

**Sex Offense/Offender Task Force
Recommendations presented to the
Colorado Commission on Criminal and Juvenile Justice**

December 10, 2010

[As approved]

FY11-SO #1. Regarding sex offender registration, combine termination hearing/de-registration for juveniles convicted of a sex offense

Recommendation FY11- SO #1:

Create a simultaneous termination hearing/de-registration process for those juvenile offenders currently eligible for de-registration under 16-22-113(e), CRS.

DISCUSSION

Many offenders who are eligible to de-register fail to do so or are uninformed of the option. This recommendation is intended to amend the relevant statutes as necessary in CRS Titles 16 and 19. This would not change the substance of current law in 16-22-113(e), CRS, only the procedures. This does not alter which juvenile offenders would be eligible for de-registration. This will create a simultaneous hearing/process to terminate supervision and registration. Proper notice can be given to all parties and the court will have treatment records for juvenile. This should apply to juvenile probation and juvenile parole. Victim notice would still be accomplished.

FY11-SO #2. Regarding sex offender registration, combine termination hearing/de-registration for adults convicted of a sex offense.

Recommendation 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 under 16-22-113(d), CRS.

DISCUSSION

Many offenders who are eligible to de-register fail to do so or are uninformed of the option. This recommendation is intended to amend the relevant statutes as necessary in Titles 16 and 18, CRS. This would not change the substance of current law in 16-22-113(d), CRS, only the procedures. This does not alter which adult offenders would be eligible for de-registration. This will create a simultaneous hearing/process to terminate jurisdiction/supervision and registration. Proper notice can be given to all parties. This would not change the substance of current law, only the procedures. Victim notice would still be accomplished.

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FY11-SO #3. Establish a consistent fee structure for sex offender registration

Recommendation FY11- SO #3:

Modify 16-22-108(7), CRS, to establish a consistent fee structure for sex offender registration. Details of the proposed modification would include the following statutory elements:

- Change 16-22-108(7), CRS, to allow for a fee up to \$25.00 for each initial annual or quarterly re-registration.
- No allowable fee for updates to address, employment, email, or registration cancellations.
- Allow for collection of fees civilly and include specific language that allows a jurisdiction to waive the registration fee if the offender is indigent.
- This would require law enforcement to accept sex offender registrations, even if the offender does not have the money to pay the fee.

DISCUSSION

This is a state-wide issue raised by law enforcement requiring attention due to the problems created by the inconsistencies in registration procedures and the wide disparity in registration fees. The registration fee was not intended to pay for the administration of registries. It is more important that sex offenders are registered than strict adherence to the collection of the registration fee.

FY11-SO #4. Combined registration/cancellation process for sex offenders

Recommendation FY11- SO #4:

Create a simultaneous registration/cancellation of registration process in 16-22-108, CRS.

DISCUSSION

This is a state-wide issue raised by law enforcement. The lag time between a cancellation and a new registration would be eliminated along with unnecessary failure to register charges. This would reduce the burden on offenders who are often required to return to a previous location to cancel a registration before being allowed to register in a new jurisdiction.

With this proposed change, law enforcement agencies would simultaneously submit a notice of registration cancellation to a previous jurisdiction when registering an offender. This would be more efficient for offenders and law enforcement and would only apply to registries within the state of Colorado. An electronic registration system would allow for streamlined implementation of this improved process. For example, the STAR system developed in Douglas County and being implemented in Denver County is a secure, web-based system to manage sex offender registration, allowing for multi-jurisdictional access.

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FY11-SO #5. Clarification regarding registration of sex offenders in jail

Recommendation FY11- SO #5:

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

DISCUSSION

The added language requires re-registration of offenders held in jail pending court disposition for more than 5 days. This re-registration and notification to law enforcement will prevent unnecessary investigation into offenders presumed to have failed to register. The clarified language for offenders sentenced to jail would specify that the re-registration requirement applies to offenders sentenced to jail for any offense, not just sex offenses, and would include a notification to the previous registration jurisdiction.

FY11-SO #7. Annual registration within 5 days of an offender's birthday

Recommendation FY11- SO #7:

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

DISCUSSION

The statute currently requires re-registration to occur exactly on an offender's birthday or on the first business day following a weekend or holiday birthday. The change will allow an offender to register within 5 business days before or after the offender's birthday which would implicitly provide flexibility around weekends and holidays.

FY11-SO #8. Modify the time required to re-register due to changes in life circumstances

Recommendation FY11- SO #8:

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

DISCUSSION

The statute currently includes no time reference for the requirement to re-register due to changes in life circumstances. The change will provide a clear expectation for this registration requirement to occur within 5 business days before or after the change in offender circumstances detailed in the subsection.

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FY11-SO #9. Trial venues to include the county where an offender was registered

Recommendation FY11- SO #9:

Add to the place of trial venues in 18-1-202(12), CRS, the county where an offender completed his or her last registration.

DISCUSSION

This is a state-wide issue raised by law enforcement and prosecutors. The change provides another option for law enforcement to manage offenders and another location in which prosecutors may charge those who fail to register.

FY11-SO #10. Eliminate mandatory Intensive Supervision Probation (ISP) for failure to register

Recommendation FY11- SO #10:

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

DISCUSSION

This change provides judicial discretion to determine whether ISP is appropriate.

FY11-SO #11. Affirmative defense for failure to register per the Federal Adam Walsh Act

Recommendation FY11- SO #11:

Add an affirmative defense for failure to register based on the model provided in the Adam Walsh Act.

DISCUSSION

Although, in practice, charges may infrequently be filed under these circumstances, an affirmative defense for failure to register should be established in statute to accommodate uncontrollable circumstances. The Adam Walsh Act provides a model for this affirmative defense.

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FY11-SO #12. Information documents created for registered sex offenders

Recommendation FY11- SO #12:

The State Public Defender's Office should create informational documents for offenders on registration/re-registration and de-registration.

DISCUSSION

Many offenders are uninformed regarding requirements to register and eligibility to de-register. There are instructions on the state judicial web site but more substantive documentation and timely distribution of information with advice would be advantageous. This recommendation directs the Colorado State Public Defender's Office (SPDO) to prepare a registration and reregistration information fact sheet and a de-registration fact sheet that public defenders, local law enforcement and other law enforcement agencies can use to advise eligible persons on the registration, re-registration and de-registration processes. The SPDO should collaborate with relevant agencies and stakeholders and provide the documents to the Commission and the Sex Offender/Offense Task Force or any successor subcommittee for review prior to finalization.

FY11-SO #14. Second degree kidnapping to be a sex offense when sexual assault is involved

Recommendation FY11- SO #14:

Add Second degree kidnapping, 18-3-302(3)(a), CRS, as a sex offense when the underlying offense is the offense of sexual assault.

DISCUSSION

Some violent offenders convicted of second degree kidnapping have not been convicted of the associated sex crime and are therefore not required to register as sex offenders. This recommendation adds second degree kidnapping, 18-3-302(3)(a), CRS, as a sex offense when the underlying offense is the offense of sexual assault to the offenses requiring registration, 16-22-102(9), CRS.

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FY11-SO #15. Addition of tribal and territorial offenders to those required to register

Recommendation FY11- SO #15:

Add tribal and territorial offenders to the list of those required to register, 16-22-103(1)(b), CRS, pursuant to the federal Adam Walsh Act requirements.

DISCUSSION

The goal of this recommendation is to enhance compliance with Adam Walsh requirements and improve consistency in the Colorado statute.

FY11-SO #17. Address inconsistencies in the unlawful sexual contact statute

Recommendation FY11- SO #17:

Repeal the current mandatory prison sentence provisions for commission of unlawful sexual contact by force, threat, or intimidation, 18-3-404(3), CRS.

DISCUSSION

Unlawful sexual contact by force, threat, or intimidation is a Felony 4 offense with a mandatory prison sentence, while sexual assault by force, threat, or intimidation, which involves sexual penetration or intrusion not only sexual contact, is a Felony 3 offense and is probation eligible. The less egregious conduct of contact should not necessarily carry a greater penalty.

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FY11-SO #18. Amend the period of deferred judgment and available treatment lengths for sex offenses

Recommendation 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.

DISCUSSION

For the majority of sex offenders, treatment will take longer than four years. However, the current statute, 18-1.3-102, CRS, only permits a maximum of four years for a deferred judgment. Because a sex offense requires an evaluation before treatment can begin, there is often a two-month lag between the entry of the plea for the deferred judgment and the beginning of that treatment. This recommendation would allow the period of the deferred judgment to begin at the time that supervision and treatment can begin. The new language would allow the court, with the consent of the parties, to extend the length of the deferred judgment period for an additional two years for good cause. Additionally, it should be clear that the period of the deferred judgment for any plea begins the date the plea is entered if no presentence investigation report or offense-specific evaluation is ordered. If a presentence investigation or offense-specific evaluation is ordered, the case is to be set over for another date so those reports can be completed. At that subsequent court date, the period of the deferred judgment should begin.

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FY11-SO #19. Address the unconstitutional provision on Sexually Violent Predator analysis in 18-1.3-1004(4), CRS

Recommendation FY11- SO #19:

Correct the currently unconstitutional provision in 18-1.3-1004(4), CRS.

DISCUSSION

This section of the statute purports to permit the sentencing court to convert an otherwise determinate sentence to an indeterminate sentence for certain crimes related to child prostitution and child pornography (often called commercial or economic sex crimes). This can be done if the court finds, based on a Sexually Violent Predator analysis, that the defendant is likely to commit a sexual assault in the future. There are two problems with this provision. First, it is unconstitutional as it permits increasing the maximum penalty to which a defendant is exposed based on a fact-finding by the court, rather than a jury. Second, even if such a court finding were sufficient, the SVP analysis is by definition inapplicable to these cases because the first question in the SVP analysis is whether the defendant was convicted of a sexual assault or sexual assault on a child. In cases of deferred judgment, the defendant is not convicted.

The proposed modification will amend subsection (4) to permit its use, provided the defendant agrees to have the judge make such a finding. In addition, it requires the development of a different analytical tool. The prosecutors involved in the discussion have used this provision in plea bargaining where an otherwise indeterminate charge is plead to one of these crimes, with an agreement that the court would have the power to make the statutory finding. This provides a useful process to resolve cases that may otherwise go to trial.