

MINUTES
Sex Offense/Offender Task Force
Colorado Commission on Criminal and Juvenile Justice
November 30, 2011 1:30PM-4:30PM
150 E. 10th Avenue, Denver

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

Laurie Kepros, Colorado Criminal Defense Bar

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

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)

Angel Weant, Probation Services, Colorado Judicial Branch

Adrian Van Nice, Colorado District Attorneys' Council

PUBLIC PARTICIPANTS

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

Roberta Ponis, Advocates for Change

Jacob Ruby-Wessley, Colorado Coalition for the Homeless (*by phone*)

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

Carolyn Turner, Advocates for Change

STAFF

Kevin Ford, Division of Criminal Justice

ABSENT MEMBERS

Erin Jemison, Colorado Coalition Against Sexual Assault

<p>Issue/Topic:</p> <p>Welcome and Introductions David Kaplan</p>	<p>Discussion:</p> <p>David Kaplan welcomed the attendees and:</p> <ul style="list-style-type: none"> • Attendees introduced themselves, • There was a brief recap of Task Force activities with a general update on the Task Force presentations recommendation at the monthly CCJJ meeting on November 18th, and • There was a brief overview of the agenda.
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<p>Issue/Topic:</p> <p>Updates: Registration Working Group Maureen Cain</p>	<p>Discussion:</p> <p>Maureen presented an update on the “Lacks a fixed residence” recommendation from the Registration Working Group. The recommendation was presented to the CCJJ November 18 meeting where it passed. A summary of the CCJJ results may be found below.</p> <p>Maureen Cain reported there are a few “clean-up” issues that still remain:</p> <p>Quarterly registration with +/-5 day allowance</p> <ul style="list-style-type: none"> - The sex offender registration statute was modified last year (by HB11-1278) to allow those who register annually the ability to register +/- 5 days from the required date of registration. - It was an oversight that the same allowance was not included for those who register quarterly. - Maureen will draft this language for presentation to the CCJJ at the Dec 9 meeting and asked the Task Force for approval to do so. - The Task Force <u>unanimously granted approval</u> for Maureen to draft this recommendation and to present it to the Commission. <p>Cancellation of registration</p> <ul style="list-style-type: none"> - Last year, HB11-1278 created a simultaneous registration cancellation of registration process to streamline the process for law enforcement and sex offenders. (*Based on CCJJ: SO TF Recommendation, FY11-SO #4. Create a simultaneous registration/cancellation of registration process in CRS 16- 22-108 for registrations within Colorado.) - This process has proved somewhat cumbersome for law enforcement. Some law enforcement agencies are failing to notify previous agencies that old registrations should be cancelled. Some sex offenders are reportedly “gaming the system” to obfuscate their responsibility to register. - Law enforcement preferred the previous system that placed the burden for cancellation on the sex offender. - Some offenders prefer and are allowed to have dual registration locations, but automatic cancellations have mistakenly occurred. - If there was an electronic system in place, the process could be more effectively implemented. The SOTAR (Sex Offender Tracking and Registration) system would be the ideal platform for this process but the roll-out to and adoption by law enforcement has been slower than expected. - The change, without proper implementation, has resulted in greater difficulty for prosecutors who must establish confirmable movements and locations of sex offenders to show a failure to register.
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<p>Issue/Topic:</p> <p>Update: (cont'd) Registration Working Group Maureen Cain</p>	<p>Comments:</p> <ul style="list-style-type: none"> - It seems that the system could be “gamed” under the previous system as well. - This issue is also connected with the Griffin issue about offenders who de-register, indicating a move to a particular location, but who settle and register in a different location. Now, there is no confirmed cancellation date and no intent-to-reside information. - The old process was burdensome to offenders and the new system is not working, in part, because law enforcement does not like being responsible for sending the cancellation notice. - With the introduction of the “lacks a fixed residence” recommendation, some of the loopholes are closed. - Probation and Parole officers are getting more calls from law enforcement asking for the whereabouts of offenders. (This can be viewed as a positive or a negative.) - Even without SOTAR, can’t this simply be added to the current system with a field in the CBI system? - Is there data to back up the concerns? Is this a real problem or simply a perceived problem? - Why hasn’t SOTAR rolled out? Chris Lobanov-Rostovsky reported that the granted supported roll out will start on January 1. Even so, law enforcement agencies are not required to adopt SOTAR. - Why can’t law enforcement be required to adopt? The SOMB Legislative Committee is mentioned as the place to take this idea. <p>SUMMARY: Recommendation FY12-SO #1 (“Lacks a Fixed Residence”) The CCJJ discussed and voted on each element of the recommendation and then voted on the entire recommendation. The recommendation and element headings are provided below with vote totals. The pass threshold for the overall vote requires 75% and 51% is required for the element votes.</p> <p>FY12-SO1. Clarify and create in statute the registration requirement for and self-verification by sex offenders who “Lack a Fixed Residence.” OVERALL VOTE: 84% support/live with, 16% do not support</p> <ul style="list-style-type: none"> a) “Lacks a Fixed Residence” definition. ELEMENT VOTE: 95% support, 5% do not support b) Shelters as a residence. ELEMENT VOTE: 95% support, 5% do not support c) Requirement to register and to accept registrations. ELEMENT VOTE: 100% support, 0% do not support d) “Geo-locations.” ELEMENT VOTE: 100% support, 0% do not support e) Self-verification. ELEMENT VOTE: 100% support, 0% do not support f) Residence/non-fixed residence changes. ELEMENT VOTE: 100% support, 0% do not support
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<p>Issue/Topic:</p> <p>Update: (cont'd) Registration Working Group Recommendation: “Lacks a fixed residence” Maureen Cain</p>	<p>g) Reporting requirements and Penalties. ELEMENT VOTE: 74% support, 26% do not support</p> <p>h) Offender notification. ELEMENT VOTE: 95% support, 5% do not support</p> <p>i) Data reporting. ELEMENT VOTE: 89% support, 11% do not support</p>
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<p>Issue/Topic:</p> <p>Update: Refinement Working Group Recommendations Peggy Heil/Members</p>	<p>Discussion:</p> <p>Peggy Heil presented an update on the delayed Recommendation, FY12-SO #15 on Residency restrictions and zoning ordinances, and on the plans to address the recommendations tabled by the Commission at the October 14 CCJJ meeting.</p> <p>FY12-SO #15</p> <p>Prior to the November 18 meeting, as discussed by the Task Force, the recommendation was revised from a legislative focus to an educational focus. The revised recommendation, in its entirety, as presented to the Commission is provided below.</p> <p>The recommendation was revised for one primary reason. If the recommendation was left as a legislative recommendation and failed to receive CCJJ support, the recommendation would die. The revision was perceived as likely to receive support to allow a future legislative recommendation to be proposed.</p> <p>Although some Commission members were in support of the original recommendation, it was clear that others would not support a legislative recommendation in the current political environment (i.e., in an election year). Some confusion was expressed regarding use of the phrase, “a statewide public policy,” which was perceived as having little meaning outside an actual piece of legislation. Also, there were concerns raised regarding the state involving itself in local matters regarding residency restrictions and zoning ordinances. There were also concerns raised regarding the use of child safety zones and whether such zones are evidenced based.</p> <p>The recommendation did, in fact, pass with an emphasis on an educational effort that would precede any legislative effort. Note that the threshold required to “PASS” at CCJJ is 75%.</p> <p>VOTE: 78% support/live with, 22% do not support</p> <p>FY12-SO15. The Commission supports a statewide public policy and an education strategy led by the Sex Offender Management Board to promote the use of child safety zones in lieu of residency restrictions and zoning ordinances regarding sex offender housing.</p> <p>DISCUSSION: Colorado municipalities and counties continue to implement sex offender housing restrictions and zoning ordinances which reduce options for housing that promotes public safety. These actions tend to result in a domino</p>
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<p>Issue/Topic:</p> <p>Update: (cont'd) Refinement Working Group Recommendations Peggy Heil/Members</p>	<p>effect causing adjacent municipalities and counties to also implement restrictions to discourage the “re-settlement” of displaced offenders. These restrictions result in negative consequences that impede better public safety options for managing sex offenders on probation and parole. Child safety zones define protected areas that sex offenders are prohibited from entering except in limited and safe circumstances. These zones are a more effective public safety option that is typically included among the conditions required of sex offenders who are under parole or probation supervision. <u>The size and design of child safety zones should be carefully defined to prevent the zone from becoming a de facto residency restriction.</u> The Commission will monitor the educational efforts and will consider legislative solutions on this matter at some point in the future after the 2012 legislative session.</p> <p><i>This recommendation is consistent with a resolution by the Sex Offender Management Board, passed September 19, 2011, that states:</i> <i>“The Board does not support sex offender residency restrictions or zoning restrictions that are counter-productive to the effective supervision of sex offenders.”</i></p> <p>Child Safety Zone Protected areas that sex offenders would be prohibited from entering except in limited and safe circumstances. Such areas might include schools and childcare facilities.</p> <p style="text-align: right;">[Statement on Sex Offender Residency Restrictions in Iowa, Iowa County Attorneys Association (December 11, 2006).]</p> <p>TABLED RECOMMENDATIONS Peggy described that the Refinement Working Group:</p> <ul style="list-style-type: none"> - has tentative meetings scheduled for December 12 and January 3 to compile the information necessary to support the tabled recommendations. - will work with Glenn Tapia who will assist in the preparation of these materials. - will complete a request to the Office of Planning and Analysis at the Department of Corrections for data to support arguments for the recommendations.
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<p>Issue/Topic:</p> <p>Update: SOMB: CNTAT Recommendation: Risk Assessment / Community Notification Chris Lobanov-Rostovsky</p>	<p style="text-align: center;">Discussion:</p> <p>Chris Lobanov-Rostovsky described his request that the Task Force consider two revised elements of the recommendation from the Community Notification Technical Assistance Team (CNTAT). These two elements had received an unfavorable vote at a previous Task Force meeting on October 5. On November 2, these revisions had been presented with the request for consideration at this Nov. 30 meeting. The recommendation and its elements remain in the purview of the CNTAT.</p> <p>Below are the two revised elements, the original text, and the discussion of this topic.</p>
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Issue/Topic:

Update: (cont'd)

SOMB: CNTAT

Recommendation:

Risk Assessment /

Community Notification

Chris Lobanov-Rostovsky

Chris re-introduced the revisions to the two elements of the recommendation (the original versions of these elements are included below):

4A. Assign current SVPs to Level 3 (High risk) on approved classification system.

5A. Report the risk level on the website only for those classified as Level 3 (High risk).

ORIGINAL

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.

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.

Chris offered the following points the **4A revision**:

- Under the proposed scoring scheme, there would be sex offenders scored under two different systems, if older scores were not updated.
- However, because re-scoring does not seem supported, he is proposing (under 4A) that only the offenders designated as SVP be "re-scored."
- These offenders would be placed into the "High risk" category.
- The eventual intent is to eliminate the "SVP" (sexually violent predator) label with the label, "High risk."

Comments:

- It is felt there were some reliability issues with the old scoring and an automatic re-categorization would not be appropriate.
- Questions arose regarding the plan to transition away from the SVP designation.
- In reference to recent research, there are questions regarding the value of risk ratings as part of the containment approach. What is the best type of "risk" to rate? The risk of sexual re-offense, the risk of treatment failure, and/or the risk of any criminal offense?
- Questions were raised regarding a recent case where the Supreme Court has "taken cert" (agreed to review the case) regarding the misapplication of the SVP label and regarding the SMART Office would take on the presence or absence of the risk rating.

<p>Issue/Topic:</p> <p>Update: (cont'd) SOMB: CNTAT Recommendation: Risk Assessment / Community Notification Chris Lobanov-Rostovsky</p>	<p>Comments: (continued)</p> <ul style="list-style-type: none"> - If re-scoring were possible, how would it be accomplished? Who would do the re-scoring? How much would it cost? Would offenders be charged for the re-scoring? - The question was posed whether there is an implementation plan for the new scoring system and assessment and the plan to eliminate/replace the SVP assessment. RESPONSE: The plan is to implement the new scoring system and figure out how to eliminate the SVP assessment later. - There are concerns that there does not appear to be a transition/implementation plan. - How will law enforcement be trained on the meaning of the new classification? - How would the risk classification categories be presented and defined for users of the internet registry? - When will the Sex Offender Management Board (SOMB) weigh in on the new classification system and the elimination of the SVP assessment and designation? - There was a brief discussion of the statutory responsibilities of the SOMB and the CNTAT. There seems to be differences in the interpretation of statute regarding the accountability of the SOMB or the CNTAT for risk classification and community notification decisions. - There appears to be research that should be reviewed to better inform the use of risk classification systems. <p>Conclusion</p> <p>David Kaplan summarized the discussion by observing that there appears to still be tasks necessary before the new system can be effectively implemented and the old system eliminated. David feels the issue should go back to the CNTAT for completion and to the SOMB for review. The Task Force will remove itself from further comment on the recommendation. Task Force members feel this is a prudent conclusion.</p>
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<p>Issue/Topic:</p> <p>Task Force Continuation? Pending Issues? David Kaplan</p>	<p>Discussion:</p> <p>David made a request that Task Force members begin to contemplate whether there are additional issues that should be addressed or whether to recommend to CCJJ that the Task force conclude. The original intent for the Task Force was to produce recommendations for two "recommendation cycles" (legislative sessions) and that this defined period of time will soon be met. Certain areas were <u>mentioned for thought</u> by David and members:</p> <ul style="list-style-type: none"> • Originally, there was no traction to solve issues regarding determinate F4 offenses proposed in the first months of the Task Force by Ted Tow. What is the current feeling? • The creation of release guidelines for the Parole Board to use when evaluating the release of sex offenders. • Issues surrounding sex offender housing and shared living arrangements. • Address the sex offender treatment sequence and discontinuities. Maybe complete Phase I in DOC and Phase II in the community. <ul style="list-style-type: none"> ○ Can sex offenders who are revoked from probation be returned from DOC to probation rather than being released to parole? There are treatment discontinuities between probation and parole. ○ This is also true between DOC and the community for parolees
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Issue/Topic:	Discussion:
<p data-bbox="235 247 381 277">Next Steps</p> <p data-bbox="235 283 391 312">David Kaplan</p>	<p data-bbox="561 247 1089 277">David summarized plans for the next month:</p> <ul data-bbox="597 283 1500 495" style="list-style-type: none"> <li data-bbox="597 283 1430 348">• Task Force members should consider whether the Task Force should continue or not and, if continue, what should be addressed. <li data-bbox="597 354 1425 420">• The Refinement Working Group will continue its work on the tabled recommendations. <li data-bbox="597 426 1500 495">• The next Task Force meeting is scheduled for Wednesday, January 4, 2012 at 710 Kipling, 3rd floor conference room, Lakewood, Denver <p data-bbox="561 537 919 567">Meeting adjourned at 3:30pm</p> <p data-bbox="561 606 1289 636">The link to the CCJJ: Sex Offense/Offender Task Force page is:</p> <p data-bbox="561 642 1289 672">http://cdpsweb.state.co.us/ccjj/Sex_offender_task_force.htm</p>

Sex Offense/Offender Task Force Meeting Dates:

Date	Location	Time
Wednesday, January 4, 2012	710 Kipling, Lakewood, Denver	1:30-4:30PM
Wednesday, February 1, 2012	710 Kipling, Lakewood, Denver	1:30-4:30PM
Wednesday, February 29, 2012	710 Kipling, Lakewood, Denver	1:30-4:30PM