

MINUTES
Sex Offense/Offender Task Force
Colorado Commission on Criminal and Juvenile Justice
August 31, 2011 1:30PM-4:30PM
150 East 10th Avenue

ATTENDEES:

CHAIR

David Kaplan, Private Defense Attorney

TASK FORCE MEMBERS

Michael Anderson, Colorado State Board of Parole

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

Chris Lobanov-Rostovsky, Division of Criminal Justice

Richard Schneider, Denver PD, SO Registration

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

Adrian Van Nice, Colorado District Attorneys' Council

Angel Weant, Probation Services, Colorado Judicial Branch

PUBLIC PARTICIPANTS

Allison Boyd, Director-Victim Witness Assistance Unit, 1st Judicial District DA's Office (Jeff Co.)

Jeff Geist, Department of Corrections / Sex Offender Management Board (SOMB)

Colleen Hackett, CU Boulder

Pat Harris, Advocates for Change

Roberta Robinette, Victim Advocacy (CO Organization for Victim Assistance)

Cathy Rodriguez, DCJ/SOMB

Carolyn Turner, Advocates for Change

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

STAFF

Kevin Ford, Division of Criminal Justice

ABSENT MEMBERS

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

Issue/Topic:	Discussion:
<p>Welcome and Introductions David Kaplan</p>	<p>The last meeting of the Task Force was on August 3, 2011. Between that date and this meeting date of August 29 the Registration Working Group met once on August 17 and the Refinement WG met once on August 18.</p> <p>David Kaplan welcomed the group and provided re-orientation to task force members:</p> <ul style="list-style-type: none"> • Attendees introduced themselves. • There was a brief recap of Task Force activities. • There was a brief overview of the agenda. <p>David thanked the members of the public in attendance at the meeting.</p>

Issue/Topic:	Discussion:
<p>Update: Registration Working Group “Transient Recommendation” Maureen Cain / Chris Lobanov-Rostovsky</p>	<p>Transient (“lacks a fixed residence”) Recommendation</p> <p>Maureen provided an update on the development of the transient registration recommendation. Maureen provided a brief reminder of the issues that arose with the transient registration legislation during the FY 2011 session and the goals of the process to revise the previous recommendation. The Working Group has:</p> <ul style="list-style-type: none"> • included representatives from the field of homelessness and sought feedback from stakeholders, • reviewed legislation in other states. • attempted to improve the definition of “lacks a fixed residence,” • included a requirement that all law enforcement jurisdictions accept registration from those lacking a fixed residence, and • addressed the false interpretation that those without a fixed residence are not required to register. <p>The recommendation contains 7 subparts and the following were comments offered by Maureen regarding each part:</p> <p>#1 - basic overview of the definition.</p> <p>#2 - address that shelters should be included in the definition of “residence.”</p> <p>#3 - establishes that all must register whether at a fixed residence or not at a fixed residence. Will add that all law enforcement agencies must accept registration from those who lack a fixed residence.</p> <p>#4 - addresses the way that a location for a “non-fixed residence” should be reported. Maureen has discussed this matter with AnnMarie Jensen (who is a legislative liaison for law enforcement) and will get feedback from Denver PD on their method for recording this information.</p> <p>#5 - describes the additional contacts by those who lack a fixed residence as a “self-verification” process. This term establishes that the responsibility for the check-ins by those lacking a fixed residence lies more with offenders than with law enforcement. Note that the required registration events (annual or quarterly) proceed unchanged by the additional check-in process.</p> <p>#6 - addresses requirements to re-register within 5 days due to changes in status from fixed to “non-fixed” status (and vice versa).</p>

**Issue/Topic:
Continued**

**Update:
Registration Working Group
“Transient Recommendation”**

Maureen Cain /
Chris Lobanov-Rostovsky

- #7 - addresses several procedural points and the penalty for non-compliance:
- those required to re-register annually must check in every 90 days (the annual re-registration event serves as one of the 4 required check-ins each year),
 - those required to re-register quarterly must check in every 30 days (the quarterly re-registration events serve as four of the 12 required check-ins each year) , and
 - the penalty for failure to check-in is a misdemeanor offense resulting in jail for up to 30 days and, for a 3rd or subsequent offense, the penalty is jail for up to one year (fines are not useful for this indigent population).

Additional - Maureen feels the WG should also add a provision that addresses the need for law enforcement to collect data on the self-verification process. This will help evaluate how the system is working and determine whether modifications are needed. It would be advantageous to track (at least): the number of offenders who are registered as “lack a fixed residence,” the rate of compliance (# of misdemeanors charged), and the amount of jail time.

Comments offered by members during and following Maureen’s update:

#7 - it should be clear that the 90-day check-in applies to annual registrants

#7 - it should be clear that the 30-day check-in is required for those labeled “sexually violent predator” and others, required by law, to register quarterly as found in 16-22-108 (1) (d) (II), C.R.S.

#5 - it should be more explicit that every self-verification by an offender that is beyond the required re-registration event(s) (3 for annual registrants and 8 for quarterly registrants) does not require an address/location verification by law enforcement, but such follow-up is at the discretion of law enforcement.

#7 - there should be no charge for the self-verification check-ins. Indigent offenders can barely cover the current costs of the required registration and re-registration events.

#6 - there should be a clear distinction between a failure to register (FTR) offense and a failure to self-verify offense and their respective penalties and consequences.

#6 - the failure-to-verify absolutely should not be considered a failure to register (with its associated felony) because a FTR felony results in a mandate to conduct an offender sex-history evaluation.

- the false report of an address (or location, in the case of lacks a fixed residence) is already covered by the FTR rules

#7 - should the penalty for failure to verify be found in Title 16 or in Title 18?

#7 - the current frequency of check-ins seems appropriate rather than an increased frequency that would result in additional opportunities for a failure to self-verify.

It is unclear whether, due to the introduction of a new misdemeanor, Judicial might add a fiscal note. Judging by the number of transient registrants in Denver, the number of offenders and potential number of cases would probably be fairly small (...therefore, not meeting a threshold that would require a fiscal note).

David Kaplan reported that the initial presentation of this recommendation (as a concept) to the Commission for feedback will occur on September 9.

<p style="text-align: center;">Issue/Topic:</p> <p style="text-align: center;">Update: Registration Working Group Classification/Notification Chris Lobanov-Rostovsky</p>	<p style="text-align: center;">Discussion:</p> <p>Risk assessment classification / Community notification Chris Lobanov-Rostovsky provided an update on a <i>draft</i> of the recommendation to address risk assessment and community notification prepared by the Community Notification Technical Assistance Team (CNTAT). The recommendation was shared with the Registration Working Group for feedback at its August 17 meeting and was presented to the Task Force for feedback. The work on this recommendation was initiated by a recommendation created by the Sex Offense/Offender Task Force last year and labeled FY11-SO#16 (and is inserted below for reference).</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.</p> <p>Reason: The current registry does not provide gradation of risk beyond those categorized as SVP and everyone else. An improved risk designation would be helpful to law enforcement and would inform the public which offenders may be a public risk. The degree of risk would determine the method by which public notification could occur. Not all registrations necessarily warrant a public meeting, which could be reserved for those offenders who may present the greatest risk to the public.</p> <p>Proposed fix: As per 16-11.7-103 (4) (c.5), the Sex Offender Management Board (SOMB) working in collaboration with representatives of the Division of Criminal Justice, Judicial and the Probation Division, the Division of Parole, the Department of Corrections, and law enforcement should revise the risk assessment screening system to assign sex offenders to categories based on risk and devise a set of notification options commensurate with the level of risk. This initial screening based on static risk factors should not preclude subsequent assessments of risk during the monitoring and treatment of sex offenders in justice agencies such as the department of corrections, probation, parole, or community corrections. This work has been assigned by the SOMB to one of its subcommittees, the Community Notification Technical Assistance Team</p> <p>A few comments were made regarding to whom the CNTAT recommendation “belongs.” The recommendation is labeled as a CNTAT recommendation and not a recommendation of the Sex Offender Management Board. The recommendation has not been reviewed by the membership of the SOMB. It is unclear whether the recommendation will become a recommendation of the Sex Offense/Offender Task Force or stay in the purview of CNTAT or the SOMB. This issue will be decided later.</p> <p>Chris provided an overview of the eleven elements of this draft of the recommendation. The elements are provided below along with a description of the CNTAT:</p> <p>(Points made by Chris during his update and comments made by attendees are provided below.)</p>
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Issue/Topic:

Update: (cont'd)
Registration Working Group
Classification/Notification
Chris Lobanov-Rostovsky

1) Adopt the existing Sex Offender Risk Scale (SORS) from the SVP assessment instrument for the new risk classification system.

Rationale: The instrument was developed based on a sample of Colorado sex offenders and effectively predicts sexual recidivism.

2) Create a risk classification system based on the following SORS score ranges:

- Low Risk – 0-3 points
- Moderate Risk – 4-6 points
- High Risk – 7-9 points

Rationale: The selected cut points for the risk classification system were based on an analysis of the numbers of sex offenders who are projected to fall into each risk category and the rate of sexual recidivism for each risk score. Based on a sample of Colorado sex offenders, it is anticipated that the following numbers of offenders will fall into each classification level (estimates of the number of affected offenders and estimated recidivism rates are included):*

- 0-3– 30.4% of sex offenders [Recidivism rate - 11.4%]
- 4-6– 59.0% of sex offenders [Recidivism rate - 20.7%]
- 7-9– 10.6% of sex offenders [Recidivism rate - 50.0%]

* Percentage rearrested for a sexual offense within 5 years. (Based on a sample of 371 sex offenders sentenced between December 1996 and November 1997).

3) Similar to the SVP assessment instrument, create an automatic risk classification override by moving to high risk all sexual offenders who have a prior sex crime conviction.

(as defined by Colorado Sex Crime Registration Act, 16-22-102 (9), C.R.S.).

Rationale: The SOMB determined that not all sexual offenders with priors were being captured by the current SVP assessment instrument as high risk, and the consensus from stakeholders was that repeat sexual offenders have a proven record of risk to community and victim safety.

Based on a sample of assessments administered over the past year, it is anticipated that an additional 9.2% of offenders will be classified as high risk based on this prior-conviction criterion (taking into account the 1% overlap between those scoring 7 or above and those meeting the prior sex offense criterion). The addition of this criterion increases the proportion of offenders classified as high risk from 10.6% to 20.4%.

4) Apply the risk classification system to all sexual offenders who are required to register. This will require retroactive scoring for all sex offenders who are currently registered and who were previously scored on the SVP assessment instrument. Registered sex offenders designated as SVP would be automatically classified as high risk in the new risk classification system.

Rationale: Law enforcement and the public will need an updated risk designation for all registered sexual offenders, both those registering after the system implementation and those registering prior to the implementation. There are currently more than 13,000 registered adult sexual offenders in the state of Colorado, and each must have an updated risk designation that is consistent for all offenders and interpretable by law enforcement and the public.

5) Place all adult sexual offenders, including those with misdemeanor offenses who are not currently on the website, on the state public registry website with their risk level noted.

Issue/Topic:

Update: (cont'd)
Registration Working Group
Classification/Notification
Chris Lobanov-Rostovsky

Rationale: In the interest of public safety, all risk classification information must be available to the public. Placing those with misdemeanor sex offenses on the state public registry website will effectively disseminate this information to the public.

- 6) Allow an option, as currently exists, for law enforcement to increase the frequency of address verification for certain high risk offenders. Therefore, no change in registration requirements based on risk is recommended.**

Rationale: The new risk classification system will allow law enforcement the flexibility to increase monitoring of high risk offenders in the community. However, due to insufficient local law enforcement resources, any mandated increase in registration or address verification requirements for high risk offenders is cost and resource prohibitive.

- 7) Repeal the existing SVP risk classification system and community notification protocol requirement, including specific notations of the crime type, date, and relationship type requirements.**

Rationale: The SVP designation and the specific notations mentioned above were requirements based on the Wetterling Act, which has been repealed. There is no research support for maintaining these elements in the new risk classification system.

- 8) Community notification meetings shall be optional rather than mandatory. Additionally, any optional community notification meeting conducted by a local law enforcement jurisdiction may only address high risk offenders and must follow the existing community notification protocol developed by the SOMB: CNTAT.**

Rationale: There is no longer a mandatory requirement to conduct community notification meetings due to the repeal of the Wetterling Act. The internet and other communication mediums have allowed the public to obtain needed sex offender information more efficiently and cost effectively. Diminished attendance at notification meetings in some jurisdictions has rendered these meetings an inefficient and costly communication modality. However, attendance in some jurisdictions continues to be strong and this recommendation element would not preclude this notification approach, assuming the meeting subject is a high risk offender.

- 9) If resources become available, develop a "blast email" notification system for all adult sexual offenders as required by AWA.**

*Rationale: The current federal mandate requires community notification by email. This will comply with that mandate and provide an alternative to the more labor and cost intensive town-hall style meetings. This recommendation can only be implemented if there is funding from federal or state government for a registration and notification system like the Douglas County Sheriff Office's SOTAR system. * (*Presented to CCJJ on August 8, 2011.)*

- 10) Ensure that consistent and equivalent information is released to the public on adult sexual offenders across all information sources (state website, county website, and registrant paper lists), and remove all information on juvenile registrants.**

Rationale: Currently, different information can be obtained from different sources, resulting in a frustrating and confusing search for information by the public. Making the information consistent would also prevent certain groups from obtaining the paper list of registrants and placing it on the website. Finally, the AWA does not require juvenile registration information to be made public and there is no research support that this practice reduces recidivism.

Issue/Topic:

Update: (cont'd)
Registration Working Group
Classification/Notification
Chris Lobanov-Rostovsky

11) Develop and fund a risk assessment committee or board to complete the retroactive and future risk classification assignments for all sex offenders, including those no longer under supervision or who have been already assessed by the SVP instrument.

Rationale: There is no entity that has the qualifications and resources to complete the retroactive assessments. Additionally, this board would provide consistency to the retroactive and future risk classification assessments. Therefore, as with other states, a risk assessment committee or board must be established to score the risk assessment instrument on all offenders.

THE COMMUNITY NOTIFICATION TECHNICAL ASSISTANCE TEAM

The CNTAT, by statute, consists of representatives from sex offender management, sex offender supervision, and law enforcement (16-13-906 (1) C.R.S.). The recommendation was generated over the course of 4 meetings by the CNTAT (03/03/11, 04/29/11, 06/16/11, and 08/03/11). In developing the recommendation, the CNTAT reviewed the change in federal mandates from the Wetterling Act to AWA, and research provided by the Division of Criminal Justice Office of Research and Statistics (ORS) on Colorado sexual offenders.

The following are additional comments offered by Chris during his update (by element number):

#2 - Although the score ranges were set, the labels to accompany the ranges are still under discussion. The CNTAT was very cognizant of possible “net widening” of those in the highest risk category (i.e., overly or inappropriately increasing the number of offenders in the highest risk category).

#3 - This element refers to registerable sex offenses and not to a failure-to-register offense. This element is modeled after sentencing consequences for habitual offenders and moves to the higher category will be evaluated on a case-by-case basis.

#4 - The CNTAT is suggesting that all offenders be scored on the new system because it will be confusing to have simultaneously two different risk assessment systems. The label “SVP” would not be used; instead, the label, “high risk” (or whichever is selected), will be used. All current SVPs would be placed in the highest category.

#5 - This was determined to be appropriate because misdemeanants can be very risky and providing more information to the public was perceived to be a good thing.

#11 - The need to re-assess existing offenders on the new risk scheme would require some body to carry out these re-assessments. WA, MN, NJ, PA all have boards that perform this function.

Comments and questions offered by members during and following Chris’ update (by element number):

#2 - A comment was made regarding the validity of actuarial assessment not being appropriately tailored to an individual offender’s circumstances.

#2 - The CNTAT should consider carefully how to define the risk category labels for the public.

#2 - It was felt that a recidivism rate in the middle category of 20.7% seemed too high. A comment addressed the relative advantages and disadvantages of statistical versus policy decisions when setting risk score ranges.

#2 - Because the specific offense is not provided on the registration information

Issue/Topic:

Update: (cont'd)
Registration Working Group
Classification/Notification
Chris Lobanov-Rostovsky

on the registry website, interpreting the meaning of a particular risk category label becomes more difficult.

#2 - Were alternate numbers of levels explored, for example, having 4 levels? The ranges selected were most valid.

#3 - The override seems to over-emphasize criminal history in the risk assessment.

#4 - If the "SVP" label is not used, how will those required to register quarterly be identified? The quarterly registrants will be identified by offense.

#5 - [There was a large disagreement regarding the placement of misdemeanants on the website registry.] Some felt this element would overly broaden the registry list with individuals who are not a public safety risk. Misdemeanant registrants could be available to law enforcement, but should not "dilute" the public registry, which should contain only those sex offenders who pose the greatest risk to the public.

#5 - It was reported that MN found no correlation between failure-to-register offenses and recidivism. Others point out that registration is one component in an overall containment plan.

#5 - Registration is not supposed to be a punishment and adding misdemeanants to the registry appears to punish these offenders out of proportion to their conviction.

#5 - This effort begs a fundamental question about registries. Although the public is described as wanting the website registry, these registries are not shown to make the public safer (because of the lack of relationship with recidivism.) Are there containment options that actually reduce recidivism and public safety rather than choosing options that merely enhance perceptions of safety? Are available studies definitive on the best public safety options?

#7 - If the "SVP" label is not used, it seems an advantage to provide as much information to the public as possible.

#7 - The risk categories overlay the conviction-based registration requirements. A discussion ensued regarding a classification system based on risk versus one based on conviction crimes. The choice of how to display individuals on the registry raises issues of the best way to indicate risk: does the public understand the conviction crime (which may not match the actual offense behavior) or using a risk category which may be difficult to define effectively for the public. How should the public be educated about the risk categories? How will the public be educated that offenders in one category or convicted of a particular crime may not be the same in level of risk?

#7 - There are benefits to displaying offenders' risk level in whatever form, but these must be weighed against the consequences to community re-entry and success for offenders.

#9 - This seems like an expense that funds would be better spent on community treatment.

#10 - Unfortunately, watchdog groups can go to law enforcement and get the names of misdemeanants and juveniles as well.

#10 - There is inadequate research to determine the consequences of specific information being provided on a public registry website.

<p style="text-align: center;">Issue/Topic:</p> <p style="text-align: center;">Update: Adam Walsh Act Compliance Chris Lobanov-Rostovsky</p>	<p style="text-align: center;">Discussion:</p> <p>Chris Lobanov-Rostovsky provided an update on Adam Walsh Act (AWA) compliance.</p> <ul style="list-style-type: none"> • The SMART Office has indicated that, in addition to some other minor issues, the Act appears substantially implemented in Colorado with one major exception: public notification of the address of an offender’s employer. • Various ideas to address this issue are being discussed. Ultimately, it’s a decision of the Governor’s Office. The SMART Office has been informed of the current limitations and barriers to compliance. • At this point, a penalty will be imposed on JAG funds totally roughly \$400,000 (The actual amount will be dependent on the total funding designated. Once designated the penalty will be 10% of that amount.) • It is expected there will be a grant to support the implementation of the Sex Offender Tracking and Registration system (SOTAR).
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<p style="text-align: center;">Issue/Topic:</p> <p style="text-align: center;">Next Steps David Kaplan</p>	<p style="text-align: center;">Discussion:</p> <p>David summarized upcoming tasks Sex Offense / Offender Task Force:</p> <ul style="list-style-type: none"> • At the next CCJJ meeting on September 9th, David will address the risk assessment/community notification recommendation from the CNTAT, Maureen Cain will present the “Lacks a fixed residence” draft recommendation, and Peggy Heil and Erin Jemison will present the draft recommendations from the Refinement Working Group (discussed in a previous Task Force meeting). • The next Task Force meeting is scheduled for Wednesday, October 5. <p>The link to the CCJJ: Sex Offense/Offender Task Force page is: http://cdpsweb.state.co.us/ccjj/Sex_offender_task_force.htm</p>
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Sex Offense/Offender Task Force Meeting Dates:

Date	Location	Time
Wednesday, October 5, 2011	150 E. 10 th Avenue, Denver	1:30-4:30PM
Wednesday, November 2, 2011	710 Kipling, Lakewood, Denver	1:30-4:30PM
Wednesday, November 30, 2011	150 E. 10 th Avenue, Denver	1:30-4:30PM