



**FY2011 RECOMMENDATION/FY11-SO19 ADDRESS THE UNCONSTITUTIONAL PROVISION ON SEXUALLY VIOLENT PREDATOR ANALYSIS IN 18-1.3-1004(4), CRS.**

**Status:** Implementation Complete

**Actions/Updates**

**2013 UPDATE**

House Bill 12-1310 (Section 14) repealed 18-1.3-1004(4). Action on this recommendation is considered complete.

**2012 ACTION/IMPLEMENTATION**

This recommendation requires statutory change to be implemented.

**Description**

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

**Agencies Responsible**

**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 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.*