

CCJJ: Sex Offense/Offender Task Force

FY 2012 Recommendations: SO1 and SO15

November 18, 2011

[As approved]

FY12-SO1. Clarify and create in statute the registration requirement for and self-verification by sex offenders who “Lack a Fixed Residence.”

DISCUSSION: The registration of offenders who lack a fixed residence (often referred to as “transient” or “homeless”) is implied but not explicitly defined in Colorado statute. Law enforcement jurisdictions have differing policies regarding the treatment of such offenders. In some cases, the registration of these offenders is accepted and in other cases the registration of these offenders is not accepted and offenders are encouraged to travel to a jurisdiction where their registration will be accepted. This places an unfair burden on “accepting jurisdictions.” Additionally, the People v. Griffin case regarding intent to reside is pending in Colorado courts and may require statutory clarification regarding the definition of “residence.”

Colorado statute should be modified to clarify the responsibility of offenders, who lack a fixed residence, to register and to require that law enforcement jurisdictions accept the registration of such offenders. Offenders who find themselves without a traditional, stable living situation will not be referenced as “transient” or as “homeless,” but as offenders who “lack a fixed residence.” The terms “transient” and “homeless” have specific meaning defined by Federal law that direct specific provision of services and individual rights.

The following 9 items comprise this single recommendation.

- a) **“Lacks a Fixed Residence.”** Add definition: 16-22-102 (7.6) – “lacks a fixed residence” means that a person does not have a living situation that meets the definition of residence pursuant to 16-22-102(5.7). This includes, but is not limited to, outdoor sleeping locations or any public or private locations not designed as traditional living accommodations. “Lacks a fixed residence” also includes public or private housing or temporary shelter facilities, residential treatment facilities, or any other residential program or facility if the person remains at the location for less than 30 days.

Also, Move 16-22-102 (5.7) to 16-22-102 (7.5).

[PLEASE NOTE: This definition will conflict with language in 16-22-105(3) which says, “Notwithstanding the existence of any other evidence of intent, occupying or inhabiting a dwelling for more than 14 days in a thirty day period shall constitute the establishment of a residence.” Also, language throughout article 22 of title 16 is currently in dispute in the case of People vs. Griffin (08CA2694) regarding “intent” to reside. Modifications of the above (and other conforming revisions of statute) may be required by the Griffin case.]

- b) **Shelters as a residence.** Amend definition in 16-22-102(5.7) of “residence” to clarify that it only applies to occupancy in a shelter for a time period longer than 30 days.
- c) **Requirement to register and to accept registrations.** Change 16-22-108 -- each person who is required to register pursuant to 16-22-103 shall register with local law enforcement in each jurisdiction in which the person resides “or is located without a fixed residence pursuant to 16-22-102 (7.6).” Law enforcement is required to accept the registration of offenders who “lack a fixed residence.”

If the location at which a person attempts to register would be in violation of a local ordinance, law enforcement shall so advise the offender. The offender shall then be required to secure alternate residence and remain in compliance with all other provisions of this article. Law enforcement officials are not required to accept a person’s registration to an unlawful location or residence.

- d) **“Geo-locations.”** Change 16-22-109(1) – If a person lacks a fixed residence as defined in 16-22-102 (7.6), the person shall be required to provide to local law enforcement the public or private locations where the offender habitually sleeps. This can include, but is not limited to cross streets, intersections, direction and identifiable landmarks of the locations.

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FY12-SO1 (continued)

- e) **Self-verification.** Change 16-22-109 (3.5) to add:
(I) If a person lacks a fixed residence, verification of the location reported by the registrant shall be accomplished by self-verification reporting as described in section 16-22- *(INSERT THE NEW SECTION REFERENCE HERE THAT DEFINES THE ENHANCED REPORTING REQUIREMENTS/VERIFICATION EVENT AS SEEN BELOW IN “1g”)*.
Also, add language that says:
(II) “Law enforcement shall not be required to verify the physical address of an offender who is required to comply with section 16-22-.... *(AS SEEN in “1g”)*”
- f) **Residence/non-fixed residence changes.** Add new section regarding changing to and from “lacks a fixed residence”:
i. a person with a residence as defined in 16-22-102 (7.5) who vacates the residence and, subsequently, has no fixed residence shall report that change in status within 5 days after ceasing to have a fixed residence and shall comply with the requirements of 16-22 – *(AS SEEN IN “1g”)* and 16-22-109 for the time period during which the person has no fixed residence.
ii. A person who lacks a fixed residence as defined in 16-22-102 (7.6) who obtains fixed residence as defined in 16-22-102 (7.5) shall report the change in status within 5 days after establishing the residence.
iii. Make clear that failure to comply with this section is a failure to report a change of address and punishable as provided under current law as a failure to register.
- g) **Reporting requirements and Penalties.** Add a new section regarding the self-verification process describing the enhanced reporting requirements and penalties:
i. In addition to any other requirements pursuant to this section, a person who is subject to annual registration and without a fixed residence shall, at least every 90 days, report to local law enforcement in whose jurisdiction or jurisdictions the person is registered for self-verification of the location of the offender. This self-verification process shall be accomplished consistent with any time schedule established by the local jurisdiction, which may include a time schedule that is within 5 business days before or after the offender’s birthdate. The person shall verify his or her location and provide any information required to be reported pursuant 16-22-109.
ii. In addition to any other requirements pursuant to this section, a person who is subject to quarterly registration pursuant to this section and who is without a fixed residence shall, at least every 30 days, report to local law enforcement in whose jurisdiction or jurisdictions the person is registered for self-verification of the location of the offender. This self-verification reporting shall be accomplished consistent with any time schedule established by the local jurisdiction, which may include a time schedule that is within 5 business days before or after the offender’s birthdate. The person shall verify his or her location and provide any information required to be reported pursuant 16-22-109.

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FY12-SO1 (continued)

- iii.** An offender without a fixed residence who fails to comply with the provision of this section shall be subject to prosecution for the crime of failure to verify location. Failure to verify location by an offender without a fixed residence shall constitute a criminal misdemeanor offense punishable by a sentence to the county jail of up to 30 days. A third or subsequent offense shall constitute a misdemeanor offense punishable by a sentence of up to one year in the county jail. Failure to verify location shall not be labeled a sex offense per 16-11.7-102(2)(a)(II) which would subject the offender to the requirements of evaluation and identification required in CRS 16-11.7-104 and the treatment required by CRS 16-11.7-105.
- iv.** Determine whether the drafter thinks this offense should be in Title 18.
- h) Offender notification.** Amend section 16-22- 106 and 107 to require a notification to any offender required to register, pursuant to this section, of the duty to report the change of address to “lacks a fixed residence” status and the requirement to comply with the statutory provisions regarding self-verification.
- i) Data reporting.** Add language that requires local law enforcement and CBI to report to CDPS information regarding the number of offenders who lack a fixed residence and any other information requested by the Department to follow up with this legislation to assess its effectiveness and/or need for modification.

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FY12-SO#15 - RE-WORDED as a policy statement

FY12-SO15. The commission supports a statewide public policy and an education strategy led by the commission to promote the use of child safety zones in lieu of residency restrictions and zoning ordinances regarding sex offender housing.

***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 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. The size and design of child safety zones should be carefully defined to prevent the zone from becoming a de facto residency restriction. 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.*

This recommendation is consistent with a resolution by the Sex Offender Management Board, passed September 19, 2011, that states:

“The Board does not support sex offender residency restrictions or zoning restrictions that are counter-productive to the effective supervision of sex offenders.”