

**MINUTES**  
**Sex Offense/Offender Task Force**  
**Colorado Commission on Criminal and Juvenile Justice**  
**February 2, 2011 1:30PM-4:30PM**  
**150 East 10<sup>th</sup> Avenue**

**ATTENDEES:**

**CHAIR**

David Kaplan, Private Defense Attorney

**TASK FORCE MEMBERS**

Michael Anderson, Parole Board

Norma Anderson, Former State Senator (*by phone*)

Maureen Cain, Criminal Defense Bar

Laurie Kepros, Colorado Criminal Defense Bar

Chris Lobanov-Rostovsky, Division of Criminal Justice

Peggy Heil, Department of Corrections

Erin Jemison, Colorado Coalition Against Sexual Assault

Dianna Lawyer-Brook, CURE and SOMB

Richard Schneider, Denver PD, SO Registration

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

Adrian Van Nice, Colorado District Attorneys' Council

Angel Weant, Probation Services, Colorado Judicial Branch

**PUBLIC PARTICIPANTS**

Bonnie Barr, Colorado Department of Corrections

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

Colleen Hackett, CU Boulder

Pat Harris, Advocates for Change

Janet Hunsaker, Advocates for Change

Terri Morrison, Colorado Judicial Branch

Robert Ponis, Advocates for Change

Mitch Sherman, Advocates for Change

Hailey Wilmer, DA's Office, 2nd Judicial District

**STAFF**

Kevin Ford, Division of Criminal Justice

**ABSENT MEMBERS**

none

Issue/Topic:	Discussion:
<p data-bbox="142 247 483 275"><b>Welcome and Introductions</b></p> <p data-bbox="237 283 391 310">David Kaplan</p>	<p data-bbox="561 247 1500 310">Following the meeting break in January, David Kaplan welcomed the group and provided re-orientation to task force members:</p> <ul data-bbox="573 321 1490 499" style="list-style-type: none"> <li data-bbox="573 321 1414 348">• Provided a brief overview of Task Force activities through December.</li> <li data-bbox="573 359 1333 386">• Described the expected 1.5-2 year trajectory of the Task Force</li> <li data-bbox="573 396 1133 424">• Initiated introductions of those in attendance</li> <li data-bbox="573 434 1490 499">• Addressed the roles and participation of task force members and guests, as well as voting privileges.</li> </ul> <p data-bbox="561 537 1500 642">David thanked the members of the public in attendance at the meeting and encouraged a participatory role for non-members attendees. A brief overview of the agenda was provided.</p>

Issue/Topic:	Discussion:
<p data-bbox="115 789 513 816"><b>Adam Walsh Compliance Update</b></p> <p data-bbox="167 825 461 852">Chris Lobanov-Rostovsky</p>	<p data-bbox="561 789 1430 894">David introduced Chris with the comment that the status of the Colorado compliance with the Adam Walsh Act plays a significant role in the issues addressed by and the efforts of the Task Force.</p> <p data-bbox="561 932 1523 1247">Chris provided copies of a December 3, 2010 letter from the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) addressed to Jeanne Smith, Director of the Division of Criminal Justice. Attached to the letter was a review of the Sex Offender Registration and Notification Act (SORNA; Title 1 of the AWA) compliance materials DCJ submitted April 27, 2010 and updated in October 2010. The review response from the SMART Office summarizes the remaining non-compliance issues. Although DCJ has requested to know which particular deficiencies, if resolved, would result in substantial compliance, the SMART office will not provide this information.</p> <p data-bbox="561 1285 1500 1312">Chris gave an overview of the AWA and the process of compliance in Colorado.</p> <ul data-bbox="573 1323 1528 1965" style="list-style-type: none"> <li data-bbox="573 1323 1516 1461">• The AWA passed in 2006. The deadline for compliance is July 2011 and penalties to JAG awards will be levied in October 2012. The consequence for a failure to be found in substantial compliance is a 10% reduction in the annual JAG/Byrne funds to a state.</li> <li data-bbox="573 1472 1528 1610">• Colorado stakeholders have been reviewing sex offender policies and studying the costs and benefits of compliance with the AWA for five years. Some stakeholders feel that compliance with the AWA is not beneficial to the overall goals of sex offender treatment, containment, and re-entry success.</li> <li data-bbox="573 1621 1528 1759">• Complaints about certain provisions are common across the country. The SMART office has backed off some of the AWA provisions. For example, some requirements regarding juvenile who commit sex offenses have been relaxed.</li> <li data-bbox="573 1770 1516 1908">• The SMART office is labeling a sufficient level of compliance as “substantially complaint” versus “fully compliant.” Four states (Delaware, Florida, Ohio, and South Dakota), Guam, and two confederated American Indian tribes/bands have been evaluated as substantially compliant.</li> <li data-bbox="573 1919 1425 1965">• The SOMB committee has not yet met to discuss which, if any, of the deficiencies to address.</li> </ul>

**Issue/Topic:**

**Adam Walsh Compliance Update**  
Chris Lobanov-Rostovsky

Next, Chris briefly presented the critical issues from the SMART response: (The order of presentation both in the SMART response and below is based on the SORNA Substantial Implementation Checklist. The checklist may be found on the SORNA Tools page at:

[http://www.ojp.usdoj.gov/smart/sorna\\_tools\\_materials.htm](http://www.ojp.usdoj.gov/smart/sorna_tools_materials.htm) .

The specific Checklist file is available at:

<http://www.ojp.usdoj.gov/smart/FillableChecklistwSuppGuidelines.doc> .)

*I. Immediate Transfer of Information*

Colorado must ensure that all jurisdictions are connected to the existing reporting system. If Indian Tribes are not connected, there must be a way to transmit notices to register to Indian Tribes. Colorado must ensure that offender movements are reported within three days to the affected jurisdiction.

*II. Terminology*

Not included in the update. There were no problems reported by SMART.

*III. Offenses that Must Be Included in the Registry*

Some Colorado sex offenses must be re-classified as Tier I registerable offenses:

18-3-303 - False imprisonment (victim under 18),

18-3-405.6 - Invasion of privacy for sexual gratification, and

18-7-801 - Criminal invasion of privacy

Others should be classified as Tier III registerable offenses

18-3-301 - First degree kidnapping (victim under 18),

18-3-302 - Second degree kidnapping (victim under 18), and

18-6.5-103(7) - Crimes [sex assault] against at-risk adults and at-risk juveniles.

Additionally, it is not SORNA-compliant to allow juveniles to petition the court for removal from the registry after the juvenile is discharged from supervision.

*IV. Tiering of Offenses*

Colorado's method of tiering offenders that determines the frequency of registration and periods following which offenders may petition for removal from the registry are not SORNA compliant. Specifically, the ability to petition for registry removal following 5, 10, or 20 years (depending on offense) is not SORNA compliant. The requirement to register for 10 or 20 years (depending on offense) is not SORNA compliant. SORNA requires annual registration for 15 years for Tier I offenses and biannual registration for 25 years for Tier II offenses.

*V. Required Registration Information*

SORNA requires sex offender information in 20-22 categories. SMART finds Colorado compliant in 9 of the 22 categories. The report lists the 13 required pieces of information where Colorado data collection is partially complete or absent. Chris identified 8 of the 13 that were most problematic (reactions to the deficiency are in parentheses):

- DNA collection upon arrest of non-felony sex offenses (difficult legal problem when only 60% of arrests result in conviction)
- International travel information (if collected, to whom should this information be reported?)
- Internet identifiers for all sex offenders (Colorado collects complete information for child sex offenders, but not all offenders)
- Palm prints (Colorado working toward this, but a technology matter)

**Issue/Topic:**

**Adam Walsh Compliance Update**  
Chris Lobanov-Rostovsky

- Passport and immigration documents (Colorado working on this)
- Professional licensing information (Colorado working on this)
- School address (not being done completely at the secondary level, but being done at the post-secondary/college level)
- Text of the registration offense (Colorado working on this for Colorado offenses; problematic to enter text of offenses from other states)

*VI. Where Registration is Required*

Not included in the update. There were no problems reported by SMART.

*VII. Initial Registration: Generally*

Colorado allows 5 business days for an offender to register once they locate in a jurisdiction. SORNA requires 3 days.

*VIII. Initial Registration: Retroactive Classes of Offenders*

SMART does not feel Colorado is sufficiently compliant on this matter. Individuals who commit any new felony who previously committed a crime that did not require registration must register if the past crime has become a registerable offense. Those committing new felonies must be notified of their new registration requirement. This applies also to an individual who may have committed crimes in another state(s). Their criminal history must be investigated to determine if any of their past crimes in the other state(s) would currently qualify as a registerable offense. (This retroactive requirement to register has been the object of several lawsuits around the country.)

*IX. Keeping the Registration Current*

SMART identified the need for registrants to update changes in employment, vehicle, and temporary lodging information and that it must occur within three days of any change. They would also require Colorado to report relocation of registrants to other countries to the U.S. Marshalls and mention technologies by which this notification could occur.

*X. Verification/Appearance Requirements*

Not included in the update. SMART issues addressed in other sections.

*XI. Registry Website Requirements*

SMART found that adult offenders convicted of misdemeanors are not displayed on the registry website and that there are no geographic search and mapping functions. Information elements are not displayed on the web including sex offense conviction history, employer address, school address, and vehicle information. In reaction to these SMART issues, some of these deficiencies are present due to technical or data availability issues. Employers are vigorously opposed to their addresses being posted on the sex offender registry. If the crime involves incest, website posting would be counterproductive to the effort to maintain victim anonymity.

*XII. Community Notification*

SMART determined that community notification to the general public, social service agencies, and child welfare agencies is not sufficient. It suggests the development of a different notification strategy or to use e-mail blast notification. This approach to send e-mail blasts to the entire community for every status change for every offender does not conform to the goals of

**Issue/Topic:**

**Adam Walsh Compliance Update**  
Chris Lobanov-Rostovsky

notification in Colorado. CO has the goal to focus on notification regarding the offenders posing greater community risk rather than indiscriminately posting large numbers of notifications where risk to the community is unclear.

*XIII. Failure to Register as a Sex Offender: State Penalty*

Not included in the update. There were no problems reported by SMART.

*XIV. When a Sex Offender Fails to Appear for Registration or Absconds*

The SMART issues in this section require Colorado to notify originating jurisdictions of a relocating offender fails to appear for registration, that warrants is posted to NCIC/Wanted, and that U.S. Marshalls are notified of absconders. Aspects of the required tasks are dependent on data sharing capabilities and technological upgrades that are currently insufficient in Colorado.

*XV. Indian Tribes in Colorado*

SMART recommends that contingencies exist regarding the sex offender registration responsibilities for the two federally-recognized Indian tribes in Colorado. There should be MOUs/MOAs in place detailing the responsibilities of the Tribes and the State.

The deadline for compliance is July 2011 with non-compliance penalties occurring October 2012. The SOMB "compliance committee" will weigh which of the deficiencies to address based on public safety benefit and concerns, implementation feasibility, and cost.

**Comments and Observations:**

- If Congress cuts funding to the JAG/Byrne funds, the impact of the funding penalty for non-compliance will likely be less anyway.
- An observation was made regarding the status of including 1<sup>st</sup> and 2<sup>nd</sup> degree (non-parent) kidnapping as a registerable offense.
- Where are the determinations of compliance or non-compliance being made? Should the compliance issues be addressed by the CCJJ: Sex Offense/Offender Task Force or are they more appropriately addressed by the Sex Offender Management Board (SOMB)?
  - It is the responsibility of the SOMB to address these issues. The SO Task Force may comment on the issue.
  - Concern was expressed regarding the perspective of the SOMB and whether it is approaching the Adam Walsh Act compliance issues in an evaluative way. Rather than assuming that Colorado should comply, are there aspects of the AWA for which there should not be compliance and/or aspects where compliance should be abandoned.
  - Many aspects of AWA compliance will cost funds to implement that are simply not available now and (even with temporary funding support) will not be available in the future. Is the SOMB conducting a cost/benefit analysis of compliance? How much will it cost Colorado to comply (in implementation costs) relative to the penalty for non-compliance?

Although the year ranges for community supervision were judged non-compliance, it doesn't make sense to adjust these ranges because the effective years of supervision do reflect the AWA requirements.

<p><b>Issue/Topic:</b></p> <p><b>Adam Walsh Compliance Update</b> Chris Lobanov-Rostovsky</p>	<p><b>Comments and Observations (cont'd):</b></p> <ul style="list-style-type: none"> <li>• There are issues not mentioned in the SMART Report that may be worth exploring. The current discussion seems to focus only on the non-compliance aspects when there may be benefits to a critical evaluation of the aspects of AWA where Colorado is complaint.</li> <li>• There may be benefits for the Registration Working Group to also review the AWA aspects (both compliant and non-compliant elements).</li> </ul>
---	---

<p><b>Issue/Topic:</b></p> <p><b>Update:</b> <b>Registration Working Group</b> Maureen Cain</p>	<p><b>Discussion:</b></p> <p><i>NOTE: The Sex Offense/Offender FY11 Recommendations #1-#16 from the Registration Working Group were presented for initial review on November 12, 2010 and for final review and vote on December 10, 2010 to the Colorado Commission on Criminal and Juvenile Justice (CCJJ). Members received a handout with a brief summary of the outcome of the CCJJ recommendation votes. The CCJJ approved Recommendations #1-5, 7-12, 14, and 15; deferred #6 for additional work; failed to pass #13, and did not vote on #16.</i></p> <p>Maureen Cain offered an update on matters related to the recommendations from the Registration Working Group.</p> <ul style="list-style-type: none"> <li>• <b>FY11-SO Recommendation #9 and S.B.11-007 (Place of trial)</b> Senate Bill 11-007* was introduced by Senator Grantham and Representative Becker on January 12, 2011 to address issues surrounding registration venue and charges of failure to register. The strike-through (see below) is being proposed to eliminate the release-from-incarceration location as a possible venue to adjudicate failure to register. The sponsors' argument is that the trial option places too heavy a burden on rural counties with prisons to prosecute and hold sex offenders who are convicted of failure to register. This proposed change conflicts with Recommendation #9** that addresses registration venues, but does not eliminate this option. Maureen indicated that those working on the drafting of the CCJJ: SO TF registration bill and the respective sponsors will work together to address the discrepancy.</li> </ul> <p><b>*SB11-007 (excerpt)</b> <b>18-1-202. Place of trial.</b> (12) If a person commits the offense of failure to register as a sex offender as provided in section 18-3-412.5, the offense is committed and the offender may be tried <del>in the county in which the offender was released from incarceration for commission of the offense requiring registration or</del> in the county in which the offender resides or in the county in which the offender is apprehended.</p> <p><b>**FY11-SO Recommendation #9</b> <b>Amend CRS 18-1-202 (12) as follows:</b> If a person commits the offense of failure to register as a sex offender as provided in section 18-3-412.5, the offense is committed and the offender may be tried in the county in which the offender was released from incarceration for commission of the offense requiring registration or in the county in which the offender resides or in the county in which the offender is apprehended OR THE COUNTY WHERE AN OFFENDER COMPLETED HIS/HER LAST REGISTRATION.</p>
---	--

**Issue/Topic:**

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

• **FY11-SO Recommendation #6 (Transient Registration)**

The CCJJ discussed recommendation #6, including its 7 statutory elements. Due to pending issues with some of the elements, the CCJJ requested that the Working Group attempt to resolve the pending issues and return to the Commission at the February 11 meeting for a final vote. The Working Group has decided to prune the pending elements of the recommendation leaving only two statutory elements: the definition of transient and the requirement that law enforcement register transient offenders. Additionally, the Working Group would like to request that the CCJJ endorse the continuing work of the Task Force and Working Group to resolve the pending issues (transient check-in process, penalty for failure to check in, expectations of law enforcement and victim concerns).

The Task Force moved and seconded a motion to reduce Recommendation #6 to the two elements mentioned above and to present the revised recommendation at the next meeting of the CCJJ on February 11, 2011. The motion was approved unanimously.

• **FY11-SO Recommendation #13 (SVP Equivalency)**

At the December 10 meeting, the CCJJ failed to approve this recommendation due to concerns regarding the criteria upon which SVP equivalency designations will be made. The Task Force and Working Group were requested to address the concerns expressed by CCJJ members.

Maureen described that there are two potential problems with the current language of the recommendation:

1. There was a concern that the risk levels in other states would not match exactly the risk levels used in the Colorado SVP (sexually violent predator) assessment. Chris Lobanov-Rostovsky feels that, with a minor language modification, this issue can be addressed. He proposed that changing the word "level" to "levels" is all that is required.
2. There is a concern that the equivalency process may not be constitutional in that the application of the equivalency criteria and the SVP assessment are not consistent and therefore are not fair to offenders moving into the state relative to those evaluated for SVP who already live in Colorado. Chris Lobanov-Rostovsky feels that the statute addresses this by allowing an appeal process.

Members discussed the tentative proposal that a new risk assessment instrument might replace the current SVP assessment. Would this impact the equivalency process? It was felt that the equivalency language would work with whatever risk assessment system is in place.

The Task Force moved and seconded a motion to modify Recommendation #13 with the word "levels" and to present the revised recommendation at the next meeting of the CCJJ on February 11, 2011. The motion was approved unanimously with one abstention.

Issue/Topic:	Discussion:
<p data-bbox="131 247 505 310"><b>Task Force Tasks and Priorities</b> David Kaplan</p>	<p data-bbox="570 247 1523 453">With the Legislative session underway and the wrap-up of FY11 recommendations near completion, David led a discussion of the next steps and priorities for the Task Force and its Working Groups. Members received a handout listing the original potential tasks for the Task Force and the potential pending tasks for consideration. The pending tasks from the handout with additional suggestions and comments from members included:</p> <p data-bbox="570 495 911 527"><b>Registration Pending issues:</b></p> <ul data-bbox="570 533 1133 674" style="list-style-type: none"> <li>• Continue work on transient offenders</li> <li>• SVP designation and community notification</li> <li>• Adam Walsh Act compliance</li> <li>• Other issues?</li> </ul> <p data-bbox="570 680 906 711"><b>Refinement Pending issues:</b></p> <ul data-bbox="570 718 1528 1251" style="list-style-type: none"> <li>• Determinate sentence with lifetime supervision? <ul data-bbox="607 751 1528 892" style="list-style-type: none"> <li>- Examine the consequences of the indeterminate sentence, documenting the length of incarceration.</li> <li>- Explore options for a determinate sentence and an indeterminate period of parole supervision.</li> <li>- This topic would require a lot of study and stakeholder input. Is there enough interest to explore this option?</li> <li>- Offenders with a determinate sentence are not prioritized for treatment. Adding more offenders to this sub-group could alter treatment resource allocation for the better or for the worse.</li> </ul> </li> <li>• Relatedly, are there Felony 4 offenses that can be shifted to Felony 5 to increase the determinate sentence options?</li> <li>• Explore the barriers to the effective function of the Lifetime (Indeterminate) Supervision Act.</li> <li>• Other issues?</li> </ul> <p data-bbox="570 1257 1146 1289"><b>Parole release and guidelines for sex offenders:</b></p> <ul data-bbox="570 1295 1084 1507" style="list-style-type: none"> <li>• Explore parole decision-making</li> <li>• Conditions of release and supervision</li> <li>• Community Corrections Boards</li> <li>• Victims Services</li> <li>• Local government (e.g. SLA/zoning laws)</li> <li>• Other issues?</li> </ul> <p data-bbox="570 1514 1511 1581">This set of issues could be addressed by a separate group or by the Refinement Working Group.</p> <p data-bbox="570 1587 678 1619"><b>Juvenile:</b></p> <ul data-bbox="570 1625 1536 1724" style="list-style-type: none"> <li>• Lack of sentencing and treatment options for individuals who perpetrated as a juvenile, but were not charged until they were over 18.</li> <li>• Other issues?</li> </ul> <p data-bbox="570 1730 1446 1797">Is the SOMB Juvenile group or maybe the Best Practices group addressing juveniles who commit sex offenses</p> <p data-bbox="570 1803 932 1835"><b>Other general pending issues:</b></p> <p data-bbox="570 1841 1463 1908">The Task Force should request that CCJJ leadership appoint a Prosecutor to replace the position left vacant by Ted Tow.</p>



<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>• The two Working Groups will meet to address the pending issues and identify any other issues for study</li> <li>• The next Task Force meeting, scheduled for Wednesday March 2 was cancelled to allow Working Group time to meet and deliberate.</li> </ul> <p>The link to the CCJJ: Sex Offense/Offender 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>
--	--

**Future Sex Offense/Offender Task Force Meeting Dates:**

<b>Date</b>	<b>Location</b>	<b>Time</b>
Wednesday, March 2, 2011	Cancelled	
Wednesday, March 30, 2011	150 E. 10 <sup>th</sup> Avenue, Denver	1:30-4:30PM
Wednesday, May 4, 2011	TBD	TBD