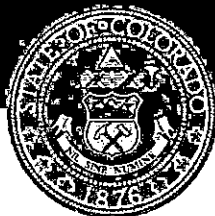


SEX OFFENDER MANAGEMENT BOARD

ANNUAL LEGISLATIVE REPORT

*Evidence-Based Practices for the Treatment and Management of
Adults and Juveniles Who Have Committed Sexual Offenses*



A Report of Findings per 16-11.7-109(2) C.R.S.

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Executive Summary

Pursuant to Section 16-11.7-109 (2), Colorado Revised Statutes (C.R.S), this annual report presents findings from an examination by the Sex Offender Management Board (SOMB) of best practices for the treatment and management of adult sex offenders and juveniles who have committed sexual offenses.

To identify the most current research- and evidence-based practices to date within the field of sex offender treatment and management, the SOMB conducted a series of literature reviews in support of ongoing committee work and the development of this report.

Section 1: Research and Evidence-Based Practices

Within the field of sexual offender treatment and management, the interest in evidence-based practice is increasing. Establishing the degree to which provided services are effective is an essential part in improving public policies aimed at reducing the risk for future sexual re-offense by identified adult sex offenders and juveniles who have committed sexual offenses.

- *Impact of Pornography:* Research on the impact of pornography on society has revealed mixed results (Ferguson & Hartley, 2009). One of the most studied topics is whether or not pornography has had an effect on crime rates. Research generally agrees that pornography has not had a significant effect on sex crime rates, even though pornography consumption has increased over the last few decades (Carroll et al., 2008; Diamond, 2009; Ferguson & Hartley, 2009; Seto, Maric, & Barbaree, 2001). Another topic is whether or not pornography has increased acceptance of aggressive sexual acts and violence towards women. Pornography, especially violent pornography, has been shown to increase sexually aggressive thoughts and behaviors, including belief in rape myths, likelihoods to commit sexual assault, and increased acceptance of violence towards women (Davis, Norris, George, Martell, & Heiman, 2006; Foubert et al., 2011; Hald, Malamuth, & Yuen, 2009; Malamuth, Hald, & Koss, 2011, Seto et al., 2001; Wright, Tokunaga, & Kraus, 2015). Contemporary research has shown that, overall, pornography consumption is a risk factor for sex offenders (Kingston, Fedoroff, Firestone, Curry, & Dradford, 2008). For most sex offenders, however, there are some moderating factors which need to be present for this effect to exist (Davis et al., 2006; Hald et al., 2009). Another concern is how pornography viewing affects juveniles who may not have a good concept of what a healthy sexual relationship looks like. Given how prevalent internet access is, researchers state that it is not *if* juveniles will be exposed to pornography, but *when*. There are many concerns regarding sex offenders using pornography of any kind. The biggest concerns include the impact pornography can have on promoting attitudes supportive of violence against women (Davis et al., 2006; Foubert et al., 2011; Hald, Malamuth, & Yuen, 2009; Malamuth et al., 2011, Seto et al., 2001; Wright et al., 2015), along with potentially increasing sex offender recidivism (Foubert et al., 2011; Kingston et al., 2008). The SOMB will continue to follow the research on this controversial topic, incorporating into its work any new findings as these become available.

- Victim Centered Approach:* Both the *Adult and Juvenile Standards and Guidelines* have individual sections discussing the victim centered approach. The SOMB Victim Advocacy committee continues to provide input into all *Adult and Juvenile Standards and Guidelines* revisions to ensure that the victim voice is represented throughout the *Adult and Juvenile Standards and Guidelines*. Sexual violence is a prevalent problem in the United States. The National Intimate Partner and Sexual Violence Survey indicates that one in three women and one in six men experienced some form of contact sexual violence (including rape, sexual coercion, and/or unwanted sexual contact) (Smith, Chen, Basile, Gilbert, Merrick, Patel, Walling, & Jain, 2017). Research estimates that one in five women and one in 71 men will be raped at some point in their lives (Black, Basile, Breiding, Smith, Walters, Merrick, ... Stevens, 2011). While physical harm caused during an assault is easily seen, the psychological trauma is not always as obvious. Evidence of the psychological harm done by sexual assault has been researched extensively and is well-documented (Dworkin et al., 2017; Mason & Lodrick, 2013). Dworkin et al. (2017) examined studies spanning 40 years, including over 200,000 individual samples. They found that after a sexual assault, the victims experience a myriad of negative psychopathological symptoms. Symptoms include PTSD and other stressor-related disorders, depression (including suicidal ideations), anxiety, substance use, and other conditions (Dworking et al., 2017; Mason & Lodrick, 2013). The fact that sexual assault negatively impacts lives is well known. Not only are victims impacted, but the families of the victim and the offender are, too. Secondary victims of sex offenses are often the forgotten victims. Secondary victims can include non-victim children, non-offending parents, family members of the offender, and other individuals who are impacted by the offense (Bailey, 2017; Baker, Tanis, & Rice, 2002; Cyr, Frappier, Hébert, Tourigny, McDuff, & Turcotte, 2016; Cyr, Frappier, Hébert, Tourigny, McDuff, & Turcotte, 2018; Dyb, Holen, Steinberg, Rodriguez, & Pynoos, 2003; Grosz, Kempe, & Kelly, 2000; Levenson & Tewksbury, 2009; Schreier, Pogue, & Hansen, 2017; Tewksbury & Levenson, 2009). While sex offenses have been studied relatively thoroughly, secondary victims have not received as much attention (Schreier et al., 2017).
- Sexual Offending in the LGBTQ Community:* The lesbian, gay, bisexual, transgender, and questioning (LGBTQ) community has been largely understudied when it comes to the topic of sexual offending. The majority of research to date focuses on rates of victimization of gay, lesbian, bisexual, and transgender individuals, which has shown that they experience sexual assaults at higher rates than their heterosexual counterparts (Edwards et al, 2015; Johnson, Matthews, & Napper, 2016; Katz-Wise & Hyde, 2012; Martin, Fisher, Warner, Krebs, & Lindquist, 2011; Menning & Holtzman, 2014; Strotzer, 2009). In a study of sexual minority students (SMS) in college, Edwards et al. (2014) found that SMS were over two times more likely to report sexual victimization. Additionally, Edwards et al. (2014) found that SMS were also over two times more likely to report instances of domestic violence, with SMS females reporting the most instances. In their meta-analysis, Katz-Wise and Hyde (2012) found that approximately 29% of lesbian, gay, and bisexual individuals reported being the victims of sexual assault. The fact that LGBTQ individuals experience sexual assault at least as frequently as their heterosexual counterparts warrants more research on the topic, especially as it pertains to risk to reoffend in sex offenders and how to best address the victim's needs. Additionally, research needs to analyze sex offenders who do identify as LGBTQ in order to better understand their offending behavior. Research on interpersonal violence among the LGBTQ community provides good information on the differences in their relationships when compared to heterosexual couples, however it does not shed light directly on sexual offending. When it comes to the supervision and treatment of LGBTQ offenders, the evidence-supported Risk,

Needs, Responsivity (RNR) model should be incorporated in order to address the unique needs of this population.

- **Risk-Related Sexual Interests and Behavior Patterns:** The SOMB Best Practices Committee was asked to discuss the relevance of continuing to include the terms 'deviant/sexual deviance' in the *Adult and Juvenile Standards and Guidelines*. The current definition in the *Adult Standards and Guidelines* regarding deviancy focuses on Sexual Paraphilias and Sexual Deviance and uses the definition provided by the Diagnostic and Statistical Manual of Mental Disorders-IV (DSM-IV). The definition outlines the specific criteria for diagnostic purposes. The *Juvenile Standards* defines deviancy as a significant departure from the norms of society and behavior which is not normative, differing from an established standard. Several alternative terms were considered, including offense-related, problematic, unhealthy, and risk-relevant. The committee discussed how most of the disadvantages of each term can be addressed simply by providing a definition that is precise and comprehensive. Therefore, providing an accurate and inclusive definition is more important than how the term is interpreted at face value. The term "risk related sexual interests and behavior patterns" is intended to replace the term "sexual deviance." The purpose behind this is to move away from a socially stigmatizing term, and replace it with one which that better captures the nature of the interest and behaviors exhibited. This change is consistent with contemporary research, much of which is also moving away from the term "sexual deviance." Risk related sexual interest and behavior patterns is defined as "any sexual interest or behavior that is empirically linked to risk factors for sexual offending and abusive behavior as well as sexual interest(s) or behavior(s) that impair the individual's ability to function as a healthy, pro-social member of the community." Such factors include cognitive, emotional, or behavioral sexual patterns determined to be sexually abusive or sexually problematic. This may involve a disregard for negative consequences, the unmanaged need for instant gratification and a lack of impulse control. Such sexual interest or behavior may result in disruption(s) to other aspects of the offender's life.

Section 2: Relevant Policy Issues and Recommendations

Relevant Policy Issues and Recommendations consist of a literature review of the empirical research on issues in sex offender management, policies, and practices. Specific policy issues are examined to highlight areas that may be of particular interest to the members of the general assembly. The following policy issues were identified by the SOMB for review:

- **Sex Offender Registration and Notification Act (SORNA):** The passage of the Adam Walsh Act (AWA) (2006) repealed the requirements of The Jacob Wetterling Act (1994), which meant that states were no longer required by federal legislation to label certain sex offenders as Sexually Violent Predators (SVPs). Sex offender registration and notification was originally designed to inform the public of predatory and violent sex offenders who posed a significant threat to the community, and children specifically (Levenson, Grady, & Leibowitz, 2016). Classification systems that are not based on risk assessments generally do a poor job of accurately assessing risk to reoffend (Harris, Lobanov-Rostovsky, & Levenson, 2010; Levenson et al., 2016). Mislabeling sex offenders as higher risk than they actually are can contribute to loss of protective factors through social rejection (Levenson et al., 2016; Zgoba, Miner, Levenson, Knight, Letourneau, & Thornton, 2016). Mislabeling can also lead to wasted resources, as when lower-risk offenders are labeled as high risk, resulting in higher levels of supervision (Zgoba et al., 2016). A risk-based classification system to identify the highest risk sex offenders and

provide community notification about these high-risk offenders is supported by research (Levenson et al., 2016; Zgoba et al., 2016). The AWA does not require the use of risk-based assessment, but does allow it to be used as an additional component to the offense-based classification system.¹

Recommendations:

- 1) Move to a three tier risk level system in lieu of SVP designation (based on risk assessment).
 - 2) Recognize that risk is dynamic and tier levels (or SVP status) should be changed based on changes in risk level.
- Registration of Juveniles Who Have Committed Sexual Offenses

The registration of juveniles who are adjudicated of sexual offenses has come under question in many states, with concerns that the associated collateral consequences hinder the therapeutic process and potentially decrease community safety. The registration requirements imposed on many juvenile offenders have been shown to increase risk factors and negatively impact protective factors (Batastini, Hunt, Present-Koller, & DeMatteo, 2011; Harris, Walfield, Shields, & Letourneau, 2016). Additionally, efforts that attempt to manage treating juveniles adjudicated of sex offenses like adult sex offenders has raised concerns about the potential negative impacts on adolescent development (Batastini et al., 2011). There are many differences between adult and juvenile offenders, including financial independence, brain development, and reliance on others. One component of this distinction is the information related to the juvenile offender that is made available to the public (Batastini et al., 2011). Allowing the public to access juvenile registry information can disrupt the juvenile's life at school and at home, often contraindicating the therapeutic goals set by the multidisciplinary team supervising the juvenile (Batastini et al., 2011; Harris et al., 2016; Stevenson, Smith, Sekely, & Farnum, 2013b). Juveniles who were subject to notification laws were more likely to develop mental health problems, more likely to be harassed, and more likely to have unstable living situations (Harris et al., 2016; Letourneau, Harris, Shields, Walfield, Ruzicka, Buckman, ..., Nair, 2018). Research has also found that registered juveniles are four times more likely to attempt suicide than non-registered juveniles (Letourneau et al., 2018). Public access to specific information can also negatively affect the juvenile's family, particularly if the victim is a family member. This family stress can undermine the protective factors that are offered by family support (Batastini et al., 2011; Harris et al., 2016; Stevenson et al., 2013b). While some of the juveniles on the registry are a danger to the community, with approximately 15% of juvenile registrants having committed a forcible sexual assault (Stevenson et al., 2013a; Stevenson et al., 2013b), researchers estimate that the majority of the juveniles who are high risk to reoffend, both as juveniles or as adults, are not identified by the current risk identified in state statutes (Batastini et al., 2011).

Recommendations:

- 1) Make juvenile registry information a law enforcement only tool that is non-public (do not include juveniles on the lists provided by law enforcement)

¹ Offense-Based Classification System: System where offender classification is based on the conviction offense.

- 2) For those who are eligible, a hearing for discontinuation from the registry will automatically be set at the time of successful completion from supervision. All notifications including those required by the Victim Rights Amendment must be made with time allowed for responses prior to vacating the hearing. This hearing can be vacated if there are no objections.
- 3) Change the threshold for release from registration - instead of "more likely than not," release from registry should be contingent on being found to be low risk to commit a sex offense as evidenced by clinical indicators
- 4) Improve sentencing procedures to increase the information provided and expand judicial discretion concerning registration, including developing criteria that an evaluator can use to make a recommendation for no registration
- 5) Remove the ineligibility to petition for release after additional adjudication for a new sex offense
- 6) Remove requirement for out-of-state juveniles to register if the originating state has already relieved the juvenile from registration requirements
- 7) Consider allowing a juvenile access to court-appointed counsel for relief from registration

Section 3: Milestones and Achievements

The SOMB established the SOMB Strategic Action Plan in March, 2014. Over the last four years, the SOMB Strategic Action Plan has driven change and enhanced collaboration between stakeholders. Throughout 2018, the SOMB has accomplished all of its strategic goals through collaboration with multiple stakeholders. As of December, 2018, all strategic action items identified were completed but for one remaining component of Section 5.700 regarding victim clarification, contact, and reunification. The draft for this section has been completed by the Victim Advocacy Committee and will be submitted for approval to the SOMB in January, 2019 for final Board approval in February, 2019. Moving forward, the Board intends to focus on Board and committee procedure to ensure a consistent and streamlined process. To help with this, the Board has retained an outside party to observe and make recommendations on the Board decision making process, specifically. Additionally, the Board has focused on incorporating the directives made by House Bill 18-1198² and Former Governor Hickenlooper, including having Board members sign a conflict of interest disclosure agreement, Board training, evaluating the Board decision making process, and ensuring adherence to best practices. Additionally, the SOMB is reviewing its implementation practices to ensure all new standards are followed to fidelity. The following highlights some of the many additional achievements of the SOMB in 2018:

- Managed 12 SOMB committees that functioned at some point during 2018. Several of these committees were convened in 2014 to address specific projects related to the strategic plan, such as the Adult Standards Revision Committee and Best Practices Committee.
- Hosted one On-The-Road Board meetings in 2018 to reach stakeholders outside of the Denver Metro area. The meeting was held in Breckenridge.
- Held an open forum Board meeting for interested stakeholders including members of the public to present concerns at an SOMB meeting.

² Best Practices For State Boards and Commissions, Colorado House Bill 18-1198 (2018)

- Conducted 53 trainings to over 2,900 attendees from across Colorado in calendar year 2018. These trainings covered a range of topics related to the treatment and supervision of individuals convicted of or adjudicated for sexual offenses. The SOMB also held its 12th annual statewide conference in Breckenridge, Colorado that offered three consecutive days of training for providers, probation officers, law enforcement, victim representatives, and many other stakeholder groups. Presentations were conducted on a variety of topics, including domestic violence and sex offending cross-over, juveniles and cyber security, sex trafficking, and the impact of pornography on youth.
- Implemented monthly Lunch and Learns. On a monthly basis, SOMB staff hosts a virtual, one-hour technical assistance session for providers. This allows staff to update providers on recent changes to the *Adult and Juvenile Standards and Guidelines* as well as allowing professionals to have questions answered.
- Handled a large number of technical assistance requests. For example, between October 1, 2018, and October 31, 2018, SOMB staff received 209 calls for technical assistance, including ARC complaint and variance questions, application inquiries, *Adult and Juvenile Standards and Guidelines* interpretation questions and consultations, and training inquiries.
- Supported several community notifications of Sexually Violent Predators (SVP's) by providing ongoing technical assistance to law enforcement around the state.
- The Application Review Committee conducted three Standards Compliance Reviews in 2018, which review pertinent provider files to assess service provider compliance with the *Adult and Juvenile Standards and Guidelines*.
- Received 15 complaints during 2018 made against approved providers, and disposed of eight cases. During 2018 there was one founded complaint. Currently, there are 5 cases still open and under investigation (see Appendix C).
- Voted on 24 motions during the course of 2018. As a rule, motions are only proposed in the affirmative, meaning there has to be some support for the motion. The Board has a thorough discussion where all points of view are heard prior to voting on an issue. On average, 88% of approved motions were passed. Winning votes (either approve or oppose) were typically won by a large majority (average of 88% of total Board member votes). Only three votes were by less than a 15% margin. In general, the Board votes homogenously on issues, with few instances of gridlocked votes (see Appendix F).
- Developed a white paper on adult male sex trafficking offenders (see Appendix B).
- Modified the requirements for contact with children including revising the Child Contact Screening process. The new process allows evaluators to use existing information to assess an offender's appropriateness for contact with children in lieu of a separate assessment instrument.
- Developed and implemented a new adult sexual behavior disclosure packet which requires more collaborative therapeutic interaction between the offender and treatment provider.

- Continued to provide SOMB members and other interested stakeholders with research and literature, including literature reviews in preparation for any *Adult and Juvenile Standards and Guidelines* revisions, trainings by national leaders in the field for Colorado stakeholders, and research and best practice presentations as part of SOMB meetings.
- Published the 2019 SOMB Annual Legislative Report and the 2018 Lifetime Supervision of Sex Offenders Annual Report, in addition to a report analyzing data on complaints submitted to the SOMB (see Appendix C) and an analysis on Board voting patterns from 2014 through 2018 (see Appendix F).

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SEX OFFENDER MANAGMENT BOARD
Preliminary Report
Decision Making Processes
Conflict of Interest

In 1992, the Colorado General Assembly passed legislation to create the Sex Offender Treatment Board, which was renamed the Sex Offender Management Board (SOMB). The purpose and duties of the SOMB as delegated in numerous C.R.S is to create a program that establishes evidence-based standards for the evaluation, identification, treatment, management and monitoring of adult sex offenders and juveniles who have committed sexual offenses. As a former certified Parliamentarian and current sitting County Commissioner, I was engaged to conduct an audit to help evaluate the processes the SOMB utilizes in their decision-making.

Preliminary Findings:

The SOMB is comprised of professional stakeholders committed to both victim advocacy, and offender treatment and management. The SOMB makes tough decisions that rarely get a full consensus because of the diversity of stakeholders represented. The SOMB might be the most diverse board I have ever evaluated. SOMB members are professional, dedicated and knowledgeable. Like all boards, some members do appear to be more dedicated to the process than others. These members tend to "carry the load." My impression is those SOMB members seem to have more of a "dog in the fight" because they work directly with either the victim or the offender. In some cases, they may work with both. The SOMB utilizes a research-based process for decision-making when available. The Standards and Guidelines that have been drafted by the SOMB are quite lengthy and through. All guidelines must be changed or adapted periodically based on new research or mandates placed on the SOMB.

My overall impression is that the SOMB, including the committee structure, works quite well. Leadership from the SOMB Chair and the SOMB sub-committees is quite good. The staff support for the SOMB is professional, knowledgeable and accessible.

SOMB meetings tend to be quite long for a couple of reasons. First, the SOMB is very large and diverse. Discussion gets quite lengthy. Second, public comment is encouraged, which adds to the length of the debate. Committees tend to wordsmith changes in the Standards and Guidelines a bit more than necessary. The public is also encouraged to attend these meeting, which can also slow down the process.

Preliminary Recommendations:

Citizen/public comment should be limited during SOMB sub-committee meetings to a specific time during the meeting. Committee members should be discussing without interruptions or having to educate non-committee members.

Citizen/public comments should be germane to the discussion at all times in both SOMB and sub-committee meetings.

The SOMB Committee Meeting Norms document should be strictly followed and a similar document adapted for use at board meetings.

The SOMB Chair and the sub-committee chairs should always be aware of conflicts or potential conflicts of interest. Members should strictly adhere to Article 7, section 7.2 of the bylaws.

All SOMB members should fill out and sign a conflict of interest disclosure each year. (I am currently working on that document.)

The SOMB should develop a systematic approach to attracting and retaining members.

Reconstitute the board to eleven (11) members. The current SOMB is too large to be efficient.

Encourage SOMB members to commit to the meetings and come prepared.

Chairs should encourage and ask for discussion from all members on specific topics.