



COLORADO CRIMINAL DEFENSE BAR

**INFORMATION REGARDING THE LAWS &  
POLICIES RELATING TO ADULT SEX  
OFFENDERS IN THE STATE OF  
COLORADO**  
July 2010

Prepared with the assistance of the Defense Bar Subcommittee  
of the Colorado Sex Offender Management Board

Published by the Colorado Criminal Defense Bar to assist in a  
more complete understanding of the Colorado system  
affecting adult sex offenders and their families

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*Information Regarding the Laws and Policies relating to  
Adult Sex Offenders in the State of Colorado  
July 2010*

This document is designed to give persons who are charged or sentenced as adult sex offenders in the state of Colorado and those persons who are interested in sex offender sentencing more complete information regarding the system and programs affecting sex offender sentencing in the state of Colorado. It is not designed to replace the advice of legal counsel and all persons who are charged as a sex offender should consult with experienced and competent legal counsel, as necessary.

**1. What is the Colorado policy regarding sex offenders?** Colorado law declared in 1992 that comprehensive evaluation, identification, treatment, and monitoring of sex offenders is necessary in order to work towards elimination of recidivism and re-offense. Therefore, Colorado created a program which standardizes the evaluation, identification, treatment, and monitoring of sex

offenders at each phase of the criminal justice system in an attempt to curtail recidivistic behaviors and enhance the protection of victims and potential victims.

Colorado's statutes declare<sup>1</sup> that the majority of persons who commit sex offenses, if incarcerated or supervised without treatment, will continue to present a danger to the public when released from incarceration and supervision."<sup>1</sup> But, Colorado also has decided that keeping all sex offenders in lifetime incarceration imposes an "unacceptably high cost in both state dollars and the loss of human potential and that some sex offenders respond well to treatment and can function as safe, responsible, and contributing members of society, so long as they receive treatment and supervision."<sup>2</sup> Therefore, Colorado declared that a program under which sex offenders may receive treatment and supervision for the rest of their lives, if necessary, is "necessary for the safety, health and welfare of the state."<sup>3</sup>

**2. Who is a sex offender in Colorado?** A sex offender in Colorado, for purposes of mandatory evaluation and treatment means any of the following:

- a) A person convicted in Colorado on or after January 1994 of any sex offense, felony or misdemeanor. Conviction includes receipt of a deferred judgment and sentence for any sex offense, felony or misdemeanor. The following are sex offenses that fall under mandatory standardized treatment:
  - i. All forms of sex assault, unlawful sexual contact, sexual assault on a child, sexual assault on a child by one in a position of

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<sup>1</sup> COLO. REV. STAT. § 18-1.3-1001

<sup>2</sup> COLO. REV. STAT. § 18-1.3-1001

<sup>3</sup> COLO. REV. STAT. § 18-1.3 -1001

trust, sexual assault on a child by a psychotherapist, enticement of a child, incest, aggravated incest, trafficking in children, sexual exploitation of children, procurement of a child for sexual exploitation, indecent exposure, soliciting for child prostitution, pandering of a child, procurement of a child, keeping a place of child prostitution, pimping of a child, inducement of child prostitution, patronizing a prostituted child, felony internet luring of a child, internet sexual exploitation of a child, or any attempt, conspiracy or solicitation to commit any of the offenses listed above.

- b) A person convicted in Colorado on or after January 1994 of any criminal offense, including all nonsexual offenses, if the person:
  - i. has been previously convicted of a sex offense in Colorado or any other jurisdiction,
  - ii. or if such person has a “history of any sex offenses” including those defined in the listed offenses.
  
- c) A person convicted in Colorado after July 2000 of any criminal offense, including all nonsexual offenses, where there is an underlying factual basis which involves a sex offense.

**3. What crimes fall under the Lifetime Supervision Act?** The Sex Offender Lifetime Supervision Act of 1998 with its amendments requires a lifetime supervision sentence for almost all class 2, 3 and 4 felony sex offenses committed on or after November 1, 1998. Additionally, sex crimes such as trafficking children and sexual exploitation (including felony crimes related to child pornography) may or may not fall under the provisions of the Lifetime Supervision Act. Before the lifetime supervision sentence can be applied to these types of sex crimes, the court must find that the offender

is likely to commit the crime of sexual assault, unlawful sexual contact, sexual assault on a child or sexual assault on a child by one in a position of trust. The sentencing court must also find that the victim was a stranger to the offender or a person with whom the offender established or promoted a relationship with primarily for the purpose of sexual victimization.

The Lifetime Supervision Act allows for a potential lifetime sentence to the Department of Corrections.

**4. Can a person be categorized as a sex offender in Colorado without having been convicted of a sex crime?**

*Under Colorado law, a person can be a sex offender for purposes of mandatory sex offender evaluation and treatment even if the person does not have a conviction of a sex offense. One way this happens is by a judicial determination that there is an underlying factual basis for a sex offense by the court at the time of the plea even though the guilty plea was to another nonsexual offense and the sex offense was not charged or was dismissed. A deferred judgment and sentence for any offense with an underlying factual basis of which involves a sex offense will also result in the person being categorized as a sex offender.*

Further, there is a provision under Colorado law that if a person has a “history of sex offenses,”<sup>4</sup> s/he can be categorized as a sex offender for purposes of evaluation and treatment required by the Sex Offender Management Board (SOMB). Colorado’s Probation Department considers only prior juvenile adjudications and adult convictions for purposes of the “history of sex offenses” categorization. However, it is important to understand that the Colorado Department of Corrections (DOC) will consider allegations in making this determination – including allegations that have never been prosecuted in Court, charges that were dismissed, allegations that have since been denied by the alleged victim, and filed

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<sup>4</sup> COLO. REV. STAT. § 16-11.7-102(2)(a)(II)

sexual charges for which a person has been acquitted - for purposes of classification of a DOC inmate as a “sex offender” within the DOC classification system. (See *Question # 24 for more information*)

**5. What happens to a person who meets the definition of a “sex offender”?** Each sex offender, upon entering a plea or upon a conviction, is required to submit to a **sex offense specific evaluation** which includes an evaluation for treatment, an evaluation for risk, and procedures required for monitoring of behavior attempting to protect victims and potential victims. The offender will be required to pay the cost of the evaluation(s) and testing(s), unless the Court or probation determines the offender does not have the ability to pay these costs. This determination is separate from a Court’s determination that an offender is indigent for purposes of court-appointed counsel. The Department of Corrections and adult parole may require the offender to pay for the costs of evaluation and testing. The payment requirement is determined on a case by case basis. Offenders should expect to pay these costs.

**6. What is a sex offense specific evaluation?** Under Colorado law, every “sex offender” must participate in the sex offender evaluation. The purpose of this evaluation is to identify levels of risk and specific risk factors that require attention in treatment and supervision. The evaluation will be used by probation to make recommendations to the Court regarding the supervision, treatment, behavioral monitoring, and all terms relating to the sentencing of offenders. The evaluation shall consider the following required areas:

- a) Cognitive Functioning,
- b) Mental Health,
- c) Medical/Psychiatric Health,
- d) Drug/Alcohol Use,
- e) Stability of Functioning,
- f) Developmental History,
- g) Sexual Evaluation,
- h) Risk,

- i) Motivation and Amenability to Treatment,
- j) Impact on the Victim.

The evaluator **must** be an approved evaluator on the list established and maintained by the Sex Offender Management Board (SOMB). Various tests and instruments are mandated by the SOMB. Testing instruments include tools designed to assess an offender's sexual interests or arousals. This may, but not always, include penile plethysmograph testing (physical testing involving the male genitals). The offender may also be required to undergo polygraph ("lie detector") testing. In drawing conclusions about the risk of the offender, the evaluator is expected to prioritize community and victim safety.

**7. Who decides what sex offender treatment will include for someone who is required to participate?** The SOMB was created by statute to develop and prescribe standards for the evaluation and identification of sex offenders. The SOMB is also required by law to recommend behavior management monitoring and treatment based upon the knowledge that "sex offenders are extremely habituated and that there is no known cure for the propensity to commit sex abuse."<sup>5</sup> The guidelines and standards developed by the SOMB are designed for the treatment of sex offenders regardless of whether the offender is on probation, incarcerated, or on parole. These standards and guidelines are modified periodically and available to the public at [www.dcj.state.co.us/odvsom](http://www.dcj.state.co.us/odvsom).

Offender, their families and all interested parties are encouraged to become familiar with the SOMB Standards and Guidelines. SOMB meetings including those concerning modifications to the Standards and Guidelines are open to the public. Meeting information is also regularly updated on the website.

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<sup>5</sup> COLO. REV. STAT. § 16-11.7-103(4)(a)

**8. What does a “no-cure” policy mean?** It is the current policy of the state of Colorado that all adult sexual offending is a behavioral disorder which can not be “cured.”<sup>6</sup> Sexual offenses are defined by law and may or may not be associated with or accompanied by the characteristics of sexual deviance which are described as paraphilias. Some sex offenders also have co-existing conditions such as mental disorders, organic disorders, personality disorders, or substance abuse. Some sex offenders do not have the characteristics of sexual deviance but have violated the law.

It is the policy of Colorado that while many offenders can learn through treatment to manage their sexual offending behaviors and decrease their risk of re-offense, behavioral management should not, however, be considered a “cure.” Our legislature has indicated that successful treatment cannot permanently eliminate the risk that any offender, no matter what the original offense, may commit another sex offense. Some sex offenders cannot or will not respond to treatment; therefore, not all sex offenders will be successful in treatment.

**9. What kind of authority does the SOMB have over the treatment providers, evaluators, and polygraphers?** The SOMB approves service providers based on certain criteria including the amount of direct clinical contact and the level of supervision. Any person who wishes to be placed on the SOMB Approved Provider List must submit an application to the SOMB. Approved SOMB providers are required to re-submit an application for continued placement on the Approved Provider List every three years.

The Department of Corrections (including parole), the Colorado State Judicial Department (including probation), the Division of Criminal Justice of the Department of Public

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<sup>6</sup> Juvenile sex offense policy is different from adult policy in this area and juveniles are not subject to the “no known cure” philosophy.

Safety, and the Department of Human Services are required to utilize only treatment providers, evaluators, or polygraphers that have been approved by the SOMB.

It is important to understand that SOMB does not currently evaluate or monitor SOMB treatment providers or programs. SOMB approves the providers based on qualifications and curriculum review. There is some limited file review after an application for continued placement is submitted to SOMB.

SOMB does review complaints filed with the Board concerning approved treatment providers.

**10. What does SOMB-approved sex offender treatment include?** Regardless of whether the adult offender is sentenced to probation, parole, community corrections, jail, or Department of Corrections, the offender will be required to sign a contract with a SOMB treatment provider which describes the offender's treatment conditions. The supervising officer will convene a community supervision team (CST) that includes the supervising officer (for example, a probation officer), a provider of sex offense specific therapy, and a polygraph examiner. The offender will be required to participate in group therapy. Group therapy is the preferred mode of treatment although offenders might also be required to be in individual therapy.

Sex offender treatment requires the offender to submit to periodic polygraph testing. The offender may also be required to submit to periodic assessments of sexual arousal and/or sexual interests. Refusal to cooperate with a polygraph will be considered a violation of probation, parole, or community corrections. Pre- and post-polygraph test statements are shared with the CST and inconclusive responses can result in increased supervision or treatment requirements. Statements made during a polygraph examination can be used as evidence in a probation revocation hearing, parole revocation hearing or other court hearing

regarding the offender's sentence. These statements can also be used as a basis for new charges.

Each offender is expected to progress through phases of treatment intensity concluding with a decreased intensity "maintenance" phase. Offenders who have progressed to the maintenance phase are still required to submit to periodic polygraph testing.

Even after the offender has completed all of the required treatment, the offender may be subject to an after-care plan and the offender's behavior will continue to be monitored until the end of his/her sentence. If, after completion and discharge from treatment, the treatment team determines that the offender has relapsed or needs more treatment, SOMB treatment may be reinstated. **The offender should expect to bear the entire expense of all treatment and therapy throughout the sentence, including polygraph and all other testing and/or monitoring. Failure to pay for required treatment and monitoring may constitute a violation of an offender's treatment program and/or sentence.**

**11. What is the polygraph testing process?** Under SOMB standards, a polygraph examiner is a member of the community supervision team for every offender. Polygraphs are considered an important assessment and treatment tool used to hold the offender accountable. Ideally, the polygraph will be used to require honesty about subjects that are difficult to discuss.

The SOMB Standards and Guidelines state that although deceptive findings on a polygraph are not in and of themselves a violation of probation or parole, they can be considered in determining the level and conditions of supervision. Information disclosed during the pre-and post-polygraph test process or during a polygraph examination will be used as part of a decision-making process that may include revocation of a person's probation or parole or requiring more intensive supervision.

There are various kinds of polygraphs: initial/instant offense polygraphs, sexual history polygraphs, maintenance/monitoring polygraphs, and event-specific polygraphs, which are considered to be a central part of sex offender evaluation and treatment. The SOMB Standards and Guidelines specifically outline what kinds of polygraphs should be given and the procedures that should be followed.

Even though courts do not recognize the reliability of polygraph testing under the rules of evidence, the polygraph continues to be relied on heavily in sex offender treatment. It is important for all offenders to be aware of what is required for a polygraph to be approved.

**12. What is the goal of sex offender treatment?**

SOMB-approved treatment attempts to identify and treat an offender's thoughts, emotions, and to address and confront behaviors that lead to offending behavior. Sex offender treatment should reduce the offender's re-offense risk. Research supports the effectiveness of sex offender treatment. Offenders are encouraged to comply with treatment as success is more likely with offenders who engage in treatment. Offenders who are successful in treatment should learn how to avoid re-offending through self-management methods.

Treatment will make an offender uncomfortable but effective treatment should support an offender in his/her attempt to develop into a better, law-abiding person.

**13. How is sex offender treatment different from other therapy or treatment interventions?**

Sex offender treatment is different from other forms of traditional therapy. Treatment goals are set by the treatment provider in consultation with the CST and in conjunction with the offender. Treatment goals may also include input from the victim. Sex offender treatment is done primarily through group therapy. Group members must be available to confront and support a new group member. Accountability through

confrontation is considered an essential component of sex offender treatment.

Individual therapy may also be used to supplement the group therapy but individual therapy is not allowed as the primary intervention unless there are exceptional circumstances. It is important to understand that there is no confidentiality in individual therapy since each offender must waive his right to confidentiality before s/he enters sex offender treatment.

**14. What is the waiver of confidentiality?** The offender is required to sign waivers and releases as a condition of probation, parole, or community corrections. Through such waivers and releases, the offender agrees that the supervising officer can share information that the offender communicates to any treatment team member with any other person on the team.

The waiver also extends to any other individuals and agencies responsible for the offenders' supervision such as community corrections case managers, social service workers, or other mental health workers. Under certain mandatory reporting laws, this information could result in disclosure of information to law enforcement agencies. In certain circumstances, the waiver also extends to victims, the victim's therapist and/or victim's representative.

The waiver of confidentiality does not extend to the attorney-client relationship which means that the offender can continue to have confidential communications with his/her attorney and those communications do not have to be disclosed to the CST.

**15. What is the role of the probation officer?** The probation officer is a representative of the court in making sure that any sentence to community supervision is performed in compliance with court orders. Generally, if probation is granted by the court, the offender will be subject to special conditions of community supervision. There are certain terms

and conditions that are standard for sex offender probation, however, the court has the authority to add additional conditions or take away conditions. **It is important for everyone involved in this process to understand that probation must follow the court's order so if there are problems with certain terms and conditions of probation, they should be addressed to the court at the time of sentencing, if at all possible. If problems occur after sentencing, the offender should make every effort to have the issue addressed by the sentencing judge.**

Common terms and conditions of sex offender probation include prohibition from the following:

- physical, verbal or electronic contact with the victim(s) in any way, including third-party communications;
- entering onto premises, traveling past, or loitering near the victim's residence, place of work, or other places frequented by the victim;
- dating, befriending or marrying anyone, and especially anyone who has children under the age of 18;
- accessing or loitering near school yards, parks, arcades, playgrounds, amusement parks, or other places primarily frequented by children;
- participating in any volunteer activity that involves contact with children;
- possessing any pornographic, sexually oriented or sexually stimulating materials, including visual, auditory, telephonic, electronic and computer media;
- drinking or possessing alcohol;
- changing treatment programs without the approval of the supervising officer; and
- living anywhere not approved in advance by the supervising officer.

Generally, probation requires the offender to follow a detailed regimen. The offender's living arrangement must be approved by the supervising officer. In some cases, the

offender is required to live in a shared living arrangement (SLA) with other offenders. In addition, some offenders may be subjected to GPS monitoring. There are very strict rules regarding contact with any children and the offender will initially be prevented from having any contact with the probationer's own children, even in cases where the offense did not include a child victim. The offender may be required to submit to an HIV test at some stage of the proceeding as well as to DNA testing.

**16. Explain what it means when the SOMB Standards and Guidelines refer to victims or potential victims?**

SOMB Standards and Guidelines refer to "victims" or "potential victims" frequently. Victims are those persons that are directly involved in the crime of the offender. Potential victims are those persons that the team identifies as "at risk" based on the nature of the offense and the risk factors identified in assessing the offender. SOMB recognizes that that it is not possible to limit an offender's contact with all individuals that might be considered "potential victims." However, the CST will identify what is considered to be the offender's risk and limit access to persons or places where an offender might present a risk such as bars, singles clubs, senior centers, schools, etc.

**17. What are the rules as they relate to contact with children? SOMB Standards and Guidelines prohibit an offender's contact with children, including the offender's own children, unless certain conditions are met. This is true even if the victim of the offense was not one of the offender's children or even any child at all. This is true for offenders in the community and for offenders in prison.**

SOMB has established a process for an offender to try to obtain contact with his or her own children. This process is known as Parental Risk Assessment (PRA). A PRA is designed to assess certain factors that relate to risk for re-offense. Practices generally do not allow the offender to live with or have contact with his or her own children unless there

is a low-risk PRA or the offender has met certain treatment criteria.

If contact with one's own children is permitted, contact with other children may still be prohibited. For example, the parent/offender may not be allowed to have contact with any friends of his or her children, attend school functions, participate in the child's birthday party, go to public parks, if other children will be present. Additionally, restrictions, such as requiring the offender to grocery shop at hours when children will not be at stores, are common. Some offenders may not be allowed to attend certain church services where there might be children present.

Community access is restricted and approved safety plans will be required before an offender may attend places where children or potential victims may be. Therefore, an offender may be required to have a safety plan approved before an offender is allowed participate in any activity including a meeting or a family gathering.

Reading materials which have pictures of children may be limited or prohibited. There will be other rules regarding children that will be imposed by the CST. Noncompliance with these rules can result in revocation by the supervising officer. The offender may be required to submit to polygraph testing with regard to contact with his or her children or other children as part of an investigation process. During the pre- and post-polygraph interview, the offender may be questioned about any thoughts or fantasies related to children.

**“Contact” with children will include correspondence, written or verbal, telephone contact, texting, emailing, gift giving, or any communication through another person.** Any attempt to communicate with any children without prior approval will be a violation.

Presently, the Department of Corrections will not conduct a PRA or pay for one to be conducted due to lack of

resources. An offender has the option of arranging for a PRA. However, a low-risk result will not guarantee contact with his/her children. The offender or his/her counsel should contact the Sex Offender Treatment and Management Program (SOTMP) at the Department of Corrections for guidance on this issue.

**18. Does the SOMB treatment system differentiate between child molesters and persons convicted of indecent exposure?**

Not really. At least not initially. SOMB Standards and Guidelines assume that any offender is capable of re-offending by committing any other type of sex crime. This is known as “cross-over.” “Cross-over research” refers to a body of research that demonstrates that a statistically significant percentage of sex-offenders will “cross-over” from one type of sex crime to another. This is why the 19 year old who has consensual sex with a 14 year old girlfriend may have the same terms and conditions and treatment as a 70 year old man who had sex with a 5 year child. It is expected that the CST will individualize the treatment plan throughout the treatment process but there is no guarantee that this will happen quickly.

**19. What does it mean to be “in denial”?**

SOMB standards talk about offenders who are in denial. These are offenders who do not accept responsibility for the crime for which they have been convicted as well as offenders who do not accept responsibility for past crimes and past behavior based on police reports. It can also include, in certain cases, offenders who accept responsibility for part of the behavior and crime charged but do not accept responsibility for everything in law enforcement reports or offenders who minimize their responsibility for the crime.

An offender who is in denial will not progress in treatment. An offender who is in denial will be eventually be terminated from treatment. In the Department of Corrections, an offender who is in denial will suffer other consequences, such as loss of earned time credits. Currently, an offender will participate in a denial intervention program for a period of

three months before treatment can be terminated and supervision revoked.

**20. How do the SOMB Standards and Guidelines address my right to be silent as provided in the United States Constitution?** Currently, the SOMB Standards and Guidelines do not address the constitutional right of an offender to remain silent. This can create problems for certain offenders (specifically those offenders whose cases are on appeal) because an offender who refuses to make statements about the offense or other offenses can be labeled a denier and thus terminated from treatment. Additionally, an offender does not have immunity in treatment for other crimes an offender might have committed. This causes a concern that there might be retaliation or charges filed if an offender is candid in treatment. Offenders need to consult with their attorney regarding these issues prior to entering into treatment. The attorney can try to address these problems with the probation officer and treatment provider.

**21. If a person falls under the Lifetime Supervision Act, what happens at sentencing?** If the offender is eligible for and sentenced to probation, probation is for a minimum of 10 years to a maximum of life for a class 4 felony, and a minimum of 20 years and a maximum of life for a class 2 or 3 felony. Intensive supervision probation is required until further order of the court.

If a person is sentenced to the Department of Corrections for a lifetime offense, the court is required to sentence the offender to at least the minimum of the presumptive range of sentencing to the maximum sentence of life. Currently, at the Department of Corrections, the minimum sentence is not a release date. It sets the earliest date at which an offender will meet the Parole Board. *A person sentenced under the Lifetime Supervision Act can assume it is possible that they will serve a life sentence for the offense. Many factors will affect the Parole Board's decisions, including the offender's treatment progress and the*

*factors that the Parole Board considers relevant and important.*

**22. Can a sex offender get early termination from probation?** Legally there are ways persons can be terminated from probation early. However, in reality this happens very infrequently and the offender should not assume that it will happen.

**23. What happens when a convicted sex offender is sentenced to prison under the Lifetime Supervision Act?** Offenders sentenced under the Lifetime Supervision Act have a different Department of Corrections (DOC) time computation system than other felony offenders because these sex offenders do not have mandatory release date. An offender sentenced to prison under the lifetime act must serve his/her minimum sentence less any earned-time deductions before the parole board may give initial consideration to releasing the offender. However, it is not likely that an offender will be paroled without participating and progressing in treatment. Few offenders are paroled at their first hearing. Waiting lists and procedures of the Department of Corrections/Colorado State Parole Board make it generally impossible for a person to be released at the minimum sentence.

The Department of Corrections provides a comprehensive sex offender treatment and management program (SOTMP) for prison inmates. Offenders work their way through Phase I, a cognitive behavioral therapy group which is designed to last approximately six months. After successful completion of Phase I, there is a transition to a second phase of treatment which has no defined time frame. It is an open-ended group where the plan is to allow for individualized progression. Treatment ends in a maintenance phase where the offender is provided support which reinforces positive lifestyle changes. Offenders can be required to complete Phase I or II more than once.

There are long waiting lists for Phase I as well as Phase II treatment. This is due to many factors including the limited treatment resources and spaces, the high demand for the program, the limited number of offenders placed on parole. Over 5,000 offenders at DOC have been assessed for needing sex offender treatment. Currently, Phase I and Phase II can accommodate approximately 350 offenders.

An offender's position on the waitlist depends on several factors. Before being eligible for the waitlist, an offender must be within eight (8) years of his or her first parole eligibility hearing. Hence, offenders who receive long minimum sentences will not even be able to commence treatment until well into their sentence. Furthermore, an offender must admit to committing a sex offense and recognize it as a problem before being eligible for treatment. Offenders are then prioritized on the waitlist according to their parole eligibility date. Currently, offenders sentenced under the Lifetime Supervision Act are given priority over offenders serving determinate sentences. Offenders that drop out, fail to comply, or are terminated from treatment can be placed back on the waitlist but will have the lowest priority.

It is common to feel discouraged in treatment; however, the offender should be aware that serious consequences result from dropping out. It could take years for the offender to get back in treatment. Offenders who are not successfully progressing in treatment will not meet SOMB treatment criteria to progress from prison to parole.

DOC sex offender treatment also requires offenders to follow SOMB Standards and Guidelines regarding contact with children, victims, or potential victims. Depending on the facility and treatment progress, an offender may or may not be allowed to see children. Also, victims or potential victims will not be allowed to visit. This can be true even if the victim or potential victim is now an adult choosing to visit or contact a family member. Reading materials may be substantially limited. Reading restrictions are supposed to be specific to the

offender and based on rehabilitative need. Pictures of any children may be prohibited as well.

**24. What happens to an offender sentenced to prison who has not been convicted of a sex offense, but who has been classified as a sex offender?** The classification system in the department of corrections spans from S1 to S5, with S5 representing convicted sex offenders and S4 representing persons who are not convicted but for whom sex offender treatment is still recommended. A person sentenced to the Department of Corrections (DOC) for a non-sexual crime may be classified a S4 if there is an underlying factual basis of a sex offense in the crime or if the person has a history of sex offenses or sexually offending behavior which has not resulted in a conviction.

It is important to understand that if a person is sent to prison for a non-sexual crime but has a prior sexual conviction, including misdemeanors and juvenile offenses, s/he will likely be classified a sex offender and recommended to participate in sex offender treatment, even if s/he has previously successfully completed a sex offender treatment program. The recommendation for treatment is based on continuing risks associated with criminal behavior. Any unadjudicated sex offender sentenced to the department of corrections after July 1<sup>st</sup>, 2009, is entitled to a hearing before a hearing officer with certain due process rights before s/he can be classified as a S4 sex offender by the DOC. These unadjudicated sex offenders have the right to appeal this classification to the court if they comply with the necessary appellate timelines. **Any person with allegations of sex offending behavior who is not convicted of a sex offense should consult with their attorney if their sentence is to the DOC.**

A person classified as a S4 is treated identically to a person classified as a S5 for purposes of treatment by the DOC. Since sex offender treatment emphasizes accountability, only persons that acknowledge committing a sex offense and are willing to work on this problem in

treatment are granted participation in treatment. Persons recommended for sex offender treatment, including both S4's and S5's, who do not admit to having committed a sexual offense, are labeled "deniers." A person can be labeled a denier if s/he denies an offense even when s/he was acquitted or when no charges were filed.

Anyone labeled a "denier" and anyone who refuses to participate in the recommended treatment are ineligible to receive earned time. Any offender classified as an S4 will be required to have a treatment plan that follows the SOMB Standards and Guidelines, including no contact with children, victims, or potential victims

A person classified as an S4 who refuses to participate in treatment while in prison and serves his/her maximum sentence and is granted mandatory parole, may be required to participate in sex offender treatment as a condition of parole. Failure to successfully complete sex offender treatment when required as a condition of parole may result in a parole revocation.

**25. What is the role of a parole officer?** The parole officer is a representative of the Parole Board who ensures that parole community supervision is performed in compliance with the terms and conditions set by the Parole Board. Terms and conditions of parole are generally the same as terms and conditions of probation. If the offender violates any term or condition of parole, the offender can be returned to prison after a hearing in front of an administrative hearing officer.

**26. What is an SVP?** A SVP is a "sexually violent predator." There are certain statutory criteria for the label of sexually violent predator which includes an assessment of risk. The process for determining whether an offender meets the definition of a SVP is completed by the probation department and the treatment provider or by the Department of Corrections. The actual SVP determination is then made by the court or, in some circumstances, the Parole Board. The criminal history need not include a crime with physical force

to qualify an offender for a SVP determination. This designation is significant because it triggers special registration requirements and community notification meetings every time the offender changes residences.

**27. What is sex offender registration and how will the offender know if s/he has to register?** Sex offenders are advised by the court at sentencing if they are required to register. If required to register, sex offenders must register with the law enforcement agency in the jurisdiction in which they live. This could be either the local police department or the sheriff's department, depending on the offender's address. Sex offenders may be required to register in additional jurisdictions if there is some kind of dual residency, e.g., college students. Registration dates, times, and fees vary among the registering agencies, therefore, the offender should contact the law enforcement agency where s/he will be registering to find out the specifics of that agency's registration process. The registering agency will provide the offender with specific registration requirements such as whether the offender is required to register annually or quarterly.

The laws concerning registration are very complex and any errors in compliance will lead to the filing of new misdemeanor or felony charges. When in doubt, it is better to register too often than not enough because of the severe penalties for failure to register. Also, if a person moves away from one jurisdiction, they are required by law to both de-register from their old address and to register at their new address. Even temporary relocations and travel plans require new prompt registration. Failure to de-register could also lead to the filing of new misdemeanor or felony charges. There are expensive registration fees in some jurisdictions and some communities prohibit sex offenders altogether. Sex offenders should, whenever possible, investigate their registration consequences before making any final plans to move.

***Sex offender registration never ends automatically.***  
A person who has ever been ordered to register must continue

to register unless s/he successfully petitions the court and an order enters allowing the registration may terminate. Because of the serious consequences and complexity of the registration laws, any adult sex offenders may wish to consult an attorney as well as all local law enforcement offices, and, if under supervision, his/her probation, community corrections, or parole offices about his/her registration requirement.

**28. What should a sex offender do if s/he thinks the sex offender treatment is not being conducted in accordance with SOMB Guidelines or if s/he thinks that s/he is being treated unfairly in treatment?** If an offender has a concern or complaint regarding a treatment provider, s/he should first try to discuss the problem with the therapist, the therapist's supervisor or the program director. If under supervision, the offender should try to discuss the problem with the supervising officer. The offender can always file a complaint with the Sex Offender Management Board. Offenders are encouraged to file complaints when a treatment provider is not following the SOMB Standards and Guidelines. **The SOMB only addresses Standards violations.** The complaint will be reviewed by the Application Review Committee, a sub-committee of the SOMB. The complaint should indicate the Standard that the treatment provider violated. Forms for the complaint can be found at [www.dcj.state.co.us/odsom](http://www.dcj.state.co.us/odsom).

Non-compliance by a treatment provider can result in denial of status as an approved provider. The grievance procedure will NOT necessarily impact what is happening in the offender's treatment. The process may not move quickly.

If an offender is sentenced to the Department of Corrections (DOC) and has a complaint regarding a specific treatment provider, a grievance can be filed with SOMB. If the offender has a complaint regarding the program (SOTMP), s/he may file a grievance with the DOC pursuant to the inmate grievance procedure.

Additionally, if the treatment provider is a licensed professional, a complaint can be filed with the state licensing board, generally through the Colorado Department of Regulatory Agencies (DORA).

**29. What should an offender family member do if s/he feels that s/he is being treated unfairly by the offender's treatment provider?** Family members of the offender are entitled to be treated with respect and professionalism by the offender's treatment provider. SOMB Guiding Principle 12. Sometimes, family members are considered to be "interfering with the treatment process." Family members should be clear about the boundaries of their involvement in order to support the offender. It is helpful if family members remain informed about the treatment process to the extent possible. Family members can also file a complaint with SOMB if a Standard has been violated.

**30. What should an offender do when s/he does not agree with conditions of probation or with how conditions are being enforced?** An offender should address concerns regarding conditions of probation with his/her supervising officer. If concerns remain, an offender may then choose to speak with the chief probation officer. If, after speaking with an offender's probation officer and with the chief probation officer, an offender's concerns are not resolved, an offender may return to court to seek modification of the conditions. **The court maintains the ultimate authority over the offender's probation.** An offender can consult with his/her attorney at any time and is encouraged to do so. Confidential communication with counsel is NOT a violation of treatment confidentiality. Confidential communication is protected by Colorado law and the Colorado and United States' Constitutions.

**31. What should a sex offender do when s/he fears revocation of community supervision related to inability to pay for treatment or other costs associated with treatment?** If an offender's financial constraints prevent him/her from complying with the requirement of treatment,

the offender should communicate such financial constraints to his/her probation or parole officer. In some cases, probation and parole have limited resources to help with the cost of treatment. Regardless, an offender should continue attending treatment even if the offender is unable to pay. An offender who stops attending treatment may potentially be revoked for not complying with treatment. An offender who becomes unable to pay for treatment should discuss such circumstances with his/her treatment provider. Some treatment providers may provide temporary alternatives to treatment that do not cost money. An offender may consult with legal counsel for assistance or for an attempt to modify terms and conditions of probation or parole. It is important that an offender keep accurate records regarding his/her ability to pay for treatment and other costs.

**32. What should a sex offender in the Department of Corrections (DOC) do if he or she has not been able to get into sex offender treatment?**

There are long waiting lists for both Phase I and Phase II treatment. The DOC prioritizes sex offenders on the waitlist by several factors including the offender's parole eligibility date. An offender must be within eight years of his/her parole eligibility date to be eligible for treatment. Currently, sex offenders with indeterminate sentences are given priority to sex offenders with determinate sentences. An offender who meets the requirements for treatment, but has not been admitted into treatment may contact the program (SOMTP) to verify the offender's waitlist status.

**33. What should a sex offender in the Department of Corrections (DOC) do if s/he is notified after the screening process that he or she is ineligible for treatment based on the information provided on the form or based on being labeled a denier?**

A sex offender who submits the screening form and is denied treatment should be contacted by a mental health professional. If an offender is not contacted by a mental health professional, the offender may request contact with the mental health professional and ask to be rescreened. If, after requesting, an offender is not contacted,

the offender may send a letter directly to the program and ask to supplement or redo the screening form. An offender should allow at least thirty (30) days for the program to respond to his or her request.

**34. What remedies are available to a sex offender who feels that s/he has been improperly classified?** An unadjudicated sex offender must be given a hearing before s/he can be classified as a sex offender for purposes of recommended sex offender treatment in the Department of Corrections. The sex offender may present witnesses at the hearing to testify on his or her behalf. If additional information is obtained after the hearing or if circumstances have significantly changed, an offender may write a letter to the program identifying the changes and/or attaching any additional information.

**35. What can a sex offender do prior to termination if s/he is struggling with treatment in the Department of Corrections?** If an offender is struggling with treatment, s/he should speak to one of the two therapists about his or her concerns. If the concern is not adequately addressed, s/he may then request to speak to his or her coordinator. If the offender still has concerns after speaking with his/her coordinator, the offender may request to speak to Peggy Heil, the director of the sex offender treatment program in the department of corrections.

If a sex offender in treatment violates a provision of the treatment contract, s/he may be placed on program probation. The offender is given written notice of his or her probationary status as well as what s/ he must do in order to become compliant with treatment. An offender is typically placed on probation for thirty days. If the offender has not met the necessary conditions after thirty days, the offender may be terminated from treatment. However, if the treatment violation relates to what is considered a safety or security issue, the offender may be automatically terminated from treatment without first being placed on probationary status.

**36. What should a sex offender do if s/he unable to meet the conditions of parole or feels like the conditions of parole are unfair?** The offender should first speak to their parole officer regarding his or her concerns with the conditions of parole. If the parole officer is unable to address the offender's concerns, he or she may request to speak to the parole officer's supervisor. The offender may also request his or her parole officer to request a modification of the offender's conditions from the parole board.

*This document has been prepared with the assistance of professionals and family members in Colorado who work with the Colorado sex offender treatment and management system. It is intended to aid in the more complete understanding of these offender laws and procedures. It is not a substitute for legal counsel or for a complete review of the law and the SOMB Standards and Guidelines. This document addresses ADULT sex offenders. There are separate SOMB Standards and Guidelines for juveniles who commit sex offenses and sex offenders with developmental disabilities.*