

Advocates For Change



THE ADVOCATE

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PUBLIC SERVICE ANNOUNCEMENTS

COVID-19 UPDATE FROM CDOC: CDOC has stopped visitation and reduced entry of non-essential staff to protect staff and inmates. Cleaning protocols have been enhanced...see more at <https://www.colorado.gov/cdoc/>

SOMB COVID-19 MEASURES: Including use of teletherapy can be found at <https://www.colorado.gov/pacific/dcj/sex-offender-management-unit>

AFC MISSION STATEMENT

AFC supports those with a sex offense and their families by:

- Advocating for change in sex offense laws and policies, and for the adherence to constitutional rights;
- Educating the public, lawmakers, and the judiciary;
- Promoting the successful treatment and reintegration of those with an offense into the community, thus reducing victimization and enhancing the safety of all.

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A MESSAGE FROM THE CHAIR

Hello Friends and Advocates!

It’s been a long time since we’ve had any real communication with you. It seems like the world stopped and we all stood in place where we were in early March. I know it’s probably been especially hard on the individuals inside the DoC facilities. But for us on the outside who really want to do something, we feel paralyzed. We want to be making a difference with the legislators but that institution has ground to a virtual halt too. We have had a couple of virtual or phone meetings with a couple of legislators but for the most part our hands have been tied.

The SOMB has had monthly meetings which many of us attend via WEBEX. We see them but they don’t see us. The meetings are shorter than the in-person variety. We also attend the SOMB Family Education, Engagement & Support Committee Meeting on the first Friday of the month. This meeting is the development of an information tool for families who have a loved one with a sexual offense. These, too, are virtual but we can see and talk to each other at these meetings.

Maybe you’ve heard about treatment meetings for those on parole and probation. Because there is a no contact “rule”, treatment is being done on the phone. Groups and individual meetings happen as scheduled by telephone. As a result of this new way of doing treatment, there is some talk of continuing some treatment this way in the future. Of course, that hasn’t been decided but this experiment in the “new normal” might be a help for people who have to travel to meetings weekly and this might offer an opportunity to save time and money by doing treatment from home.

This virus we’re all dealing with in one way or another will possibly create new ways of doing business and, hopefully, improve the processes.

*Pat Harris, Chair
 Advocates for Change*

COLORADO STATE AUDITOR RESULTS FOR AUDIT ON THE SOMB

In July the audit of the SOMB was released and Chris Osher's (The Gazette) news report* stated "Colorado board that writes rules for management of sex offenders rife with conflicts, state audit finds."

As the key findings of the report state,

- Board Standards do not reference supporting evidence, as required by statute;
- of the 18 provider applicants, 13 did not meet applicable requirements;
- the board was found to have problems with conflicts of interest present within the board;
- the Board did not comply with statutory requirements for addressing complaints and not dealing with anonymous complaints;
- and the board has not given serious consideration in the use of Sex Offender Surcharge Funds.

The audit was presented to the Legislative Audit Committee on July 28, 2020. The committee was very serious in their questioning of the SOMB as the auditors presented their findings to the committee. The work of the board was best summed up by Senator Lundeen when he said: " I first encountered the SOMB in 2015... when many of these issues were present, surfaced, discussed, and visible then. It seems there is a culture of focus on hearing all voices and I wonder if the board ... is so solicitous of input that it loses its way and we find ourselves in a circumstance where we find good people, well intentioned people, disobeyed the law. Perhaps we have a culture that is missing the key focus of what it needs in terms of governance, vision, mission in order to achieve a compliance with the law and success on behalf of the people of Colorado and people served or not served by this system. If I had not encountered some of these issues in 2015. . .

. . . I would have greater hope if changes hadn't been languishing for these many years. ...We have a culture problem; a structure problem and I would love to believe... there will be meaningful change and urgency in a short period of time but I'm dubious based on my personal experience."

*https://gazette.com/colorado-watch/colorado-board-that-writes-rules-for-management-of-sex-offenders-rife-with-conflicts-state-audit/article_3a4a67be-d11a-11ea-9783-a710d571c03c.html

THE SEX OFFENDER REGISTRY: VENGEFUL, UNCONSTITUTIONAL AND DUE FOR FULL REPEAL

EXCERPTS FROM OPINION ARTICLE IN THE HILL

BY JESSE KELLEY, OPINION CONTRIBUTOR, THE HILL— 03/05/18 08:00 AM EST 389. THE VIEWS EXPRESSED BY CONTRIBUTORS ARE THEIR OWN AND NOT THE VIEW OF THE HILL

The Bureau of Justice Statistics reports that at least 95 percent of all state prisoners will be released from prison at some point. However, convicted sex-offenders almost exclusively face the vengeful, additional punishment of registration under the Sex Offender Registry and Notification Act (SORNA).

SORNA violates our nation's founding documents by singling out a specific category of offenders for unfair, unconstitutional punishment.

The right to due process can be found in the Fifth and 14th Amendments of our Constitution. Due process is commonly understood to include the presumption of innocence, the right to a fair trial and the right to counsel — ideas that ensure a defendant is treated as fairly as possible in our adversarial criminal justice system. It can be "gauged by its aim to safeguard both private and public rights against unfairness."

SORNA requirements punish ex-offenders by inflicting upon them tangible, secondary punishments, like the inability to qualify for housing and increased difficulties securing employment.

In addition to violating double jeopardy, repeated punishments violate the Eighth Amendment by imposing cruel and unusual punishment. The government is prohibited from imposing a criminal sentence that is either vindictive or far too harsh for the crime committed.

Last fall, a federal judge found that the Colorado sex offender registry's punitive impact outweighed any value it might have had in protecting the public and concluded that registration violates the prohibition against cruel and unusual punishment

Therefore, both legislators — by way of developing and amending laws — and judges — via hearing arguments and creating case law — must re-examine SORNA in order to preserve liberty and uphold the Constitution.

Eradicating the Label "Offender" from the Lexicon of Restorative Practices and Criminal Justice

Lynn S. Branham

Saint Louis University - School of Law

V. CONCLUSION

I remember puffing up my chest when I was a child after someone said something hurtful to me. "Sticks and stones can hurt my bones, but words can never hurt me," I resolutely announced. This statement may have been a valiant effort to muster and display inner strength, but it was a canard, devoid of any truth. Words can and do hurt. Badly. The label "offender" is one of these words, inflicting injury on those who are denominated, through this appellation, as incorrigible miscreants. Using depreciating and derogatory terms when referring to another human being is also at odds with core values that are the foundation of restorative practices – values such as respect, interconnectedness, hope, and transformation. These values are not the sole province of restorative practices but transcendent values that most people would likely say they endorse and hope to personify. A third ill effect of the convention of typecasting people as alteration in how people who have committed a crime are viewed and treated, both within the criminal-justice system and by society at large. Referring to people in ways that denude them of their humanness makes it difficult, if not impossible, to fuel and foster widespread receptivity to restorative processes that, at their core, are founded on an unflagging commitment to accord respect to every human being.

ERADICATING THE LABEL "OFFENDER"

So what do we do? And who are "we"? "We" are each of us. Those of us who tout the value and benefits of restorative practices must commit to becoming better role models. We must recognize and admit the incongruity between, on the one hand, being in a field whose *raison d'être* is, in part, to prevent and remedy harm and, on the other hand, blithely referring to people with a term that causes harm. We must decide, individually (as I have done) as well as collectively, to abandon what has become the rote practice of labeling a person "offender." We must instead commit to using humanizing language when referring to people who have caused harm, such as opting to call them as much as possible what they are – "people." Court and criminal-justice officials, members of the media, academics, and others, many of whom may not yet even be conversant with restorative practices, should likewise embark on a critical examination of the words they employ when describing

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people who are in, or once were in, the criminal-justice system. A litmus test to apply when conducting this examination is whether a term "offers dignity, humanity as well as hope." The label "offender" does not meet this test. It never has.

SURVEY RESULTS ON THE IMPACTS OF REGISTRY LAWS

Earlier this year, AFC sent out a request to individuals who might be interested in participating in a survey being done by Dr. Lisa Anne Zilney. Some of our members along with members of other organizations did participate and provided information for this report.

Dr. Zilney's research focuses on the impacts of registry laws on the female partners of registrants, as well as negative consequences for the individual required to register. She is the Director of the Environmental Justice Minor at Montclair State University.

In June 2020, Dr. Zilney's article, *Will Sex Offense Registry Changes by Part of Criminal Justice Reform* was published.

She discusses topics such as:

- Why So Many Laws?
- What is the Sex Offender Registry?
- Does the Registry Keep us Safe?
- Consequences for Registrants

Dr. Zilney concludes with: What Changes Can be Made? She says there are some clear potential changes to be made through evidenced passed policy making.

There needs to be

- Mechanisms for removal based on participation in treatment, risk assessment, and length of time offense-free. The registry should not be a blanket life-time punishment.
- A reconsideration of the monitoring of individuals who are no longer a risk or low risk
- Programs that focus on job skills and promote gainful employment in proximity to one's residence and removal of the place of employment from the registry
- Removal of residency restrictions to reduce transience

Laws continue to be passed as though we are in an epidemic of sexual offense generating fear in the public. America needs an evidence-based understanding of the circumstances that lead to offending, factors that may reduce future offending and a realistic understanding of how legislation impacts public safety. Criminal justice reform needs to involve registry reform.

REMEMBRANCE VIGIL AT STERLING

In the afternoon of June 6th, a group of women – wives, mothers, girlfriends, sisters, etc. – along with a few of their children, gathered in the pavilion across from the Sterling Correctional Facility (SCF). Some came from as far away as Tennessee and Grand Junction. This wasn't a protest like what we've been watching tear our nation apart. Maybe that's why there wasn't any major media coverage for the event even though they had been notified; only one Denver radio station, CPR, was there.

This was a remembrance vigil for the three Sterling inmates who had died of the coronavirus, and for all of those incarcerated during this epidemic. SCF has been hit harder than any other Colorado prison facility, with over 530 positive cases. These are unprecedented and scary times for those on the inside, and for their loved ones. The theme of the day was, *We are their voices. They are names, not numbers.* Many of the women had posters or wore T-shirts with a picture of their loved one.

When Warden Jeff Long became aware of the event that was in the planning, he contacted the individual who was spearheading the whole thing. She lives in Tennessee, but her son is at Sterling. After learning of the third death at SCF, the thought wouldn't leave her that something needed to be done to remember these individuals and give them an identity. She posted her thoughts on Facebook on the Colorado Prison Reform site. The positive response was overwhelming, and as they say, "The rest is history." The event was to take place alongside Hwy. 61, overlooking the prison. However, when Warden Long contacted her, he offered the pavilion that sits between the staff and visitor parking lots. DOC even provided a portable restroom.

The initial plan was for the staff to be included in the pavilion activities, but due to the ACLU lawsuit against CDOC regarding COVID-19 and limited early parole of vulnerable inmates, that wasn't allowed to happen.

That didn't stop the goodwill of these ladies, though. Those that could chipped in to have pizza delivered to the staff inside, while the families had their own picnic

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in the patriotically decorated pavilion. The weather was windy with some showers, but that didn't seem to dampen anyone's spirits as these mostly strangers came together for a common cause, with a common bond between them.

The evening's activities began with a prayer by one of the attendees. The prayer ended by quoting Jeremiah 29:11,

For I know the plans I have for you declares the Lord; plans to help you, not to harm you; plans to give you hope and a future.

Another attendee read a tribute to the three deceased inmates. Since June 6th was the anniversary of Victory in Europe, it seemed appropriate to give a special eulogy for the latest COVID victim at SCF who was a WWII veteran, and retired Air Force chaplain.

Besides the Sterling staff, CDOC Executive Director Dean Williams had also been invited. He was unable to attend, but he sent a message that he had Warden Long read. This is his message in its entirety.

It is with a somber and grieving heart that you all gather today. We grieve too. I have asked Warden Long to read my note as I cannot be with you.

Every man and woman who is in our custody matters. Every life is personal to me. Every man serving time here at the Sterling Correctional Facility has a name, has a story, and hopefully has family members or loved ones that care for them. Many men here have daughters or sons...or wives...or brothers...or sisters... This is never lost on me and I want you to know that it is never lost on my leadership as well. If the pandemic had to hit a prison, I am so grateful to have a man like Warden Long at the helm. If he is blushing because I made him read that, just know that it is true none the less.

Every day I wake up asking God for wisdom in what else can be done as the pandemic sweeps the country and now especially as it has hit this prison and lives have been lost. You may know that I am a man that deeply depends upon God in all I do. Behind these walls and the walls of other prisons I have often talked to men and women about the journey of justice and mercy, accountability and redemption, responsibility and forgiveness. I believe that justice and mercy can be held in the same hand.

Please know that your grief and sorrow does find a home in our hearts as well. And while I pray for the sorrow of this day and what it might do to bind our hearts together, I ask that you pray for my staff that walk into this prison every day to

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care and safeguard the men behind these walls and the men and women in this community.

Let me leave you with words out of Hebrews 13:1- 3. "Keep on loving one another as brothers and sisters. Do not forget to show hospitality to strangers, for by so doing some people have shown hospitality to angels without knowing it. Continue to remember those in prison as if you were together with them in prison, and those who are mistreated as if you yourselves were suffering."

May God protect all of us and offer up wisdom for the days ahead.

-- Dean Williams, Executive Director of the Colorado DOC

Before Warden Long left, he gave the ladies permission to place a small memorial outside the pavilion consisting of a small cross saying *In remembrance* and a patriotic bouquet. He said he'd leave it there until someone complained about it. Sadly, that probably happened. He also told them that the visitor parking lot was theirs to use until 10:00 p.m. and that inmates in units 21, 23, and 25 could see the north end of the parking lot.

Once it got dark, the group converged to the north end of the parking lot, each carrying battery-operated candles. Waving their candles, they sang an obviously heartfelt version of *Amazing Grace*. Suddenly someone yelled, "Look. There's a light flashing back at us!" There was a light flashing on and off in one of the cells, and an inmate was in the window waving. Soon, there were lights flashing from all three units, upstairs and down. Inmates could be seen waving and dancing. The more cell lights flashed, the harder the group waved their candles. One of the lights was the husband of one of the ladies. It was later learned that word had spread on the inside, and lights were flashing in cells that couldn't even see the parking lot.

One wife told the reporter,

For all of us here, our loved ones had, before the COVID lockdown, at least semi-regular visits. I'm sure that for many of those flashing lights, we were the only visitors they've had in a very long time. They need to know that there are people who care about them; that they have an identity, and are not just a number.

It's hard to say who was moved the most by the evening – the inmates or the loved ones in the parking lot.

TENNESSEE DECISION ON REGISTRY

EXCERPT

By Larry (NARSOL)

The case of *Doe v. Rausch* contains a very thorough analysis regarding the history of sex offender registration in Tennessee and the developing body of case law in the Sixth Circuit which resulted in a favorable outcome for Doe. Due to the limited scope of the court's ruling, I think that the chances of an appeal to the Sixth Circuit are less than the odds in the recent Pennsylvania case of *T. S. v. Pennsylvania State Police* decided by the Commonwealth Court of Pennsylvania and the case of *Grabarczyk v. Stein* decided by the United States District Court for the Eastern District of North Carolina.

This analysis is intended to focus on some important aspects of future litigation challenging the constitutionality of sex offender registration. It is critically important that those of us involved in advocacy recognize that all recent victories have come because litigants focused on the:

- Ever-expanding reach of registration to additional offenses;
- Increased periods of registration and frequency of in-person reporting to law enforcement;
- Continuous expansion of exclusion zones through residency and proximity restrictions;
- Favorable decisions from state and federal courts across the United states.

The Supreme Court decided the most cited registration case almost seventeen years ago. See *Smith v. Doe*, 538 U.S. 84 (2003). *Smith* was decided when most registration schemes were relatively benign compared to today's registries. There was no in-person reporting, and people were free to live and work wherever they chose without interference from anyone. The Supreme Court did not say that states could impose any and all requirements they could imagine. In fact, they said just the opposite. . .

. . . NARSOL is excited about this case because it is another step in building the body of case law which will help us in our long-term goal of elimination of the nightmare of public registration.

Editorial Policy

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

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

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