellate court may order. The remedies will depend on what the issues were on appeal but they can include orders to vacate some or all of the convictions (and related sentences) and declare the defendant not guilty, or orders to vacate the convictions but require the defendant be sent back to the trial court to be retried, or orders that the sentence imposed or require the defendant be sent back to the trial court to be resentenced.

If the defendant is represented by the public defender on appeal, the appellate lawyer will also file any applicable reconsideration motion following the appeal if the defendant’s convictions are not overturned on appeal. A defendant who was represented by private counsel on the appeal should discuss whether that lawyer will be filing the reconsideration motion as part of their representation.

Post-Conviction Relief
There are other legal remedies beyond the scope of this guidebook, including other state and federal legal processes. Your loved one should seek legal advice to identify available remedies in his or her case.

For your information, however, one of the most common post-conviction remedies pursued in Colorado trial courts is a petition based on Colorado Rule of Criminal Procedure 35(c). As noted above, some legal issues cannot be raised in a direct appeal and other legal issues may be raised either on direct appeal or under 35(c). The following types of claims may be raised in a 35(c) petition:

A. The Defendant has sought appeal of a conviction within the time prescribed, and judgment on that conviction has not then been affirmed upon appeal, and there has been a significant change in the law which if applied to this conviction or sentence, the interests of justice allow the retroactive application of the changed legal standard. (In other words, there was a change in the law and the Defendant is allowed the positive retroactive effect of the change.)

B. No review of a conviction of crime was sought by appeal within the time prescribed therefore, or a judgment of conviction was affirmed upon appeal. However, in good faith the Defendant alleges one or more of the following:
   (1) That the conviction was obtained or sentence imposed in violation of the Constitution or laws of the United States or the constitution or laws of this state.
   (2) That the Defendant was convicted under a statute that is in violation of the Constitution of the United States or the constitution of this state, or that the conduct for which the applicant was prosecuted is constitutionally protected.
(3) That the court rendering judgment was without jurisdiction over the person of the applicant or the subject matter.

(4) That there exists evidence of material facts, not theretofore presented and heard, which, by the exercise of reasonable diligence, could not have been known to or learned by the Defendant or his attorney prior to the submission of the issues to the court or jury, and which requires vacation of the conviction or sentence in the interest of justice.

(5) Any other ground otherwise properly the basis for collateral attack upon a criminal judgment.

(6) That the sentence imposed has been fully served or that there has been unlawful revocation of parole, probation, or conditional release.

These issues may be raised differently from issues raised on appeal because they may need to be developed in a live court hearing with witnesses and evidence before a trial judge and may not be resolved based on a paper record alone like an appeal is. The prosecution represents the government in most 35(c) proceedings.

There are strict time limits to raise claims under 35(c) depending on whether the relevant conviction was for a felony or a misdemeanor, usually 3 years or 18 months, respectively. The time clock for a 35(c) starts with either the sentencing date or the end of a timely-filed appeal. If the defendant does not file a 35(c) in time or establish an exception to the time rules, the courts may refuse to consider the motion.

The courts expect a defendant to raise all possible claims in a single 35(c) petition and may refuse to consider a second or subsequent 35(c) petition if it is based on claims that could have been included in the original 35(c) petition.

Even if financially eligible, a defendant does not have an automatic right to court-appointed counsel like a public defender for a 35(c). But a defendant can request counsel by (1) contacting the regional public defender and/or (2) filing a Form 4 (or document containing all Form 4 information) with the trial court. Form 4 is available in prison law libraries or online here: https://www.courts.state.co.us/Forms/PDF/Form%204%20petition%20for%20postconviction%20relief%20pursuant%20to%20crim.%20p%2035(c).pdf

If the regional public defender or trial judge agree the legal issues may have merit, the judge will appoint the public defender to represent the defendant on the 35(c) petition and supplement the petition based on the lawyer’s investigation of the case. If the public defender has a conflict of interest (for example, if one of the issues in the 35(c) is that one of the public defenders in the local regional office provided constitutionally ineffective assistance of counsel), the judge will appoint another free lawyer through the Office of Alternate Defense Counsel.

A defendant who is denied a free lawyer or chooses not to pursue a free lawyer may hire a private lawyer as the representative on the 35(c). Also individuals can represent themselves pro se. A defendant, who believes he or she was wrongly denied a free lawyer, may appeal the denial of lawyer.

If the trial court denies the defendant relief on the 35(c), the order denying relief may also be appealed.
Chapter 4 – Evaluation, Child Contact Considerations, and Sentencing

This chapter addresses what happens in Colorado, when a person is convicted of a sex crime:

- 4.1 Evaluation - Your loved one participates in a sex offense-specific evaluation
- 4.2 Child Contact Considerations - Limits are placed on your loved one’s contact with children
- 4.3. Sentencing - Your loved one is given either a determinate or indeterminate sentence.

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. This is also referred to as a psychosexual evaluation or PSE.

**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 (1) set number of years or (2) 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.
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.

The purpose of the Sex Offense Specific Evaluation (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.
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 (PART 2 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. Family members should be aware that the evaluation 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. For example, some treatment providers may be unwilling to accept your loved one as a client unless s/he agrees to restrict child contact although it is permitted by the judge.

**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.

**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

**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 changes to any no contact with children restriction or other probation conditions including the length of the probationary sentence.
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.

Extended No Child Contact Provisions

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

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 and either the prosecution or defense may file a motion at any time during a probationary sentence to alter the conditions or length of probation supervision if the change is reasonably related to the defendant’s rehabilitation and allowed under any applicable plea bargain agreement. 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.

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. Children may find periods of separation particularly confusing and unsettling.

**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 is 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.

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**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

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Watch for signs that children in the family may be having difficulty coping with the situation. Separation of a parent and child can have consequences for the child, even when the separation has been for a short time. Be aware of changes in behavior or unusual changes in mood such as when a usually happy child becomes aggressive or stops wanting to go to school. If you feel comfortable doing so, consider asking school leaders to be on the lookout for any bullying/shaming (including perhaps social
media) towards a child due to the parent’s arrest or publicity in the news media. You may wish to find out if your child(ren)’s school has processes in place to help families experiencing crises.

You may want to consider counseling for your child or children. Schools may be able to recommend counseling or community mental health services. There may be other entities such as family protective services, victim therapy groups, faith based organizations, and military family counseling that can make recommendations to you.

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.
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).

- **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.

TIME IN JAIL WHILE AWAITING SENTENCING

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.

**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 resentsenced 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 Mandatory 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.

**TIP: Indeterminate sentences can be hard to understand.**

Here are examples of indeterminate sentences for probation and prison/mandatory 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, your loved one will be led away from the courtroom in handcuffs to begin the sentence immediately.

**Family Impact:**

For many family members, the sentencing hearing and the time immediately following sentencing 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.

**Probation:** 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.

**Incarceration:** 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 a 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.
DISCLAIMERS

LEGAL: This guide does not serve as legal advice. Because sexual offense cases involve complex and technical areas of Colorado criminal law that change frequently, you may wish to consider a lawyer who specializes not only in criminal defense but also has some expertise in handling sexual offense cases.

MENTAL HEALTH: Your family may be impacted significantly by this challenging experience. There will be difficult moments. You are encouraged to reach out to mental health providers who are trained and experienced in working with issues that impact a family in which sexual abuse allegations are present.