

MINUTES
Sex Offense/Offender Task Force
Colorado Commission on Criminal and Juvenile Justice
December 1, 2010 1:30PM-4:30PM
150 East 10th Avenue

ATTENDEES:

CHAIR

David Kaplan, Private Defense Attorney

TASK FORCE MEMBERS

Michael Anderson, Parole Board

Norma Anderson, Former State Senator

Maureen Cain, Criminal Defense Bar

Peggy Heil, Department of Corrections

Erin Jemison, Colorado Coalition Against Sexual Assault

Laurie Kepros, Colorado Criminal Defense Bar

Dianna Lawyer-Brook, Community Corrections Boards, CURE and SOMB

Chris Lobanov-Rostovsky, SOMB and Division of Criminal Justice

Richard Schneider, Denver PD, SO Registration

Steve Siegel, Victim Advocacy, Victim organizations and 2nd Judicial District DA's Office (Denver)

Angel Weant, Colorado Judicial Branch

PUBLIC PARTICIPANTS

Bonnie Barr, Colorado Department of Corrections

David Bourgeois, Denver Police Department

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

Joe Cannata, Voices of Victims

Maggie Conboy, Deputy DA, 2nd Judicial District DA's Office (Denver)

Dana Easter, 1st Judicial District DA's Office

Robert Henderson, Denver Police Department

Jon Luper, Denver Human Services

Terri Morrison, Judicial Branch

Mitch Morrissey, DA, 2nd Judicial District DA's Office

Roberta Robinette, Colorado Organization for Victim's Assistance

Cathy Rodriguez, SOMB and Division of Criminal Justice

Dan Schoen, Colorado Criminal Defense Bar

Carolyn Turner, Advocates for Change

Hailey Wilmer, 2nd Judicial District DA's Office

STAFF

Peg Flick, Division of Criminal Justice

Kevin Ford, Division of Criminal Justice

ABSENT MEMBERS

Issue/Topic:	Discussion:
<p data-bbox="142 247 483 275">Welcome and Introductions</p> <p data-bbox="237 285 391 312">David Kaplan</p>	<p data-bbox="561 247 1511 384">David Kaplan welcomed the group and provided a brief orientation to the agenda. David thanked the members of the public in attendance at the meeting and encouraged a participatory role for non-members attendees. Voting privileges are available only to individuals officially appointed to the Task Force.</p>

Issue/Topic:	Discussion:
<p data-bbox="134 571 493 667">Update: Presentations to CCJJ and the Juvenile Justice Task Force</p> <p data-bbox="147 678 480 705">David Kaplan/Maureen Cain</p>	<p data-bbox="561 571 1511 636">David Kaplan and Maureen Cain presented the SO TF recommendation concepts at the November 12, 2010 CCJJ meeting for feedback from CCJJ members.</p> <p data-bbox="561 678 1511 814">Regina Huerter, CCJJ Commission member and Chair of the Juvenile Justice Task Force (JJ TF), requested that representatives of the Sex Offense/Offender Task Force (SO TF) present the juvenile-related SO TF recommendations to JJ TF members for feedback.</p> <p data-bbox="561 856 1511 921">At the JJ TF meeting on November 18, 2010, Maureen Cain (Registration Work Group Leader) and Kevin Ford (SO TF, Staff) presented:</p> <ul data-bbox="561 932 1511 1100" style="list-style-type: none"> - Registration WG recommendation #1 (de-registration simultaneous with supervision termination hearings), and - Refinement WG recommendations #4 (extend “mistake of age” to 14) and #5 (add 4-yr. age difference to sex assault on a child by one in a position of trust -- for 15-17 y.o. victims only). <p data-bbox="561 1142 1511 1207">Maureen also sought feedback regarding pending concepts from the Registration WG:</p> <ol data-bbox="561 1218 1511 1354" style="list-style-type: none"> 1) expanding judicial discretion regarding registration requirements for certain aged juveniles and for some juvenile offenses, 2) expungement issues, and 3) notification requirements related to juvenile SO registration. <p data-bbox="561 1396 1511 1743">Responses were positive or neutral for the recommendations and concepts presented, except for one. Statements of opposition were directed toward the introduction of the 4-yr age difference provision into Refinement WG Rec. #5 (SAOC... position of trust; SEE BELOW). The three Juvenile TF members who opposed were: Rep. Beth McCann, Dept. of Human Services Exec. Dir. Karen Beye, and Don Moseley (Exec. Dir. of Ralston House) who spoke on behalf of “all children advocates.” They did not like the introduction of the 4-year age difference to fix a problem that appears to be due to either the misapplication of “position of trust” or a definition of “position of trust” that needs improved wording to clarify its use.</p> <p data-bbox="561 1785 1511 1984">Position of Trust Definition.* “One in a ‘position of trust’ includes, but is not limited to, any person who is a parent or acting in the place of a parent and charged with any of a parent's rights, duties, or responsibilities concerning a child, including a guardian or someone otherwise responsible for the general supervision of a child's welfare, or a person who is charged with any duty or responsibility for the health,</p>

<p>Issue/Topic:</p> <p>Update: Presentations to CCJJ and the Juvenile Justice Task Force David Kaplan/Maureen Cain</p>	<p>education, welfare, or supervision of a child, including foster care, child care, family care, or institutional care, either independently or through another, no matter how brief, at the time of an unlawful act.”</p> <p>*This same definition appears in two places: - Article 3, Part 1 “Homicide and related offenses” [18-3-101 (2.5). Definition of terms.] - Article 3, Part 4 “Unlawful sexual behavior” [18-3-401 (3.5). Definitions.]</p> <p>We assured that this point of opposition regarding Refinement recommendation #5 would be on the agenda for the Dec. 1st SO TF meeting.</p>
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<p>Issue/Topic:</p> <p>Update: Sex Offender Management Board Sunset Bill Erin Jemison</p>	<p>Discussion:</p> <p>David Kaplan introduced Erin Jemison and the background of the SOMB Sunset bill and why it was being tracked by the Sex Offense/Offender Task Force. David reminded members of the May 21, 2010 veto message (regarding HB10-1364) by Gov. Ritter...</p> <p><i>I will direct my office, the Colorado Criminal Justice Commission, the Sex Offender Management Board, and the impacted executive agencies to work with the members of the General Assembly to prepare a bill that can be introduced on the first day of the 2011 legislative session.</i></p> <p>The Colorado Coalition Against Sexual Assault (CCASA; www.ccasa.org/), under the direction of Erin Jemison, has taken the lead in seeking feedback from stakeholders regarding revisions for the updated SOMB Sunset bill.</p> <p>Erin provided two handouts to members for their review: a one-page summary of the major changes and the complete bill draft (as of the Dec. 1 meeting date). The Division and Criminal Justice and the SOMB have done a lot of work on the bill draft and meetings have been held with a variety of stakeholders. The sponsors of the bill will be Rep. Bob Gardner and Sen. John Morse.</p> <p>Erin stepped the Task Force through the following points:</p> <p><u>The current <i>draft</i> of the bill:</u></p> <ul style="list-style-type: none"> • extends the repeal date for the SOMB to July 1, 2020. • identifies board membership and outlines its responsibilities. • refers to juvenile offenders as "juveniles who have committed sexual offenses" rather than labeling juveniles as sex offenders and adds definitions to the statute for "adult sex offender" and "juvenile who has committed a sexual offense." • retains language regarding adult sex offenders with the propensity to commit sexual offenses in directing the board to create procedures for the management, monitoring, and treatment of adult sex offenders (16-11.7-103
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Issue/Topic:

Update:
Sex Offender Management Board
Sunset Bill
Erin Jemison

(4)(a)). Stakeholders have offered suggestions for alternative wording. adds language to section 16-11.7-103 (4)(a) regarding the need to assess risk on a case-by-case basis and directs the board to develop protocol for evaluating and identifying reliably lower risk adult sex offenders.

- retains the recommendation that came out of the sunset review process that the board refers all complaints or grievances against providers to DORA.
- excludes language from the 2010 bill that requires offenders to be provided with a choice of three treatment providers.
- removes any appropriations from the 2010 bill due to fiscal concerns. Stakeholders have expressed need for data collection regarding evaluation of treatment providers.
- The following language has been proposed for addition to CRS 16-11.7-103:
(6) PRIOR TO JULY 1, 2012, THE BOARD, IN COLLABORATION WITH THE DEPARTMENT OF HUMAN SERVICES, DIVISION FOR DEVELOPMENTAL DISABILITIES, THE DIVISION OF REGIONAL CENTER OPERATIONS, THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING, ADVOCACY GROUPS FOR BOTH VICTIMS AND INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES, APPROVED COMMUNITY PROVIDERS AND COMMUNITY CENTERED BOARDS, AND THE DEPARTMENT OF CORRECTIONS, SHALL DEVELOP BEST PRACTICE GUIDELINES FOR PROVISION OF SERVICES TO INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES WITH IDENTIFIED HIGH RISK SEX OFFENDING BEHAVIORS AND WHO HAVE NOT BEEN CONVICTED OF A SEX OFFENSE. THE BOARD SHALL PROVIDE THE GUIDELINES TO APPROVED COMMUNITY PROVIDERS AND COMMUNITY CENTERED BOARDS.

Discussion:

- Erin invites everyone in attendance to submit suggested edits for consideration.
- Erin pointed out that there has been a lot of discussion regarding the language that will be acceptable to those holding opposing viewpoints on the existence of the behavioral propensity of sex offenders (i.e., “no known cure,” “no identified cure,” etc.).
- There may be additional updates following a meeting with victims on December 2, 2011.
- The issue of offenders changing treatment providers is still under review, but it is not currently in the bill draft.
- The bill draft appears to expand the already large membership of the SOMB. This expansion addresses the complaint by offender advocates who feel the Board under-represents offender interests.
- A program evaluation element was removed due to the necessity for a fiscal note.
 - This year, any bill with a fiscal note places the bill in danger of failing.
 - This element was to require data from providers to demonstrate their program effectiveness.
 - It was felt that an increase in provider fees could cover the cost rather than requiring state funds.
 - Levying additional fees would be on top of the fees required for licensure. Over-burdening programs with fees could result in providers deciding to

<p>Issue/Topic:</p> <p>Update: Sex Offender Management Board Sunset Bill Erin Jemison</p>	<p>abandon sex offender treatment.</p> <ul style="list-style-type: none"> ○ The proposed fee increase would only generate about \$2500. This would not be enough to cover the costs. ○ Maybe the fee increase would cover the data collection and grants could be found to cover the data collection and analysis costs. ○ The analyses required to evaluate the treatment programs are very complex to take into account variations in treatment and variations in offenders. ○ Alternatively, this “complexity argument” was viewed as a reason that demonstrates the need for program evaluation.
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Issue/Topic:	Discussion:
<p>Recommendations: Refinement Working Group Laurie Kepros/WG Members</p>	<p><i>NOTE: Based on a request by a public member at the meeting, the decision was made to reverse the agenda order and hear the update from the Refinement Working Group before the update from the Registration Working Group.</i></p> <p>David Kaplan reported on the presentation of Refinement WG concepts to the CCJJ. Laurie Kepros presented the Refinement recommendations to the Task Force for review, finalization and vote that determined the recommendations to be presented to and voted on by the CCJJ.</p> <p>The full text of the recommendations is not presented here because recommendations are still considered tentative until they are approved by the CCJJ. The recommendation number and a shortened title are presented along with any notes and vote totals for each recommendation.</p> <p>FY11-SO #17. Repeal the current mandatory prison sentence provisions for commission of Unlawful Sexual Contact by Force, Threat, or Intimidation, 18-3-404(1),(3).</p> <p>This recommendation corrects an inconsistency in the sexual contact vs. sexual assault crimes. VOTE: Favor-9, Oppose-2, Abstain-1 [APPROVED]</p> <p>FY11-SO #18. Extend the amount of time available on a deferred judgment and sentence for a sex offense requiring treatment, and clarify when the period of the deferred begins.</p> <p>Applies to adults. VOTE: Favor-12, Oppose-0, Abstain-0 [APPROVED]</p> <p>FY11-SO #19. Fix the currently unconstitutional provision in C.R.S. 18-1.3-1004(4).</p> <p>The Denver DA argued to leave the provision as is and allow/require the plea bargaining process to “constitutionalize” the provision. Following a long discussion of the provision’s constitutionality, the Task Force held two votes:</p> <ul style="list-style-type: none"> - Vote A was to present both options to CCJJ (present the leave-the-provision “as is” option and the fix option) - Vote B was to accept the recommendation as written. <p>VOTE A: Favor-4, Oppose-8, Abstain-0 [FAILED] VOTE B: Favor-8, Oppose-3, Abstain-1 [APPROVED]</p>

<p>Issue/Topic:</p> <p>Recommendations: Refinement Working Group Laurie Kepros/WG Members</p>	<p>FY11-SO #20. Lower the availability of the “mistake of age” defense from 15 years to 14 years. VOTE: Favor-9, Oppose-2, Abstain-1 [APPROVED]</p> <p>FY11-SO #21. Add a requirement of a 4-year age difference to the crime of Sexual Assault on a Child by One in a Position of Trust, where the victim is 15, 16, or 17. Examples of the misapplication of the crime were discussed. Rather than the 4-year age difference solution should be definition be clarified? The definition is already pretty clear, but misapplications still occur. MOTION: Remove for consideration by CCJJ and, instead, study further. VOTE: Favor-9, Oppose-3, Abstain-0 [APPROVED]</p> <p>Continuing study These concepts should continue to be studied by the Refinement Working Group:</p> <ul style="list-style-type: none"> • Consider shortening the time spent on indeterminate probation or parole before a defendant may request to be terminated from supervision. • Explore changing the front-end sentence structure for the indeterminate crimes.
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<p>Issue/Topic:</p> <p>Recommendations: Registration Working Group Maureen Cain</p>	<p>Discussion:</p> <p>David Kaplan and Maureen Cain reported on the presentation of Registration WG concepts to the CCJJ. Maureen presented the Registration WG recommendations to the Task Force for review, finalization and vote that determined the recommendations to be presented to and voted on by the CCJJ.</p> <p>The full text of the recommendations is not presented here because recommendations are still considered tentative until they are approved by the CCJJ. The recommendation number and a shortened title are presented along with any notes and vote totals for each recommendation. <i>(Note: Vote totals fluctuated slightly as some members stepped in and out of the meeting.)</i></p> <p>FY11-SO #1. Create a simultaneous termination hearing/de-registration process for those juvenile offenders currently eligible for de-registration. The termination of supervision and the termination of registration do not typically occur at the same time. VOTE: Favor-11, Oppose-0, Abstain-0 [APPROVED]</p> <p>FY11-SO #2. Create a simultaneous termination hearing/de-registration process for adult offenders with a deferred judgment who are currently eligible for de-registration. VOTE: Favor-11, Oppose-0, Abstain-0 [APPROVED]</p> <p>FY11-SO #3. Modify CRS 16-22-108 (7) to establish a consistent fee structure for sex offender registration. What about “home rule”? Denver is already supportive of consistency.</p>
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VOTE: Favor-11, Oppose-0, Abstain-0 [APPROVED]

FY11-SO #4. Create a simultaneous registration/cancellation of registration process in CRS 16-22-108.

Append "within Colorado" to the end of the recommendation.

VOTE: Favor-11, Oppose-0, Abstain-0 [APPROVED]

FY11-SO #5. Add and clarify language in CRS 16-22-106 (3) (a) regarding the registration of offenders sentenced to or held in jail.

VOTE: Favor-11, Oppose-0, Abstain-0 [APPROVED]

FY11-SO #6. Define "transient" in statute and provide a method to register those offenders who are homeless or have no permanent residence.

- Denver will register those who are transient and some nearby jurisdictions take advantage of this by not registering individuals who are transient.
- How will the transient check-ins work? The Denver approach serves as the model (every 30 days).
- What if offenders pretend to be transient to avoid disclosing their address? The 30-day check-in requirement is a burden that most would not assume to avoid disclosing their actual address and any non-compliance with the check-ins would result in a penalty. If law enforcement verifies the "check-in" location, the offender would still have to be found at this location.
- The penalty would be Failure to Comply with a Lawful Order and result in up to 10-day jail stay. The violation would not be a failure to register. Offenders still have to register/re-register on their regular annual or quarterly schedule and failure-to-register consequences would still apply.
- The Failure to Comply violation would not trigger a new SO evaluation (16-11.7-104, CRS)

VOTE: Favor-9, Oppose-1, Abstain-1 [APPROVED]

FY11-SO #7. Modify CRS 16-22-108 (1) (b) to allow annual re-registration to occur within 5 business days of the offender's birthday.

VOTE: Favor-10, Oppose-0, Abstain-0 [APPROVED]

FY11-SO #8. Modify CRS 16-22-108 (3) to add "within 5 business days" as the time required to re-register due to the changes in life circumstances listed in the statute.

VOTE: Favor-10, Oppose-0, Abstain-0 [APPROVED]

FY11-SO #9. Add to the place of trial venues in CRS 18-1-202 (12) the county where an offender completed his/her last registration.

VOTE: Favor-8, Oppose-0, Abstain-2 [APPROVED]

FY11-SO #10. Eliminate the language requiring mandatory ISP as a condition of probation or parole for failure to register in CRS 18-3-412 (2) (b) and 18-1.3-1007 (1.5).

VOTE: Favor-6, Oppose-0, Abstain-4 [APPROVED]

FY11-SO #11. Add affirmative defense for failure to register from Adam Walsh.

VOTE: Favor-9, Oppose-0, Abstain-1 [APPROVED]

	<p>FY11-SO #12. Request that State Public Defender’s Office, in collaboration with other agencies and stakeholders, draft registration/deregistration information for offenders. VOTE: Favor-9, Oppose-0, Abstain-2 [APPROVED]</p> <p>FY11-SO #13. Add language to CRS 16-13-902 (and relevant sections in Title 18) on SVP equivalency criteria. VOTE: Favor-11, Oppose-0, Abstain-0 [APPROVED]</p> <p>FY11-SO #14. Add Second degree kidnapping, CRS 18-3-302 (3) (a), as a sex offense when the underlying offense is the offense of sexual assault. This is an offense that would require registration. VOTE: Favor-10, Oppose-0, Abstain-1 [APPROVED]</p> <p>FY11-SO #15. Add tribal and territorial offenders in the list of those required to register, CRS 16-22-103 (1) (b), pursuant to Adam Walsh Act requirements.. VOTE: Favor-10, Oppose-0, Abstain-1 [APPROVED]</p> <p>FY11-SO #16. Create an improved risk assessment classification of registered sex offenders and a public notification system that is more functional to law enforcement and more informative to the community. VOTE: Favor-10, Oppose-0, Abstain-1 [APPROVED]</p>
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<p>Issue/Topic:</p> <p>Next Steps David Kaplan</p>	<p>Discussion:</p> <p>David summarized the responsibilities for presentation of the recommendations at the December 9, 2010 meeting of the CCJJ.</p> <ul style="list-style-type: none"> • David will introduce Maureen Cain and Chris Lobanov-Rostovsky to present the Registration WG recommendations and Laurie Kepros to present the Refinement WG recommendations. • Erin Jemison will present the SOMB bill draft to CCJJ • The CCJJ will not meet in January, therefore the Task Force canceled its meeting previously scheduled for January 5, 2011. The next meeting of the Task Force will be Wednesday, February 2, 2011. <p>The direct link to the Sex Offense/Offender Task Force page on the CCJJ website is: http://cdpsweb.state.co.us/cccj/Sex_offender_task_force.htm</p>
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Future Sex Offense/Offender Task Force Meeting Dates:

Date	Location	Time
Wednesday, January 5, 2011	150 E. 10 th Avenue, Denver	CANCELED!
Wednesday, February 2, 2011	150 E. 10 th Avenue, Denver	1:30-4:30PM
Wednesday, March 2, 2011	150 E. 10 th Avenue, Denver	1:30-4:30PM