

**MINUTES**  
**Sex Offense/Offender Task Force**  
**Colorado Commission on Criminal and Juvenile Justice**  
**October 20, 2010 1:30PM-4:30PM**  
**150 East 10<sup>th</sup> Avenue, Denver**

**ATTENDEES:**

**CHAIR**

David Kaplan, Private Defense Attorney

**TASK FORCE MEMBERS**

Norma Anderson, Former State Senator

Maureen Cain, Criminal Defense Bar

Jeff Geist, Department of Corrections / Sex Offender Management Board (SOMB) *(for Peggy Heil)*

Erin Jemison, Colorado Coalition Against Sexual Assault / SOMB

Laurie Kepros, Colorado Criminal Defense Bar

Dianna Lawyer-Brook, CURE / SOMB / Boulder Community Corrections Board

Terri Morrison, Colorado Judicial Branch *(for Scot Smith)*

Richard Schneider, Denver PD, SO Registration

Steve Siegel, Victim Advocacy, Victim organizations and Denver DA's Office

Ted Tow, Colorado District Attorneys' Council

**PUBLIC PARTICIPANTS**

Allison Boyd, Victim Witness Assistance Unit, 1st Judicial District DA's Office (Jefferson Co.) and SOMB

Joe Cannata, Voices of Victims

Maggie Conboy, Deputy DA, 2<sup>nd</sup> Judicial District (Denver)

Tracy Deyell, CU Boulder

Sterling Harris, Colorado Organization for Victim's Assistance

Steve Jensen, Chief Deputy DA, 1<sup>st</sup> Judicial District (Jefferson Co.)

Katie Kurtz, Deputy DA, 1<sup>st</sup> Judicial District

Marlena MacArthur, CU Boulder

Roberta Robinette, Colorado Organization for Victim's Assistance

Mitch Sherman, Advocates for Change

Casey Sloan, CU Boulder

Sarah Sowter, Rape Assistance and Awareness Program

Sara Steen, CU Boulder (and 3 additional CU Boulder students)

Scott Storey, DA, 1<sup>st</sup> Judicial District

Carolyn Turner, Advocates for Change

Hailey Wilmer, 2<sup>nd</sup> Judicial District DA's Office

**STAFF**

Kim English, Division of Criminal Justice

Kevin Ford, Division of Criminal Justice

**ABSENT MEMBERS**

Michael Anderson, Parole Board

Peggy Heil, Department of Corrections / SOMB

Chris Lobanov-Rostovsky, Division of Criminal Justice

Issue/Topic:	Discussion:
<p data-bbox="142 205 483 233"><b>Welcome and Introductions</b></p> <p data-bbox="237 241 391 268">David Kaplan</p>	<p data-bbox="561 205 1511 233">David Kaplan welcomed the group and provided a brief overview of the agenda:</p> <ul data-bbox="573 241 1203 384" style="list-style-type: none"> <li data-bbox="573 241 873 268">• Update on proxy voting</li> <li data-bbox="573 277 1203 304">• Update from the Registration Working Group (WG)</li> <li data-bbox="573 312 992 340">• Update from the Refinement WG</li> <li data-bbox="573 348 1062 375">• Update on the SOMB Sunset review bill</li> </ul> <p data-bbox="561 426 1458 558">David thanked the members of the public in attendance at the meeting and encouraged a participatory role for non-members attendees. David lead introductions of the Task Force members and requested that the guests in attendance introduce themselves.</p>

Issue/Topic:	Discussion:
<p data-bbox="126 743 500 812"><b>Membership and participation Task Force voting</b></p> <p data-bbox="237 821 391 848">David Kaplan</p>	<p data-bbox="561 743 1479 812">David provided information regarding the participation of members and non-members in Task Force discussions and proxy voting.</p> <ul data-bbox="573 821 1511 1205" style="list-style-type: none"> <li data-bbox="573 821 1511 890">• Discussions are open to all in attendance and anyone may contribute to Task Force discussions and deliberations.</li> <li data-bbox="573 898 1474 968">• Voting privileges are granted only to individuals officially appointed to the Task Force.</li> <li data-bbox="573 976 1523 1205">• At the previous meeting, the Task Force decided to allow proxy voting. Specifically, a Task Force member could designate a substitute to attend the meeting in their place and this individual would be allowed to vote. However, at a meeting of task force chairs and the leadership of CCJJ, the decision was made to eliminate proxy voting as a task force option. All task forces will require that members be present in person or by phone to participate in task force votes.</li> </ul>

Issue/Topic:	Discussion:
<p data-bbox="264 1394 363 1421"><b>Update:</b></p> <p data-bbox="142 1430 483 1457"><b>Registration Working Group</b></p> <p data-bbox="180 1465 444 1493">Maureen Cain, Leader</p> <p data-bbox="110 1501 516 1602">(Members: Sen. Norma Anderson, Chris Lobanov-Rostovsky, Rick Schneider, Scot Smith)</p>	<p data-bbox="561 1394 1523 1568">Maureen Cain provided an update of the work by the Work Group (WG). The WG met twice where they reviewed available research on registration and community notification. The group developed several ideas for recommendations in the area of registration. Maureen provided an update of the work of the group.</p> <p data-bbox="561 1610 980 1638"><b>Statements of General Perspective</b></p> <ul data-bbox="573 1646 1528 1955" style="list-style-type: none"> <li data-bbox="573 1646 1528 1747">• Sex offender registries were originally conceived as a law enforcement tool to aide in investigations. Later, community notification was added as an element of registration.</li> <li data-bbox="573 1787 1511 1955">• On review, registries have not become a significant law enforcement tool and community notification has raised awareness of sex offenders but has not necessarily enhanced public safety. These conclusions were based on a review of available research in the area of registration/notification and recidivism.</li> </ul>

**Issue/Topic:**

**Update(cont'd):**  
**Registration Working Group**  
Maureen Cain, Leader

- According to the WG, the research on registration and community notification shows little or mixed support for the idea that registration reduces recidivism (for example, see <http://www.wsipp.wa.gov/rptfiles/05-12-1202.pdf> or <http://www.law.umich.edu/centersandprograms/elsc/abstracts/2008/Documents/08-006prescott.pdf> )
- The WG feels that efforts should proceed in a way that improves the registration process while identifying better ways to improve public safety.
- The focus of registration should not be as an additional way to punish sex offenders.
- The goal of the WG is to identify solutions that will make things easier/better for everyone (offenders, victims, the public, and law enforcement).

**Problems**

**#1 De-registration**

- Eligible individuals are not getting off sex offender registration lists because the process is too complicated.
- The registry grows larger and larger with the inclusion of individuals who should be removed.
- Obvious examples that can be addressed quickly include:
  - Juveniles whose supervision is being terminated often fail to take the steps necessary to be removed from the registry
  - Adults who have completed the requirements of a deferred judgment may not take the steps to be removed from the registry.

**#2 Registration Fees**

- Maureen gathered information about registration practices informally at the Sex Offender Registration Legislative Work Group of the SOMB. Registration procedures are quite complicated to navigate and offenders can receive different advice or instructions from different representatives within the same law enforcement jurisdiction.
- There is wide variation in registration fees across Colorado jurisdictions. It is clearly stated by some jurisdictions that the intent of high registration fees is to discourage sex offenders from locating in that jurisdiction. (A document with current fee structure across Colorado counties was provided.)
- The WG is weighing options surrounding fees:
  - Cap or standardize the fee structure?
  - Require that jurisdictions accept hardship registrations when the offender cannot afford to pay the registration fee?
- The legislative intent of the registration fee did not include the assumption that fees would solely pay for the registration process.
- The legislative intent was that that no one would be turned away because they could not afford the registration fee. It is reported that sex offenders who cannot pay are turned away from law enforcement and not allowed to register.
- Depending on how offenders enter various systems, sometimes registration is automatic (like at the Dept. of Corrections) and other times registration is not automatic. Offenders are unsure whether they are registered or not.
- The transfer of registrations is not possible. Offenders are required to cancel a registration in one jurisdiction before they can register in a new jurisdiction. This can create failure to register circumstances, if the offender can't

**Issue/Topic:**

**Update(cont'd):**  
**Registration Working Group**  
Maureen Cain, Leader

promptly cancel a previous registration or if there is a lag in the new registration beyond the allowed period to register. These complications can produce the impression that offenders are attempting to manipulate the system.

- It may be possible to integrate address verification with registration updates in parole and probation offices, however there are barriers. There are typically no fingerprint capabilities/equipment and address verification practices are currently a bit haphazard across these offices.
- Issues of venue must be addressed to determine whether registration would be possible at locations other than law enforcement agencies. Would it be possible for registrations to occur, for example, at non-jail detention facilities, at group homes, at halfway houses, or at the offices of probation and parole officers? Law enforcement has an interest in maintaining a central role as the primary registration site in order to more closely monitor and track the whereabouts of sex offenders`.

*[The STAR system was described at this point of the meeting; however, it is detailed below, following the continued list of other registration-related problems identified by the WG.]*

**#3 Homeless / Transient Registration**

- The WG reviewed a 50-state analysis of registration practices for homeless/transient offenders.
- The WG is looking at a card system where transient offenders are required to check-in every thirty days to have their card stamped. There would be no fees associated with the card system.
- Creating a good definition of “transient” will be a necessary part of the work directed at this problem.

**#4 Sex Offender Registry and Risk Identifiers**

- The current registry does not provide a method by which one can differentiate offenders by risk to public safety. The community notification aspect of the registry is rendered less effective if offender risk is not indicated.
- The availability of the registry via the internet was supposed to inform the public of those offenders who pose a threat to public safety. However, all offenders, regardless of the level of risk are listed, rendering the list an ineffective tool for public notification.
- The SVP designation is not working as a risk indicator.
- There should be a discussion of the relative merits of static and dynamic risk factors. Some sex offenders are not easily labeled regarding risk because they do not have a criminal history that reflects the extent of their actual behaviors (because they haven't been caught and/or victims have not reported assaults).
- Maybe the risk designations should include the risk of any offense and not just the risk for sexual offense.
- The possible solutions may be limited by provisions of the Adam Walsh Act, depending on the degree to which Colorado will be compliant with Adam Walsh.

**Issue/Topic:**

**Update(cont'd):**  
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**#5 Community Notification Meetings**

- The current method of community notification is inefficient and requires significant resources.
- Law enforcement in some jurisdictions schedule notification meetings where no one attends.

**#6 Miscellaneous**

Maureen concludes by listing some additional areas of study for the Working Group:

- Equivalency criteria for SVP designation for sex offenders moving to Colorado from other states, territories or tribal locations,
- Offenders convicted of second degree kidnapping, but not a committed sex offense, who are not required to register, and the SOMB Reauthorization bill.

**STAR System**

*During the discussion of registration problems above, the STAR system, in use by the Douglas County Sheriff's Office, was described. This description is provided here although it occurred earlier in the meeting.*

- The STAR (Sex Offender Tracking and Registration) system is a custom-designed and web-based system for the tracking and registration of sex offenders in use by the Douglas County Sheriff's Office.
- The system allows users to access the system to record and update offender information and to record registration information.
- The system allows law enforcement officers to access the system to determine the status of sex offender registrations.
- The system was commissioned by the Douglas County Sheriff's Office and this office is promoting its use to other local law enforcement agencies. The U.S. Marshalls Service is a potential partner working with the Douglas County to determine whether the system can be broadened to accommodate additional users.
- Denver County is in the process of adopting the system.
- Many of the registration issues identified by the Registration Working Group (working with Denver officers from the Sex Offender Registration Unit) could be solved if the STAR system was used widely (for example, simultaneous registration/cancellation of registration, the sharing of a better risk designation on registrations, transient registration tracking
- There are several logistic and technical issues that must be addressed before a statewide roll-out would be possible.
- There are several law enforcement stakeholders who would need to be included in discussions regarding technical and jurisdictional issues before a wide roll-out of the system could occur.

**Upcoming Meetings**

Maureen notified the Task Force that the Registration Work Group will meet on Friday, Oct. 29<sup>th</sup> and Friday, Nov. 5<sup>th</sup> from 10:00am - Noon at 150 E. 10<sup>th</sup> Ave. at David's Kaplan's law firm.

Issue/Topic:	Discussion:
<p style="text-align: center;"><b>Update: Refinement (Determinate/Indeterminate) Working Group</b></p> <p style="text-align: center;">Ted Tow, Leader (Members: Peggy Heil, Erin Jemison, Laurie Kepros, &amp; Dianna Lawyer- Brook)</p>	<p>Ted Tow provided the update from the Refinement Working Group. Ted offered a list of the topics the group is exploring:</p> <ol style="list-style-type: none"> <li>1. Possible options for determinate F4 sex offenses <p>Ted described 5 possible sex offenses via a matrix of arguments for and arguments against converting these to a determinate F4. Members discussed the “tortured plea bargaining” conducted for the crimes at the indeterminate/ determinate “line” to shift the offenders to what is felt the appropriate sentence. Often, the charged and plead crimes do not match the actual crimes committed.</p> <p>Some sex offenders receive stiffer sentences than offenders convicted of an offense where a victim dies. Former Sen. Anderson commented that it was never the intent to punish sex offenders more severely than murderers. The purpose of the indeterminate sentence was to get offenders the treatment necessary to control/manage inappropriate/illegal sexual behaviors.</p> <p>Due to the difficulty of treating sex offenders, either because the behaviors are difficult to control or because the offender’s motivation is lacking, the idea of Sex Offender Courts was proposed. Like Drug Courts, a specialty court focused on sex offender management and treatment, might offer advantages.</p> <p>Those convicted of determinate sex offenses are not getting the necessary treatment because those sentenced to indeterminate sentences are first in line for treatment slots.</p> </li> <li>2. “Economic” crimes and the constitutionality of the determinate-to-indeterminate “conversion” by a judge <p>These crimes involve no physical contact or assault. Previously judges have made a finding that would convert these crimes to an indeterminate sentence. This practice is problematic in two ways.</p> <ol style="list-style-type: none"> <li>a) This practice has been ruled unconstitutional by the U.S. Supreme Court in the case <i>Blakely v. Washington</i>, 542 U.S. 296 (2004). It was determined that the Sixth Amendment right to a jury trial prohibits judges from enhancing criminal sentences based on facts other than those decided by the jury or admitted by the defendant. This practice can be constitutional, if the defendant consents to fact-finding by the judge prior to the sentence.</li> <li>b) In Colorado, the conversion to an indeterminate sentence is based on an assessment and designation as a sexually violent predator (SVP; see CRS 18-1.3-1004 (4) ). The first criterion for SVP designation on the <i>Colorado Sexually Violent Predator Assessment Screening Instrument</i> lists a specific set of five sexual assault crimes, none of which include the “economic” crimes. This necessarily excludes these offenders as SVP designees and, therefore, makes them ineligible for an indeterminate “sentence conversion.”</li> </ol> <p>The WG is looking at whether the statute can be “fixed” (made constitutional by codifying a required request for defendant consent) or whether it should be repealed</p> </li> </ol>

<p><b>Issue/Topic:</b></p> <p><b>Update (cont'd): Refinement (Determinate/Indeterminate) Working Group Ted Tow, Leader</b></p>	<ol style="list-style-type: none"> <li>3. Sentencing discrepancy between Unlawful Sexual <i>Contact</i> (with force threat or intimidation) and Sexual <i>Assault</i> (with force threat or intimidation) The “lesser” conduct of Sexual <i>Contact</i> is not probation eligible whereas Sexual <i>Assault</i> is probation eligible. The WG is looking at re-aligning this discrepancy.</li> <li>4. “Drop-off” in sentences between indeterminate F4s and F5 attempts</li> <li>5. Age limits on SOAC (Sex assault on a child)</li> <li>6. Age limits and the “mistake of age” defense</li> <li>7. The definition of “position of trust”</li> <li>8. The lack of sentencing and treatment options for adults who committed their crime as a juvenile</li> <li>9. Evaluating the current minimum probationary periods for sex offenders This issue could be assigned later to the proposed parole working group.</li> <li>10. Introducing a provision to allow the additional time to a deferred judgment to accommodate treatment needs and progress.</li> </ol> <p><b>Upcoming Meetings</b> Ted notified the Task Force that the Refinement Work Group will meet on upcoming successive Thursdays, Oct. 28<sup>th</sup> and Nov. 4<sup>th</sup> from 10:00am - Noon at the CDAC Office, 1580 Logan Street, Ste 420, Denver, CO 80203.</p>
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<p><b>Additional Issue/Topics</b></p> <p><b>SOMB Reauthorization Bill</b> Erin Jemison</p> <p><b>Adult and Juvenile sex crime convictions</b> Kim English</p> <p><b>Reports from Judicial/Probation</b> Terri Morrison</p>	<p><b>Discussion:</b></p> <p>Erin Jemison (Exe. Dir., Colorado Coalition Against Sexual Assault) provided a quick update of the stakeholders being interviewed for feedback regarding the SOMB Reauthorization Bill. There was a brief discussion regarding the efforts by CCASA (<a href="http://www.ccasa.org/">www.ccasa.org/</a>) and COVA (<a href="http://www.coloradocrimevictims.org/">www.coloradocrimevictims.org/</a>) to include stakeholder input.</p> <p>Kim English (DCJ) offered a data summary of adult and juvenile sex crime convictions. However, due to issues regarding the availability and structure of the data, the information was deemed in need of revision.</p> <p>Prior to the meeting, Terri Morrison (First Assistant Legal Counsel who sat in for Judicial representative Scot Smith) provided a report ( <i>A Report to the Division of Probation Services: A Review of FY2007-08 Revocations Based on Technical Violations for Adults and Juveniles who have Committed Sex Offenses</i> ) compiled by Angel Weant of Probation Services. The Executive Summary of this report was made available to the Task Force members.</p> <p>Terri also provided a summary titled, <i>Sex Offenses and the Statutory Consequences</i>. This document was made available to Task Force members.</p>
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<p><b>Additional Issue/Topics (cont'd)</b></p> <p><b>Adam Walsh Tiers</b> Chris Lobanov-Rostovsky / Maureen Cain</p>	<p>Chris Lobanov-Rostovsky and Maureen Cain provided a summary of the Colorado Revised Statutes according to their categorization into Adam Walsh Act crime tiers.</p>
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<p><b>Issue/Topic:</b></p> <p><b>Next Steps</b> David Kaplan</p>	<p><b>Discussion:</b></p> <p>David summarized the goals before the next Sex Offense / Offender Task Force meeting:</p> <ul style="list-style-type: none"> <li>• To receive updates from the two Working Groups</li> <li>• After a discussion with Task Force members and Work Group leaders, it was decided that the Task Force will change its meeting schedule.</li> <li>• Members would prefer to schedule meetings to occur prior to the monthly CCJJ meetings rather than the week after the monthly CCJJ meetings.</li> <li>• Therefore, Task Force meetings on Nov. 17<sup>th</sup> and Dec. 15<sup>th</sup> were canceled.</li> <li>• The new meeting dates chosen were: Nov. 5<sup>th</sup> and Dec. 1<sup>st</sup>.</li> <li>• This scheduling will allow the working Groups time to prepare recommendation concepts for the Task Force meeting and for the presentation of these concepts at the Nov. CCJJ meeting (Nov. 12).</li> <li>• The goal is to have firmly worded recommendations for review and voting at the Dec. 1<sup>st</sup> Task Force meeting in preparation for voting at the Dec. 10<sup>th</sup> CCJJ meeting.</li> </ul> <p>The direct link to the Task Force page is: <a href="http://cdpsweb.state.co.us/ccjj/Sex_offender_task_force.htm">http://cdpsweb.state.co.us/ccjj/Sex_offender_task_force.htm</a></p>
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**Sex Offense/Offender Task Force Meetings:**

Date	Location	Time
Wednesday, November 5, 2010	150 E. 10 <sup>th</sup> Avenue, Denver	1:30-4:30PM
Wednesday, December 1, 2010	150 E. 10 <sup>th</sup> Avenue, Denver	1:30-4:30PM

**Registration Work Group Meetings:**

Date	Location	Time
Friday, October 29, 2010	150 E. 10 <sup>th</sup> Avenue, Denver	10:00am-Noon
Friday, November 5, 2010	150 E. 10 <sup>th</sup> Avenue, Denver	10:00am-Noon

**Refinement Work Group Meetings:**

Date	Location	Time
Thursday, October 28, 2010	1580 Logan Street, Ste 420, Denver	10:00am-Noon
Thursday, November 4, 2010	1580 Logan Street, Ste 420, Denver	10:00am-Noon

**Commission on Criminal and Juvenile Justice Meetings:**

Date	Location	Time
Friday, November 12, 2010	US DOT, 12300 W. Dakota Ave., Lakewood	12:30-4:30PM
Friday, December 10, 2010	US DOT, 12300 W. Dakota Ave., Lakewood	10:30-4:30PM