

# 2021 SVPASI HANDBOOK

## SEXUALLY VIOLENT PREDATOR ASSESSMENT SCREENING INSTRUMENT (SVPASI)

### *Background and Instructions*

Prepared on behalf of the  
*Colorado Sex Offender Management Board*

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## **INTRODUCTION TO THIS HANDBOOK**

The General Assembly requires that special precautions should be taken in the community management of sexually violent predators. Pursuant to 18-3-414.5, C.R.S., the Colorado Division of Criminal Justice's Office of Research and Statistics worked in consultation with representatives of the Colorado Sex Offender Management Board (SOMB) to develop a risk assessment screening instrument for use in the identification of individuals who meet the eligibility criteria for designation by the court or parole board as *sexually violent predators (SVPs)*.

The Sexually Violent Predator Assessment Screening Instrument (SVPASI) identifies those individuals most likely to commit a subsequent sexual or violent offense.

*The final legal determination of sexually violent predator is at the discretion of the court and/or the parole board.*

## BACKGROUND

In the mid-1990s, federal law mandated that each state develop a mechanism to identify “sexually violent predators.” The federal legislation identified the offender’s behavior present in the current crime and his/her risk of committing future similar crimes as primary criteria for the states to use in the designation of sexually violent predators (SVPs). The Colorado General Assembly complied with the federal SVP mandate during its 1998 session by enacting 18-3-414.5, C.R.S.

An adult convicted of at least one of the following offenses and found to be a sexually violent predator is required for the remainder of his or her natural life to register his or her residential address with local law enforcement every three months rather than annually. Information describing the offender is placed on the Internet listing of sex offenders maintained by the Colorado Bureau of Investigations (CBI) and linked to the State of Colorado’s homepage. Further, the offender is subject to community notification by the local law enforcement agency. The offenses specified in 18-3-414.5 (A through E), C.R.S., describe sexual assault “as it existed prior to July 1, 2000.” The qualifying crimes, which *include* attempt, solicitation, and conspiracy to commit one of the following, are as follows:

- Sexual assault, in violation of section 18-3-402, C.R.S., or sexual assault in the first degree, in violation of section 18-3-402, C.R.S. as it existed prior to July 1, 2000;
- Sexual assault in the second degree, in violation of section 18-3-403, C.R.S. as it existed prior to July 1, 2000 (*Note: Section 18-3-403 was repealed in 2000*);
- Unlawful sexual contact, in violation of section 18-3-404(1.5) or (2), C.R.S., or sexual assault in the third degree, in violation of section 18-3-404(1.5) or (2), C.R.S. as it existed prior to July 1, 2000;
- Sexual assault on a child, in violation of sections 18-3-405, C.R.S.; or
- Sexual assault on a child by one in a position of trust, in violation of section 18-3-405.3, C.R.S.

The offender must be convicted of one of the above on or after July 1, 1999 for offenses committed on or after July 1, 1997.

*Note that the state law requires the assessment and designation process on active cases only.*

The history of prior versions of the SVPASI may be found in earlier SVPASI Handbooks.

## **HOW TO USE THIS HANDBOOK**

Probation officers, SOMB approved evaluators, and trained DOC staff or contractors will complete the assessment instrument on men and women who qualify for screening as described in this handbook.

Section One provides instructions for completing the Sexually Violent Predator Assessment Screening Instrument.

Section Two provides a description of the research study and findings that resulted in the development of Part 3B of the SVPASI.

# SECTION ONE: COMPLETING THE SEXUALLY VIOLENT PREDATOR ASSESSMENT SCREENING INSTRUMENT (SVPASI)

## OVERVIEW

*Only probation officers, SOMB-approved evaluators and SVP-trained DOC staff or contractors are qualified to complete the Sexually Violent Predator Assessment Screening Instrument.<sup>1</sup>*

The completion of the Sexually Violent Predator Assessment Screening Instrument (SVPASI) for qualifying cases is mandated in 18-3-414.5, C.R.S. The qualifying crime categories are listed below. The law requires the assessment and designation process on active cases only, not cases in which the sentence has been previously discharged.

The offender must have been convicted on or after July 1, 1999 of one of the following offenses committed on or after July 1, 1997. *Attempt, solicitation, or conspiracy to commit one of the following crimes are also considered to be qualifying offenses.* Conviction is defined to include verdicts of guilty, pleas of guilty and nolo contendere, or having received a deferred judgment and sentence. Individuals must be 18 years or older on the date of the offense or be tried as an adult.

- Sexual assault, in violation of section 18-3-402, C.R.S., or sexual assault in the first degree, in violation of section 18-3-402, C.R.S. as it existed prior to July 1, 2000;
- Sexual assault in the second degree, in violation of section 18-3-403, C.R.S. as it existed prior to July 1, 2000 (*Note: Section 18-3-403 was repealed in 2000*);
- Unlawful sexual contact, in violation of section 18-3-404(1.5) or (2), C.R.S., or sexual assault in the third degree, in violation of section 18-3-404(1.5) or (2), C.R.S. as it existed prior to July 1, 2000;
- Sexual assault on a child, in violation of section 18-3-405, C.R.S.; or
- Sexual assault on a child by one in a position of trust, in violation of section 18-3-405.3, C.R.S.

The **probation officer** is responsible for completing certain portions of the instrument and forwarding it to the SOMB-listed sex offender evaluator for completion. The evaluator then returns the completed form to the probation officer. In cases in which the offender has refused to cooperate with the assessment, the probation officer may complete the form in its entirety. The probation officer ensures that each item is entered on the form. The probation officer forwards the original instrument to the sentencing judge who makes the final Sexually Violent Predator (SVP) determination and, when making a finding, enters the SVP order in the record.

For the **Department of Corrections** cases, trained DOC staff or contractors are responsible for completing the entire instrument. The trained staff member or contractor makes sure that each item is completed and entered into the Department of Corrections Information System (DCIS). A copy of the instrument is then submitted to the parole board. The parole board makes the final Sexually Violent Predator (SVP) determination and enters the SVP order in the record.

**Following these instructions is required by state statute.** The DCJ and the SOMB must ensure that the statute is implemented as the General Assembly intended, according to 18-3-414.5, C.R.S. An individual found to be a sexually violent predator by the court or the parole board is required to register every quarter his or her residential address with law enforcement pursuant to 16-22-108(1)(d), C.R.S., and is subject to community notification by the local law enforcement agency.

Specifically, sexually violent predator status requires the individual to register with local law enforcement every ninety days for the rest of his or her natural life (see 16-22-108(1)(d), C.R.S.). The individual must register in the jurisdiction where they live within five business days of becoming a temporary or permanent resident. The offender must re-register if they legally change their name. Upon changing residences, the offender must re-register accordingly to ensure that the address documentation is correct. Failure to comply with these requirements is a felony crime (per C.R.S. 18-3-412.5).



## **INSTRUCTIONS** *(Found also on page 3 of the instrument)*

### **Probation Officers**

Probation officers are to complete Part 1 (page 4), Part 3A (page 6), Part 3B (page 6), the corresponding items on the Instrument Summary (page 8) and the Assessment Summary (page 1) on the SVPASI. If the offender refuses to cooperate, the probation officer may also complete Part 2 (page 5).

When these sections are completed, probation officers shall forward the instrument and copies of any police reports and victim statements to the SOMB approved evaluator (unless the offender has refused to cooperate and the entire form has been completed by the probation officer).

In the event no Pre-Sentence Investigation Report or Offense Specific Evaluation is ordered, and part 3C is needed to determine the criteria, the probation officer should refer the offender to an SOMB Approved Evaluator (unless the offender has refused to cooperate and then NA can be marked)

### **SOMB Evaluators**

The SOMB approved evaluator is selected by the probation officer pursuant to the SOMB's *Standards*. The evaluator is required to complete the following:

- Part 2 (page 5)
- Part 3C (page 7)
- Corresponding items on the Instrument Summary (page 8), including:
  - ❖ Whether the evaluator agrees with the instrument findings (page 8), and
  - ❖ Confirmation that the evaluator has reviewed all sections (page 8).

Upon completion of the instrument, the evaluator will return it to the probation officer with the mental health sex offense specific evaluation. Both the evaluation and the sexually violent predator assessment instrument will be attached to the PSIR. **When necessary, the evaluator may expand the data obtained during the evaluation to acquire the information necessary to complete the SVPASI.**

### **Trained DOC Staff or Contractors**

The trained DOC staff or contractor must complete the entire instrument (Parts 1, 2, 3A, 3B, 3C, the Instrument Summary and the Assessment Summary).

## Data Sources

A list of potential data sources is provided on page 5 of the SVPASI for use by the SOMB-listed evaluator or trained DOC staff or contractor when completing the relationship criteria portion of the assessment screening instrument. It is important that all data sources that apply be clearly identified and documented when requested on the instrument. The form will become a part of the court record and officials may be asked to testify on the sources of the information used to classify the offender. Self-report should be used only when other data sources are not available, though it may be the only available source for this instrument.

1. *Criminal History*
2. *Pre-Sentence Investigation Process*
3. *Police Report*
4. *Mental Health Evaluation*
5. *Official Record/Documentation*
6. *Child Protection or Social Service Records*
7. *Demographic Information*
8. *NCIC*
9. *Education Records*
10. *Victim Report (self-report or from any data source)*
11. *Sexual History (official record, self-report)*
12. *Sex Offense Specific Mental Health Evaluation*
13. *Prison Record*
14. *Self-Report*
15. *CCIC*
16. *Results of a Plethysmograph Examination or VRT Assessment*
17. *Other (Specify)\_\_\_\_\_*

## **PART 1** (Page 4 of the instrument)

*Entire section is to be completed by the probation officer, trained DOC staff, or a trained DOC contractor.*

### **Client Information**

Please ensure that all of the requested client information is provided.

First and Last Name  
CC#: Court Case Number  
SID#: State Identification Number ML#/DOC#: Master List Number or DOC Number  
DOB: Date of Birth (mm-dd-yyyy)  
Gender: Male or Female  
Ethnicity: Caucasian, African American, Hispanic or Other

### **Eligible Cases for Screening**

Probation officers, SOMB-listed sex offender evaluators, trained DOC staff, or trained DOC contractors will complete the entire instrument for every sex offender that meets the following criteria:

- Is 18 years of age or older on the date of the offense, or has been tried as an adult pursuant to 19-2-517 or 19-2-518, C.R.S.

Has been convicted (including verdicts of guilty, pleas of guilty and nolo contendere, or receiving a deferred judgment and sentence) on or after July 1, 1999 of one of the following offenses committed on or after July 1, 1997, including an attempt, solicitation or conspiracy to commit one of the following:

- Sexual assault, in violation of 18-3-402, C.R.S., or sexual assault in the first degree, in violation of 18-3-402, C.R.S. as it existed prior to July 1, 2000;
- Sexual assault in the second degree, in violation of 18-3-403, C.R.S., as it existed prior to July 1, 2000 (*Note: 18-3-403 was repealed in 2000*);
- Unlawful sexual contact, in violation of 18-3-404(1.5) or (2), C.R.S., or sexual assault in the third degree, in violation of 18-3-404(1.5) or (2), C.R.S., as it existed prior to July 1, 2000;
- Sexual assault on a child, in violation of 18-3-405, C.R.S.; or
- Sexual assault on a child by one in a position of trust, in violation of section 18-3-405.3, C.R.S.

**Please check the box indicating which of the five crimes qualifies the person for the assessment.**

Finally, please mark yes/no to identify whether the individual meets the defining crimes criterion.

**Please proceed to Part 2.**

## PART 2 (Page 5 of the instrument)

*This entire section is to be completed by the SOMB evaluator or trained DOC staff or contractor, unless the offender refuses to participate in the assessment. In this case, this section shall be completed by the probation officer using collateral sources of information.*

The relationship categories are identified, but not defined, in state statute. The following definitions were provided by the Colorado Supreme Court in several 2013 cases to assist in the identification of sexually violent predators as outlined in 18-3-414.5 (III), C.R.S.

The evaluator is being asked to make a recommendation regarding whether the offender meets the relationship criteria or not, **but the final determination rests with the sentencing court or the parole board.**

Indicate which of the following applies:

- A. The stranger relationship criterion “is satisfied where either the victim is not known by the offender or the offender is not known by the victim, at the time of the offense.” When the trial court assesses whether or not the stranger criterion is met, “it should consider the context of the parties’ relationship at the time of the offense.” *People v. Hunter*, 307 P.3d 1083, 1086 2013 CO 48 P10
- B. An offender “establishes a relationship” with his victim primarily for the purpose of sexual victimization where he creates, starts, or begins a relationship primarily for that purpose. *People v. Gallegos*, 307 P.3d 1096, 1100, 2013 CO 45, P14<sup>2</sup>
- C. An offender “promotes a relationship” if, “excluding the offender’s behavior during the commission of the sexual assault that led to his conviction, he otherwise encouraged a person with whom he had a limited relationship to enter into a broader relationship primarily for the purpose of sexual victimization.” *People v. Gallegos*, 307 P.3d 1096, 1100, 2013 CO 45, P14

*The SOMB notes that the relationship criteria section of the SVP assessment screening instrument, although required by the statute, is not based on research and is not related to the statistical probability of risk for re-arrest for a new sexual offense. However, the SOMB recognizes that the offender's relationship to the victim can have a significant impact on the level of trauma to the victim.*

- D. None of the above. Please mark yes/no to indicate whether the individual does NOT meet any of the relationship criteria.

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<sup>2</sup> In *People v. Gallegos*, the Colorado Supreme Court stated that established and promoted were alternative ways that the relationship criterion could be met. To meet the “promoted” criterion, a relationship between the victim and the offender will already exist. To meet the “established” criterion, a relationship between the offender and the victim need not exist.

## Select the Data Source(s) Used to Determine Relationship Criteria

Regardless of the relationship criterion recommended, at least one data source must be documented. The SOMB evaluator, the probation officer, or the trained DOC staff or contractor must check the appropriate box in the section at the bottom of page 5 of the instrument to indicate the data source(s) utilized to make this recommendation. The potential data sources include:

1. *Criminal History*
2. *Pre-Sentence Investigation Process*
3. *Police Report*
4. *Mental Health Evaluation*
5. *Official Record/Documentation*
6. *Child Protection or Social Service Records*
7. *Demographic Information*
8. *NCIC*
9. *Education Records*
10. *Victim Report (self-report or from any data source)*
11. *Sexual History (official record, self-report)*
12. *Sex Offense Specific Mental Health Evaluation*
13. *Prison Record*
14. *Self-Report*
15. *CCIC*
16. *Results of a Plethysmograph Examination or VRT Screen*
17. *Other (Specify)*

If a source other than those listed was utilized, check item 17 and specify the data source.

## Please proceed to Part 3.

### **PART 3** *(Pages 6 and 7 of the instrument)*

**Completion of Part 3A is required. If the finding in Part 3A is YES, proceed to Instrument Summary. If the finding in Part 3A is NO, complete 3B. If 3B is a YES, proceed to Instrument Summary. If 3b is a no, 3C must be completed, However, if the offender refuses to participate in the assessment, Part 3C may be omitted.**

### **PART 3A** *(Page 6 of the instrument)*

If the defendant has previously been convicted as an adult of at least one felony or two misdemeanor sex crimes as defined by C.R.S. 16-11.7-102(3), check 'Yes'. Otherwise, check 'No'.

*Note that this excludes deferred judgments, failure to register, and juvenile adjudications.*

The qualifying crimes, which include attempt, solicitation, and conspiracy to commit one of the following, include:

- Sexual assault, in violation of section 18-3-402, C.R.S. or sexual assault in the first degree, in violation of section 18-3-402, C.R.S., as it existed prior to July 1, 2000;
- Sexual assault in the second degree, in violation of section 18-3-403, C.R.S., as it existed prior to July 1, 2000;

- Unlawful sexual contact, in violation of section 18-3-404, C.R.S. or sexual assault in the third degree, in violation of section 18-3-404, C.R.S., as it existed prior to July 1, 2000;
- Sexual assault on a child, in violation of section 18-3-405, C.R.S.;
- Sexual assault on a child by one in a position of trust, in violation of section 18-3-405.3, C.R.S.;
- Sexual assault on a client by a psychotherapist, in violation of section 18-3-405.5, C.R.S.;
- Enticement of a child, in violation of section 18-3-305, C.R.S.;
- Incest, in violation of section 18-6-301, C.R.S.;
- Aggravated incest, in violation of section 18-6-302, C.R.S.;
- Trafficking in children, in violation of section 18-6-402, C.R.S.;
- Sexual exploitation of children, in violation of section 18-6-403, C.R.S.;
- Procurement of a child for sexual exploitation, in violation of section 18-6-404, C.R.S.;
- Indecent exposure, in violation of section 18-7-302, C.R.S.;
- Soliciting for child prostitution, in violation of section 18-7-402, C.R.S.;
- Pandering of a child, in violation of section 18-7-403, C.R.S.;
- Procurement of a child, in violation of section 18-7-403.5, C.R.S.;
- Keeping a place of child prostitution, in violation of section 18-7-404, C.R.S.;
- Pimping of a child, in violation of section 18-7-405, C.R.S.;
- Inducement of child prostitution, in violation of section 18-7-405.5, C.R.S.;
- Patronizing a prostituted child, in violation of section 18-7-406, C.R.S.;
- Class 4 felony internet luring of a child, in violation of section 18-3-306 (3), C.R.S.; or
- Internet sexual exploitation of a child in violation of section 18-3-405.4, C.R.S.

“Convicted” is defined as a verdict or plea of guilty or nolo contendere. Court established factual basis sex crimes and out of state sex crime convictions are included in the definition of conviction. Again, deferred judgments and sentences, failure to register and juvenile adjudications are EXCLUDED.

The criteria for defining a prior conviction follows the case law identified in 18-1.3-801, C.R.S. To qualify, the date of the offense for which the offender is being assessed must have occurred after a conviction for one of the sexual crimes defined above. The prior conviction must be based upon charges separately brought and tried, and arising out of separate and distinct criminal episodes, either in this state or elsewhere.

Therefore, convictions related to the current/index offense, such as situations in which multiple cases result from a singular offense, are excluded. For example: if in the case of the current/index offense an offender assaulted a victim in two different counties, which resulted in

convictions in both counties, both convictions would be related to a singular offense and would not be considered a prior conviction.

Single cases with multiple conviction charges are considered a single conviction. For example, if an offender had two victims within a single jurisdiction and was prosecuted for two counts of sexual assault in a single case, this would be a single conviction (though with multiple counts). If this was the situation in the current/index offense, this would not count as a prior conviction.

For further clarification regarding the definition of prior conviction, refer to 18-1.3-801, C.R.S.

If this item is answered with a yes, and the individual meets the relationship criteria defined in Part 2 of the SVPASI, the offender qualifies for designation as an SVP. Please proceed to the Instrument Summary on page 8. Complete this summary, except for the portion requiring the evaluator's responses, and complete the Assessment Summary on page 1.

## **If the individual scores YES to 3A proceed to INSTRUMENT SUMMARY, otherwise proceed to Part 3B.**

### **PART 3B** *(Page 6 of the instrument)*

The SOMB Sex Offender Risk Scale (SORS) was developed pursuant to C.R.S. 16-11.7-103(4)(d) which requires the Division of Criminal Justice to work in consultation with the Sex Offender Management Board to develop an actuarial risk assessment scale to be used in the identification of a person's risk for recidivism.

Actuarial risk is determining the probability that specific groups of individuals will commit a new offense. That is, actuarial risk assessment places individuals into groups that have a known probability for reoffending. Those who meet the SORS scoring criteria fall into a risk group that has a 50-60% likelihood of a new sex or violent court filing within eight years of a conviction/deferred judgement for one of the qualifying SVP offenses.

The 2018 SORS was developed using the data elements available in the Judicial Branch's ICON data system. **The new SORS is a fillable form, and requires the use of Adobe Reader.** The SORS automatically calculates the score after the probation officer enters the necessary information and presses the calculate button. The automatic calculation is intended to reduce the time and errors associated with completing the instrument, and it allows for a more complicated scoring system which increases the predictive accuracy of the SORS.

The formula for the actuarial scale is as follows:

Score = (# Adult Cases x 2.1) + (# Juvenile Cases x 3.1) + (# Revocation Cases x 2.2) – (Earliest Sex Offense Filing Age x .23)

**For the form inputs below, only include cases that have been verified through criminal history system checks.**

**Total number of adult cases filed:** Include district and county cases (including Denver County) filed in Colorado or another state in which the age at offense was 18 or older, or less than 18 and filed as an adult. Include cases with any misdemeanor or felony charge, including traffic, regardless of conviction, excluding this case. Please enter this number into the form field.

**Total number of juvenile cases filed:** Include only *Juvenile Delinquency* cases filed in Colorado or another state, with a misdemeanor or felony charge, regardless of conviction, excluding this case. Exclude cases filed in county court. Please enter this number into the form field.

**Total number of cases containing a revocation from probation or community corrections:** Include district, county (including Denver County) and juvenile delinquency cases in Colorado with misdemeanor or felony charges (including traffic cases). Include cases in which probation or community corrections was reinstated. If a case had multiple revocations only count it once. *Do not include parole revocations.*

**Earliest sex offense filing age:** This input refers to the age at filing date. If filing date is not available, use age at date of offense. Include district, county, and juvenile delinquency cases filed in Colorado or another state with a sex offense charge, regardless of conviction, including this case. Please refer to Part 3A of this handbook for a list of qualifying sex crimes. Round age to the nearest full year.

**Scoring the instrument.** While the instrument was developed using only Colorado court cases, probation officers often have access to out-of-state information about criminal proceedings. To better understand the impact of out-of-state information on SVP-eligibility (that is, scoring 22 or above on the SORS), a subsample of 300 cases was examined by hand to determine the impact of adding out-of-state case filings to the information required by the SORS. Not surprisingly, the additional information increased the likelihood of some individuals scoring 22 or more on the SORS. However, even with this additional information, it is estimated that fewer than five percent of those assessed with the SORS will score 22 or more.

**A note about women and individuals with developmental disabilities.** Note that risk of recidivism (new sex or violent crime filing) remains unknown for women and persons with developmental disabilities because the study cohort used to develop this instrument included too few of these individuals. Caution should be exercised in the use of this instrument with these populations. For more information, please see the SOMB White Paper on women and risk assessment (available at <https://drive.google.com/file/d/0ByCqXGmcaW-aam1XTmliQnpudlU/edit>) and *Standards* 2.061DD, 2.70DD, and 4.210DD.

**Evaluators** using this instrument with women and persons with developmental disabilities shall also attach documentation with an explanation of the scoring, limitations of the assessment, any relevant research, and a recommendation on whether the person should be identified as a Sexually Violent Predator.



**If meets SORS criteria, proceed to instrument summary. If does not meet SORS criteria, proceed to 3C.**

## **PART 3C** (Page 7 of the instrument)

*The SOMB evaluator or trained DOC staff or contractor must complete at least one of the following three assessment instruments UNLESS the offender refuses to participate in the assessment:*

*The Hare Psychopathy Check List Revised (PCL-R),  
The Millon Clinical Multiaxial Inventory (MCMI-IV) or  
The Coolidge Correctional Inventory (CCI)*

*The evaluator or the trained DOC staff must meet the minimum qualifications to administer the instrumentation as determined by the author of the instrument.*

Pursuant to 16-11.7-103(4)(d), C.R.S., the assessment "...shall consider as one element of the risk posed by an adult sex offender who suffers from psychopathy or a personality disorder..."

Prior to administering the Hare PCL-R, a clinician is required to attend a training with Dr. Hare or his appointee. A certificate is provided after the training. The use of the PCL-R is not allowed without this formalized training, per the requirements of the instrument.

Users of the MCMI-IV must have completed graduate-level courses in tests/measurements or have received equivalent documented training.

The CCI should be used only on incarcerated populations with the same stipulations outlined above for the MCMI-IV.

### **Psychopathy or Personality Disorder Criterion**

The offender meets the psychopathy or personality disorder criterion when he or she scores as follows:

- 30 or more on the Hare Psychopathy Check List Revised (PCL-R), OR
- 85 or more on each of the following Millon Clinical Multiaxial Inventory (MCMI-IV)<sup>3</sup> scales – narcissistic, antisocial, and paranoid, OR
- 70 or more on each of the following Coolidge Correctional Inventory (CCI)<sup>4</sup> scales – narcissistic, antisocial, and paranoid.

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<sup>3</sup> The MCMI-IV (Millon Clinical Multiaxial Inventory-III) is a 195-item self-administered questionnaire that generates 26 subscales and assesses for 15 personality disorders and 10 clinical syndromes in adult patients.

<sup>4</sup> The CCI (Coolidge Correctional Inventory) is a 250 item self-report psychological inventory that measures Axis I clinical syndromes and Axis II personality disorders as well as neuropsychological symptoms such as memory problems, inattention, language dysfunction, neurosomatic problems, neuropsychological syndromes, adult ADHD, and executive function deficits of the frontal lobes. This instrument is used within DOC only.

Indicate whether the score of the applicable test met the criteria defined above in the checkboxes provided, or indicate 'N/A' if the specified instrument was not used.

If the offender did meet the criteria defined above, check 'Yes' in the box provided under "Psychopathy/Personality Disorder Criteria." If not, check 'No'. If the individual refused to participate, please check "refused testing."

If the offender is assessed with more than one of the specified instruments and a 'Yes' is indicated in any of the boxes, the offender qualifies for the Sexually Violent Predator designation.

## **Please proceed to the Instrument Summary.**

### **INSTRUMENT SUMMARY** *(Page 7 of the instrument)*

After the probation officer, the SOMB evaluator, or the trained DOC staff or contractor completes Parts 1, 2, 3A, 3B, and 3C, the findings need to be summarized in the Instrument Summary.

Please check either the 'Yes' or 'No' box presented after the statements:

- Meets Defining Sexual Assault Crimes Criterion **(Part 1)**?
- Meets Date Requirement **(Per Statute)**?
- Meets the Prior Conviction Criterion **(Part 3A)**? OR
- Meets SORS criterion: Scores 22 *or More* on DCJ 2018 Sex Offender Risk Scale **(Part 3B)**? OR
- Meets Psychopathy or Personality Disorder Criterion **(Part 3C)**?
- The **evaluator** must review (and check the accompanying boxes) 3A, 3B, and 3C and indicate Yes/No/NA regarding whether the evaluator agrees with the instrument findings
- Did the offender meet the above SVP Criteria? *In order for an offender to qualify for designation as a sexually violent predator, a YES is required on **Part 1 and Part 2 and either Part 3A, Part 3B, or Part 3C.***

**Please record this information in the assessment summary on page 1 of the instrument also.**

## SECTION TWO:

### 2018 SORS Study Description

**Actuarial risk.** Statistical predictions of behavior sort individuals into subgroups which have the behavior of interest occurring at different rates, such as more vs. fewer traffic accidents, or in the case of the SORS, new sex or violent offenses. *Individual behavior* is not being predicted. Rather, statistical risk tools predict an individual's *membership in a subgroup* that is correlated with future offending. Actuarial risk prediction is determining the probability that specific groups of individuals will commit a new offense. That is, actuarial risk assessment places individuals into groups that have a known probability for reoffending. Those who meet the SORS scoring criteria fall into a risk group that has a 50-60% likelihood of a new sex or violent court filing within eight years of a conviction/deferred judgement for one of the qualifying SVP offenses.

**2018 SORS Overview.** The SOMB Sex Offender Risk Scale (SORS) described here was developed pursuant to C.R.S. 16-11.7-103(4)(d) which requires the Division of Criminal Justice to work in consultation with the Sex Offender Management Board to develop an actuarial risk assessment scale to be used in the identification of a person's risk for recidivism.

The 2018 SORS was developed using the data elements available in the Judicial Branch's ICON data system plus data from Denver County Court. Using data elements from ICON has advantages and disadvantages. The significant advantages include the ability to analyze a large number of cases, and the information is readily available to probation officers who complete the SVPASI. The disadvantage is the limited information that is available in ICON. Specifically, information about current and past criminal charges is available in ICON, but rich details that might be gleaned during an interview, for example, is not available for analysis. Fortunately, juvenile/criminal history data are typically strong predictors of future criminality.

The new SORS is a fillable form, and requires the use of Adobe Reader. The SORS automatically calculates the score after the probation officer enters the necessary information and presses the calculate button. The automatic calculation is intended to reduce the time and errors associated with completing the instrument, and it allows for a more complicated scoring system which increases the predictive accuracy of the SORS.

The SOMB decided that only those most likely to recidivate would meet the SORS criterion. For this reason, a score of 22 or above on the SORS is required for individuals to meet this criterion. Less than five percent of individuals assessed on the SORS will score 22 or higher.

**Study design.** The study cohort consisted of 4,698 adults who had a conviction or deferred judgment for an SVP-eligible crime (see C.R.S. 18-3-414.5) in Colorado between 1999 and 2008, and who had eight years of "at-risk" time in the community. Individuals who received prison sentences were included in the study cohort as long as, subtracting out incarceration time, the person had eight years "at-risk." This cohort was selected both to maximize the follow-up period and ensure a large sample size. Excluded from the cohort were those individuals with one prior adult felony sex offense conviction or two misdemeanor sex offense convictions because these individuals will qualify for SVP eligibility as they will

score “yes” on Part 3A.

The sample was 97% male, 74% White, and 7% Black. Hispanics represented 16% of the sample, however, Judicial does not collect ethnicity information so most Hispanics all fall into the White race category. Criminal history and age information were obtained for each person in the study cohort, using the data available in ICON plus Denver County Court. The dozens of variables initially examined included the number of past/present cases, types of charges and conviction offenses, the dates of the cases, and date of birth. Because criminal history variables are highly correlated, cluster analysis was used to identify groups of similar variables. All possible combinations of each variable from each group was statistically modeled using logistic regression, a technique used in the development of predictive equations.

The study cohort was randomly divided into two groups for analysis: the development sample, with two-thirds of the group, and the validation sample, with one-third of the group. The prediction model was constructed on the larger group and validated on the smaller group.

Recidivism was defined as a new court filing for a sex or violent offense within eight years of the original SVP-eligible conviction/deferred judgment. Recidivism crimes included homicide, kidnapping, robbery, felony assault, sex assaults, and other sex crimes (including, for example, indecent exposure). Using this measure, 10% of the study cohort had a new sex/violent offense filing in Colorado (4% had a new sex offense filing) during the eight year observation period. New filing data were obtained from Judicial’s ICON (plus Denver County) information system. Both the development sample and the validation sample had identical proportions of recidivating cases (10%).

**Predictive model.** Logistical regression is a statistical method for analyzing a dataset in which there multiple variables that predict a specific outcome. The goal of logistic regression is to find the best fitting model to describe the relationship between the dichotomous outcome (new filing/no new filing) and a set of independent (predictor or explanatory) variables. Logistic regression generates the coefficients (and its standard errors and significance levels) of a formula to predict a *logit transformation* of the odds of the presence of the characteristic of interest. Dozens of prediction models were generated in the process of determining the one that had the best fit, that is, had the highest predictive accuracy. The following factors were found to predict new sex or violent filing within eight years:

- Total number of prior adult court cases regardless of conviction, misdemeanor or felony (excluding current),
- Total number of juvenile court cases regardless of conviction, misdemeanor or felony (excluding current),
- Total number of probation or community corrections revocations (not parole<sup>1</sup>), and
- Age at first sex offense filing, regardless of conviction, including this case.

To translate the logistic regression results into an actuarial scale, the coefficients were multiplied by 10 and rounded, and the intercept was removed, creating a simple scoring system from the information presented in Table 1.

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<sup>1</sup> Parole data is not housed in Judicial’s ICON information management system and therefore was not available for this study.

The formula for the actuarial scale is as follows: Score = (# Adult Cases x 2.1) + (# Juvenile Cases x 3.1) + (# Revocation Cases x 2.2) – (Earliest Sex Offense Filing Age x .23)

Note that the historical case information is additive, meaning that the first three factors are added together. The last factor, the individual’s age at first sex crime filing, is subtracted from the total.

Table 1. Final logistic regression model selected

	Estimate	Std. Error	z value	Pr(> z )	z value
<b>AnyRevocation</b>	0.2251	0.1082	2.081	0.03746	*
<b>AdultCases</b>	0.2072	0.02595	7.981	1.447e-15	** **
<b>EarliestSexFilingAge</b>	-0.02339	0.006293	-3.717	0.0002019	** **
<b>Juvenile Cases</b>	0.3125	0.05166	6.049	1.453e-09	** **
<b>(Intercept)</b>	-2.008	0.2049	-9.799	1.135e-22	** **
<b>Pseudo R<sup>2</sup></b>	<b>McFadden</b>	<b>Adj.McFadden</b>	<b>Cox.Snell</b>	<b>Nagelkerke</b>	
	0.1213	0.1153	0.07594	0.1587	

Once the predictor variables and their accompanying weights were identified, the next step was determining the cut points for the scale. The scores were grouped into five bins using Fisher-Jenks<sup>2</sup> Natural Breaks. The scores in the highest bin were selected by the SOMB as the cut-point for the SVP designation. In the validation data set, this cut-point contained 1.4% of the population and had a recidivism rate of 59.5%. In the validation data set this cut-point contained 1.2% of the population and had a recidivism rate of 52.6%. Specifically, a score of 22 or above means that the person falls into a risk group with a 53% - 60% chance of recidivating with a new sex or violent offense filed in court within eight years of getting a deferred judgment/conviction for an SVP-eligible crime.

**Predictive accuracy.** Predicting rarely occurring events, such as a court filing for a sex or violent crime, is extremely challenging. When the base rate--the rate of the event of interest--is as low as 10%, one will be correct 90% of the time predicting no recidivism. This scale identifies a small group with the highest likelihood of recidivism.

One method of assessing accuracy is quantified by the Area Under the ROC (Receiver Operating Characteristic) Curve (AUC). The power of the model’s predicted values to discriminate between recidivists and non-recidivists is expressed by the AUC. The AUC is a figure that varies from 0.5 (discriminating power not better than chance) to 1.0 (perfect discriminating power).

The four-item model achieved an AUC of .75 for both the development and validation samples. This can be interpreted to say that there is a 75% chance that a randomly selected recidivist would have a higher score than a randomly selected non-recidivist.<sup>3</sup> This compares favorably with other common risk assessment tools, as reflected in Table 2. Also, by way of comparison, McGrath, Hoke and Lasher (2013)

<sup>2</sup> Fisher, W. D. (1958). On grouping for maximum homogeneity. *Journal of the American Statistical Association*, 53, pp. 789–798.

<sup>3</sup> See Andrews and Bonta (2006). *The Psychology of Criminal Conduct*. 4<sup>th</sup> Edition. Anderson Publishing. Page 312.

report an AUC of .74 (sex) and .71 (violence) for the VASOR-2.<sup>4</sup>

Table 2<sup>5</sup>

Median area under the curve produced by nine risk assessment tools ranked in order of strength.

Tool	<i>n</i>	<i>k</i>	Median AUC	IQR
SVR-20	380	3	0.78	0.71–0.83
SORAG	1599	6	0.75	0.69–0.79
VRAG	2445	10	0.74	0.74–0.81
SAVRY	915	8	0.71	0.69–0.73
HCR-20	1320	8	0.70	0.64–0.76
SARA	102	1	0.70	–
Static-99	8246	12	0.70	0.62–0.72
LSI-R	856	3	0.67	0.55–0.73
PCL-R	2645	10	0.66	0.54–0.68

Note. *n* = sample size; *k* = number of samples; AUC = area under the curve; IQR = interquartile range.

**Scoring the instrument.** While the instrument was developed using only Colorado court cases, probation officers often have access to out-of-state information about criminal proceedings. To better understand the impact of out-of-state information on SVP-eligibility (that is, scoring 22 or above on the SORS), a subsample of 300 cases was examined by hand to determine the impact of adding out-of-state case filings to the information required by the SORS. Not surprisingly, the additional information increased the likelihood of some individuals scoring 22 or higher on the SORS. However, even with this additional information, it is estimated that fewer than five percent of those assessed with the SORS will score 22 or more.

**Limitations of actuarial prediction.** In 1978, the American Psychological Association (APA) withdrew its support of members who testified to the dangerousness of individual offenders. The APA’s position was based on a number of studies that revealed the error rate of clinical prediction was intolerably high. Studies of clinical prediction indicated that experts were wrong in their predictions of dangerousness, on average, two out of three times.<sup>7</sup> While actuarial (statistical) prediction is not a perfect solution to the prediction of dangerousness, the approximate error rate of group predictions is known. Policy decisions about the cost of errors—over predicting and under predicting dangerousness—can be made in light of known probabilities.

The science of risk prediction is imperfect, however. Prediction variables are limited to data available and to items that have a practical or theoretical link. The research literature is quite clear that criminal history, lifestyle, social adjustment and opportunity are relevant and statistically powerful indicators of risk. However, actuarial methods are limited because offenders in any study group may vary on factors not measured.

<sup>4</sup> See <http://www.csom.org/pubs/VASOR-2ManualOctober2013.pdf>.

<sup>5</sup> This table has been reproduced from page 506 of the following paper: Singh, Grann, and Fazel (2011). A comparative study of violence risk assessment tools: A systematic review and metaregression analysis of 68 studies involving 25,980 participants. *Clinical Psychology Review*, 31, pp. 499-513.

<sup>7</sup> Monahan, John. (1995). *The Clinical Prediction of Violent Behavior*. Northvale, New Jersey: Jason Aronson Inc.

Additionally, prediction tools may lose efficiency over time and generalizability of prediction tools across jurisdictions is suspect: As stated by Farrington, "...it is essential that the sample from which it is derived is drawn from the population on which it is to be used" (Farrington and Tarling, 1985). Developing the scale on sex offenders convicted of crimes in Colorado and subject to the SOMB standards of assessment, evaluation, treatment and monitoring is, in fact, the ideal research design, despite the general limitations of actuarial risk assessment discussed here.



## Appendix A: Regarding Psychopathy or Personality Disorder

**The HARE Psychopathy Scale** (Revised-PCL-R or Screening Version-PCL-SV) has been found to be predictive of violent behavior among groups who have previously behaved aggressively (see Monahan and Steadman, 1994). Factor One measures personality characteristics such as selfishness and narcissism. It taps the psychological dimension of an individual. Factor Two measures behavior such as criminal history, and it reflects the extent to which a person is engaged in an antisocial lifestyle. Both factors have been found to be associated with negative outcomes.

**The MCMI** calculates 26 personality subtypes. Factor analyses were conducted to determine if any of the subtypes “clustered” within the study sample, but this analysis proved unproductive. Twelve subtypes were identified as adding useful information about the sample: Schizoid, Narcissistic, Anti-Social, Sadistic, Negativistic, Schizotypal, Paranoid, Alcohol Abusive, Drug Abusive, Post-Traumatic Stress Disorder, Thought Disorder, and Delusional Disorder.<sup>8</sup>

**The CCI** is a 250 item, self-report, psychological inventory. It was created (a) to be a cost-effective measure of psychological problems, (b) to be a *DSM-IV-TR* aligned measure of Axis I clinical syndromes and Axis II personality disorders, (c) to measure neuropsychological symptoms such as memory problems, inattention, language dysfunction, and neurosomatic problems, and neuropsychological syndromes such as neurocognitive disorder, adult ADHD, and executive function deficits of the frontal lobes, and (d) to allow the differential diagnosis of those inmates who have clinically diagnosable syndromes from those who do not. The median scale reliability (Cronbach’s alpha) for the 14 personality disorder scales measured by the CCI was .75. The median scale reliability for five Axis I scales was .85, and the median scale reliability for the remaining 13 scales and subscales was .78.<sup>9</sup>

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<sup>8</sup> Two MCMI subtypes were excluded because they were significantly related to errors in prediction in the final regression model. The Self-Defeating subscore increased the rate of false negatives (those predicted to succeed who actually failed) and Anxiety increased the rate of false positives (those predicted to fail who actually succeed).

<sup>9</sup> Coolidge, F.L. (2006, December). *An Introduction to the Coolidge Correctional Inventory (CCI)*. Presentation given at Colorado Department of Corrections. Colorado Springs, CO.



**APPENDIX B:**  
**STATUTES**

**18-3-414.5. Sexually violent predator.**

(1) As used in this section, unless the context otherwise requires:

(a) "Sexually violent predator" means an offender:

(I) Who is eighteen years of age or older as of the date the offense is committed or who is less than eighteen years of age as of the date the offense is committed but is tried as an adult pursuant to section 19-2-517 or 19-2-518, C.R.S.;

(II) Who has been convicted on or after July 1, 1999, of one of the following offenses, or of an attempt, solicitation, or conspiracy to commit one of the following offenses, committed on or after July 1, 1997:

(A) Sexual assault, in violation of section 18-3-402 or sexual assault in the first degree, in violation of section 18-3-402, as it existed prior to July 1, 2000;

(B) Sexual assault in the second degree, in violation of section 18-3-403,<sup>20</sup> as it existed prior to July 1, 2000;

(C) Unlawful sexual contact, in violation of section 18-3-404 (1.5) or (2) or sexual assault in the third degree, in violation of section 18-3-404 (1.5) or (2), as it existed prior to July 1, 2000;

(D) Sexual assault on a child, in violation of section 18-3-405; or

(E) Sexual assault on a child by one in a position of trust, in violation of section 18-3-405.3;

(III) Whose victim was a stranger to the offender or a person with whom the offender established or promoted a relationship primarily for the purpose of sexual victimization; and

(IV) Who, based upon the results of a risk assessment screening instrument developed by the division of criminal justice in consultation with and approved by the sex offender management board established pursuant to section 16-11.7-103 (1), C.R.S., is likely to subsequently commit one or more of the offenses specified in subparagraph (II) of this paragraph (a) under the circumstances described in subparagraph (III) of this paragraph (a).

(b) "Convicted" includes having received a verdict of guilty by a judge or jury, having pleaded guilty or nolo contendere, or having received a deferred judgment and sentence.

(2) When a defendant is convicted of one of the offenses specified in subparagraph (II) of paragraph (a) of subsection (1) of this section, the probation department shall, in coordination with the evaluator completing the mental health sex offense specific evaluation, complete the sexually violent predator risk assessment, unless such an evaluation and assessment has been completed within the six months prior to the conviction or the defendant has been previously designated a sexually violent predator. Based on the results of such assessment, the court shall make specific findings of fact and enter an order concerning whether the defendant is a sexually violent predator. If the defendant is found to be a sexually violent predator, the defendant shall be required to register pursuant to the

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<sup>20</sup> Section 18-3-403 was repealed in 2000.

provisions of section 16-22-108, C.R.S., and shall be subject to community notification pursuant to part 9 of article 13 of title 16, C.R.S.

(3) When considering release on parole or discharge<sup>21</sup> for an offender who was convicted of one of the offenses specified in subparagraph (II) of paragraph (a) of subsection (1) of this section, if there has been no previous court order, the Parole Board shall make specific findings concerning whether the offender is a sexually violent predator, based on the results of a sexually violent predator assessment. If no previous assessment has been completed, the Parole Board shall order the department of corrections to complete a sexually violent predator assessment. If the Parole Board finds that the offender is a sexually violent predator, the offender shall be required to register pursuant to the provisions of section 16-22-108, C.R.S., and shall be subject to community notification pursuant to part 9 of article 13 of title 16, C.R.S.

**16-11.7-103. Sex offender management board – creation – duties.**

(c.5) On or before January 1, 1999, the board shall consult on, approve, and revise as necessary the risk assessment screening instrument developed by the division of criminal justice to assist the sentencing court in determining the likelihood that an offender would commit one or more of the offenses specified in section 18-3-414.5(1)(a)(II), C.R.S., under the circumstances described in section 18-3-414.5(1)(a)(III), C.R.S. No state general fund moneys shall be used to develop the risk assessment screening instrument. In carrying out this duty, the board shall consider sex offender risk assessment research and shall consider as one element the risk posed by a sex offender who suffers from a mental abnormality, psychosis, or personality disorder that makes the person more likely to engage in sexually violent predatory offenses. For purposes of this subsection (4) only, "mental abnormality" means a congenital or acquired condition that affects the emotional or volitional capacity of a person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a significant risk to the health and safety of other persons. If a defendant is found to be a sexually violent predator, the defendant shall be required to register pursuant to article 22 of this title and shall be subject to community notification pursuant to part 9 of article 13 of this title.

**19-2-517. Direct filing.**

(1) (a) A juvenile may be charged by the direct filing of an information in the district court or by indictment only when:

(I) The juvenile is fourteen years of age or older at the time of the commission of the alleged offense and is alleged to have committed a class 1 or class 2 felony; or

(II) The juvenile is fourteen years of age or older at the time of the commission of the alleged offense and:

(A) Is alleged to have committed a felony enumerated as a crime of violence pursuant to section 18-1.3-406, C.R.S.; or

(B) Is alleged to have committed a felony offense described in part 1 of article 12 of title 18, C.R.S., except for the possession of a handgun by a juvenile, as set forth in section 18-12-108.5, C.R.S.; or

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<sup>21</sup> This law requires the assessment and designation process on active cases only.

(C) Is alleged to have used, or possessed and threatened the use of, a deadly weapon during the commission of felony offenses against the person, which are set forth in article 3 of title 18, C.R.S.; or

(D) Is alleged to have committed vehicular homicide, as described in section 18-3-106, C.R.S., vehicular assault, as described in section 18-3-205, C.R.S., or felonious arson, as described in part 1 of article 4 of title 18, C.R.S.; or

(III) The juvenile has, within the two previous years, been adjudicated a juvenile delinquent for a delinquent act that constitutes a felony, is sixteen years of age or older at the time of the commission of the alleged offense, and allegedly has committed a crime defined by section 18-1.3-401, C.R.S., as a class 3 felony, except felonies defined by section 18-3-402 (1) (d), C.R.S., or section 18-3-403 (1) (e), C.R.S., as it existed prior to July 1, 2000; or

(IV) The juvenile is fourteen years of age or older at the time of the commission of the alleged offense, has allegedly committed a delinquent act that constitutes a felony, and has previously been subject to proceedings in district court as a result of a direct filing pursuant to this section or a transfer pursuant to section 19-2-518; except that, if a juvenile is found not guilty in the district court of the prior felony or any lesser included offense, the subsequent charge shall be remanded back to the juvenile court; or

(V) The juvenile is fourteen years of age or older at the time of the commission of the alleged offense, has allegedly committed a delinquent act that constitutes a felony, and is determined to be an "habitual juvenile offender." For the purposes of this section, "habitual juvenile offender" is defined in section 19-1-103 (61).

(b) The offenses described in subparagraphs (I) to (V) of paragraph (a) of this subsection (1) shall include the attempt, conspiracy, solicitation, or complicity to commit such offenses.

(2) Notwithstanding the provisions of section 19-2-518, after filing charges in the juvenile court but prior to the time that the juvenile court conducts a transfer hearing, the district attorney may file the same or different charges against the juvenile by direct filing of an information in the district court or by indictment pursuant to this section. Upon said filing or indictment in the district court, the juvenile court shall no longer have jurisdiction over proceedings concerning said charges.

(3) (a) Whenever criminal charges are filed by information or indictment in the district court pursuant to this section, the district judge shall sentence the juvenile as follows:

(I) As an adult; or

(II) To the youthful offender system in the department of corrections in accordance with section 18-1.3-407, C.R.S., if the juvenile is convicted of an offense described in subparagraph (II) or (V) of paragraph (a) of subsection (1) of this section; except that a juvenile shall be ineligible for sentencing to the youthful offender system if the juvenile is convicted of:

(A) A class 1 felony;

(B) A class 2 felony as a result of a plea agreement in cases where the juvenile is charged with a class 1 felony;

(C) A class 2 felony and the juvenile has one or more prior convictions for a crime of violence, as defined in section 18-1.3-406, C.R.S., or prior adjudications for an offense that would constitute a crime of violence if committed by an adult;

(D) A class 2 felony and the juvenile is sixteen years of age or older;

(E) Any sexual offense described in section 18-6-301 or 18-6-302, C.R.S., or part 4 of article 3 of title 18, C.R.S.; or

(F) A second or subsequent offense described in said subparagraph (II) or (V), if such person received a sentence to the department of corrections or to the youthful offender system for the prior offense; or

(III) Pursuant to the provisions of this article, if the juvenile is less than sixteen years of age at the time of commission of the crime and is convicted of an offense other than a class 1 or class 2 felony, a crime of violence as defined under section 18-1.3-406, C.R.S., or an offense described in subparagraph (V) of paragraph (a) of subsection (1) of this section and the judge makes a finding of special circumstances.

(b) Repealed.

(c) The district court judge may sentence a juvenile pursuant to the provisions of this article if the juvenile is convicted of a lesser included offense for which criminal charges could not have been originally filed by information or indictment in the district court pursuant to this section.

(4) In the case of any person who is sentenced as a juvenile pursuant to subsection (3) of this section, section 19-2-908 (1) (a), regarding mandatory sentence offenders, section 19-2-908 (1) (b), regarding repeat juvenile offenders, section 19-2-908 (1) (c), regarding violent juvenile offenders, and section 19-2-601, regarding aggravated juvenile offenders, shall apply to the sentencing of such person.

(5) The court in its discretion may appoint a guardian ad litem for any juvenile charged by the direct filing of an information in the district court or by indictment pursuant to this section.

### **19-2-518. Transfers.**

(1) (a) The juvenile court may enter an order certifying a juvenile to be held for criminal proceedings in the district court if:

(I) A petition filed in juvenile court alleges the juvenile is:

(A) Twelve or thirteen years of age at the time of the commission of the alleged offense and is a juvenile delinquent by virtue of having committed a delinquent act that constitutes a class 1 or class 2 felony or a crime of violence, as defined in section 18-1.3-406, C.R.S.; or

(B) Fourteen years of age or older at the time of the commission of the alleged offense and is a juvenile delinquent by virtue of having committed a delinquent act that constitutes a felony; and

(II) After investigation and a hearing, the juvenile court finds it would be contrary to the best interests of the juvenile or of the public to retain jurisdiction.

(b) A petition may be transferred from the juvenile court to the district court only after a hearing as provided in this section.

(c) If the crime alleged to have been committed is a felony defined by section 18-8-208, C.R.S., and no other crime is alleged to have been committed and the juvenile has been adjudicated a juvenile delinquent for a delinquent act which constitutes a class 4 or 5 felony, then the charge for the crime may not be filed directly in the district court, but the juvenile court may transfer such charge to the district court pursuant to paragraph (a) of this subsection (1).

(d) (I) Except as otherwise provided in subparagraph (II) of this paragraph (d), in cases in which criminal charges are transferred to the district court pursuant to the provisions of this section, the judge of the district court shall sentence the juvenile pursuant to the provisions of section 18-1.3-401, C.R.S., if the juvenile is:

(A) Convicted of a class 1 felony;

(B) Convicted of a crime of violence, as defined in section 18-1.3-406, C.R.S.; or

(C) Convicted of any other criminal charge specified in paragraph (a) of this subsection (1) and the juvenile was previously adjudicated a mandatory sentence offender, a violent juvenile offender, or an aggravated juvenile offender.

(II) In cases in which criminal charges are transferred to the district court pursuant to the provisions of this section, the judge of the district court may sentence to the youthful offender system created in section 18-1.3-407, C.R.S., any juvenile who would otherwise be sentenced pursuant to the provisions of subparagraph (I) of this paragraph (d); except that a juvenile shall be ineligible for sentencing to the youthful offender system if the juvenile is convicted of:

(A) A class 1 felony;

(B) A class 2 felony as a result of a plea agreement in cases where the juvenile is charged with a class 1 felony;

(C) A class 2 felony and the juvenile has one or more prior convictions for a crime of violence, as defined in section 18-1.3-406, C.R.S., or prior adjudications for an offense that would constitute a crime of violence if committed by an adult;

(D) A class 2 felony and the juvenile is sixteen years of age or older;

(E) Any sexual offense described in section 18-6-301 or 18-6-302, C.R.S., or part 4 of article 3 of title 18, C.R.S.

(III) In cases in which criminal charges are transferred to the district court pursuant to the provisions of this section and the juvenile is not eligible for sentencing pursuant to subparagraph (I) of this paragraph (d), the judge of the district court shall have the power to make any disposition of the case that any juvenile court would have or to remand the case to the juvenile court for disposition at its discretion.

(IV) If, following transfer of criminal charges to the district court pursuant to this section, a juvenile is convicted of a lesser included offense for which criminal charges could not



originally have been transferred to the district court, the court shall sentence the juvenile pursuant to the provisions of this article.

(e) Whenever a juvenile under the age of fourteen years is sentenced pursuant to section 18-1.3-401, C.R.S., as provided in paragraph (d) of this subsection (1), the department of corrections shall contract with the department of human services to house and provide services to the juvenile in a facility operated by the department of human services until the juvenile reaches the age of fourteen years. On reaching the age of fourteen years, the juvenile shall be transferred to an appropriate facility operated by the department of corrections for the completion of the juvenile's sentence.

(2) After filing charges in the juvenile court but prior to the time that the juvenile court conducts a transfer hearing, the district attorney may file the same or different charges against the juvenile by direct filing of an information in the district court or by indictment pursuant to section 19-2-517. Upon said filing or indictment in the district court, the juvenile court shall no longer have jurisdiction over proceedings concerning said charges.

(3) At the transfer hearing, the court shall consider:

(a) Whether there is probable cause to believe that the juvenile has committed a delinquent act for which waiver of juvenile court jurisdiction over the juvenile and transfer to the district court may be sought pursuant to subsection (1) of this section; and

(b) Whether the interests of the juvenile or of the community would be better served by the juvenile court's waiving its jurisdiction over the juvenile and transferring jurisdiction over him or her to the district court.

(4) (a) The hearing shall be conducted as provided in section 19-1-106, and the court shall make certain that the juvenile and his or her parents, guardian, or legal custodian have been fully informed of their right to be represented by counsel.

(b) In considering whether or not to waive juvenile court jurisdiction over the juvenile, the juvenile court shall consider the following factors:

(I) The seriousness of the offense and whether the protection of the community requires isolation of the juvenile beyond that afforded by juvenile facilities;

(II) Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;

(III) Whether the alleged offense was against persons or property, greater weight being given to offenses against persons;

(IV) The maturity of the juvenile as determined by considerations of the juvenile's home, environment, emotional attitude, and pattern of living;

(V) The record and previous history of the juvenile;

(VI) The likelihood of rehabilitation of the juvenile by use of facilities available to the juvenile court;

(VII) The interest of the community in the imposition of a punishment commensurate with the gravity of the offense;

(VIII) The impact of the offense on the victim;

(IX) That the juvenile was twice previously adjudicated a delinquent juvenile for delinquent acts that constitute felonies;

(X) That the juvenile was previously adjudicated a juvenile delinquent for a delinquent act that constitutes a crime of violence, as defined in section 18-1.3-406, C.R.S.;

(XI) That the juvenile was previously committed to the department of human services following an adjudication for a delinquent act that constitutes a felony;

(XII) That the juvenile is sixteen years of age or older at the time of the offense and the present act constitutes a crime of violence, as defined in section 18-1.3-406, C.R.S.;

(XIII) That the juvenile is sixteen years of age or older at the time of the offense and has been twice previously adjudicated a juvenile delinquent for delinquent acts against property that constitute felonies; and

(XIV) That the juvenile used, or possessed and threatened the use of, a deadly weapon in the commission of a delinquent act.

(c) The amount of weight to be given to each of the factors listed in paragraph (b) of this subsection (4) is discretionary with the court; except that a record of two or more previously sustained petitions for delinquent acts that constitute felonies or a record of two or more juvenile probation revocations based on acts that constitute felonies shall establish prima facie evidence that to retain jurisdiction in juvenile court would be contrary to the best interests of the juvenile or of the community.

(d) The insufficiency of evidence pertaining to any one or more of the factors listed in paragraph (b) of this subsection (4) shall not in and of itself be determinative of the issue of waiver of juvenile court jurisdiction.

(5) When an action has been remanded to the juvenile court pursuant to section 19-2-517 (1) (a) (IV) and the prosecution seeks waiver of jurisdiction pursuant to this section, the court's findings from the prior transfer hearing regarding the factor listed in paragraph (c) of subsection (4) of this section shall establish prima facie evidence that to retain jurisdiction in juvenile court would be contrary to the best interests of the juvenile or of the community.

(6) Written reports and other materials relating to the juvenile's mental, physical, educational, and social history may be considered by the court, but the court, if so requested by the juvenile, his or her parent or guardian, or other interested party, shall require the person or agency preparing the report and other material to appear and be subject to both direct and cross-examination.

(7) (a) If the court finds that its jurisdiction over a juvenile should be waived, it shall enter an order to that effect; except that such order of waiver shall be null and void if the district attorney fails to file an information in the criminal division of the district court within five days of issuance of the written order of waiver, exclusive of Saturdays, Sundays, and court holidays. Upon failure of the district attorney to file an information within five days of the

issuance of the written order of waiver, exclusive of Saturdays, Sundays, and court holidays, the juvenile court shall retain jurisdiction and shall proceed as provided in this article.

(b) As a condition of the waiver of jurisdiction, the court in its discretion may provide that a juvenile shall continue to be held in custody pending the filing of an information in the criminal division of the district court. Where the juvenile has made bond in proceedings in the juvenile court, the bond may be continued and made returnable in and transmitted to the district court, where it shall continue in full force and effect unless modified by order of the district court.

(8) If the court finds that it is in the best interests of the juvenile and of the public for the court to retain jurisdiction, it shall proceed with the adjudicatory trial as provided in part 8 of this article.

### **18-3-402. Sexual Assault.**

1) Any actor who knowingly inflicts sexual intrusion or sexual penetration on a victim commits sexual assault if:

(a) The actor causes submission of the victim by means of sufficient consequence reasonably calculated to cause submission against the victim's will; or

(b) The actor knows that the victim is incapable of appraising the nature of the victim's conduct; or

(c) The actor knows that the victim submits erroneously, believing the actor to be the victim's spouse; or

(d) At the time of the commission of the act, the victim is less than fifteen years of age and the actor is at least four years older than the victim and is not the spouse of the victim; or

(e) At the time of the commission of the act, the victim is at least fifteen years of age but less than seventeen years of age and the actor is at least ten years older than the victim and is not the spouse of the victim; or

(f) The victim is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over the victim and uses this position of authority to coerce the victim to submit, unless the act is incident to a lawful search; or

(g) The actor, while purporting to offer a medical service, engages in treatment or examination of a victim for other than a bona fide medical purpose or in a manner substantially inconsistent with reasonable medical practices; or

(h) The victim is physically helpless and the actor knows the victim is physically helpless and the victim has not consented.

(2) Sexual assault is a class 4 felony, except as provided in subsections (3), (3.5), (4), and (5) of this section.

(3) If committed under the circumstances of paragraph (e) of subsection (1) of this section, sexual assault is a class 1 misdemeanor and is an extraordinary risk crime that is subject to the modified sentencing range specified in section 18-1.3-501 (3).

(3.5) Sexual assault is a class 3 felony if committed under the circumstances described in paragraph (h) of subsection (1) of this section.

(4) Sexual assault is a class 3 felony if it is attended by any one or more of the following circumstances:

(a) The actor causes submission of the victim through the actual application of physical force or physical violence; or

(b) The actor causes submission of the victim by threat of imminent death, serious bodily injury, extreme pain, or kidnapping, to be inflicted on anyone, and the victim believes that the actor has the present ability to execute these threats; or

(c) The actor causes submission of the victim by threatening to retaliate in the future against the victim, or any other person, and the victim reasonably believes that the actor will execute this threat. As used in this paragraph (c), "to retaliate" includes threats of kidnapping, death, serious bodily injury, or extreme pain; or

(d) The actor has substantially impaired the victim's power to appraise or control the victim's conduct by employing, without the victim's consent, any drug, intoxicant, or other means for the purpose of causing submission.

(e) (Deleted by amendment, L. 2002, p. 1578, § 2, effective July 1, 2002.)

(5) (a) Sexual assault is a class 2 felony if any one or more of the following circumstances exist:

(I) In the commission of the sexual assault, the actor is physically aided or abetted by one or more other persons; or

(II) The victim suffers serious bodily injury; or

(III) The actor is armed with a deadly weapon or an article used or fashioned in a manner to cause a person to reasonably believe that the article is a deadly weapon or represents verbally or otherwise that the actor is armed with a deadly weapon and uses the deadly weapon, article, or representation to cause submission of the victim.

(b) (I) If a defendant is convicted of sexual assault pursuant to this subsection (5), the court shall sentence the defendant in accordance with section 18-1.3-401 (8) (e). A person convicted solely of sexual assault pursuant to this subsection (5) shall not be sentenced under the crime of violence provisions of section 18-1.3-406 (2). Any sentence for a conviction under this subsection (5) shall be consecutive to any sentence for a conviction for a crime of violence under section 18-1.3-406.

(II) The provisions of this paragraph (b) shall apply to offenses committed prior to November 1, 1998.

(6) Any person convicted of felony sexual assault committed on or after November 1, 1998, under any of the circumstances described in this section shall be sentenced in accordance with the provisions of part 10 of article 1.3 of this title.

**18-3-403. Sexual assault in the second degree. (Repealed)**

**18-3-404(1.5) or (2). Unlawful sexual contact.**

(1.5) Any person who knowingly, with or without sexual contact, induces or coerces a child by any of the means set forth in section 18-3-402 to expose intimate parts or to engage in any sexual contact, intrusion, or penetration with another person, for the purpose of the actor's own sexual gratification, commits unlawful sexual contact. For the purposes of this subsection (1.5), the term "child" means any person under the age of eighteen years.

(2) (a) Unlawful sexual contact is a class 1 misdemeanor and is an extraordinary risk crime that is subject to the modified sentencing range specified in section 18-1.3-501 (3).

(b) Notwithstanding the provisions of paragraph (a) of this subsection (2), unlawful sexual contact is a class 4 felony if the actor compels the victim to submit by use of such force, intimidation, or threat as specified in section 18-3-402 (4) (a), (4) (b), or (4) (c) or if the actor engages in the conduct described in paragraph (g) of subsection (1) of this section or subsection (1.5) of this section.

**18-4-405. Sexual assault on a child.**

(1) Any actor who knowingly subjects another not his or her spouse to any sexual contact commits sexual assault on a child if the victim is less than fifteen years of age and the actor is at least four years older than the victim.

(2) Sexual assault on a child is a class 4 felony, but it is a class 3 felony if:

(a) The actor applies force against the victim in order to accomplish or facilitate sexual contact; or

(b) The actor, in order to accomplish or facilitate sexual contact, threatens imminent death, serious bodily injury, extreme pain, or kidnapping against the victim or another person, and the victim believes that the actor has the present ability to execute the threat; or

(c) The actor, in order to accomplish or facilitate sexual contact, threatens retaliation by causing in the future the death or serious bodily injury, extreme pain, or kidnapping against the victim or another person, and the victim believes that the actor will execute the threat; or

(d) The actor commits the offense as a part of a pattern of sexual abuse as described in subsection (1) of this section. No specific date or time must be alleged for the pattern of sexual abuse; except that the acts constituting the pattern of sexual abuse, whether charged in the information or indictment or committed prior to or at any time after the offense charged in the information or indictment, shall be subject to the provisions of section 16-5-401 (1) (a), C.R.S., concerning sex offenses against children. The offense charged in the information or indictment shall constitute one of the incidents of sexual contact involving a child necessary to form a pattern of sexual abuse as defined in section 18-3-401 (2.5).

(3) If a defendant is convicted of the class 3 felony of sexual assault on a child pursuant to paragraphs (a) to (d) of subsection (2) of this section, the court shall sentence the defendant in accordance with the provisions of section 18-1.3-406.

**18-3-405.3. Sexual assault on a child by one in a position of trust.**

(1) Any actor who knowingly subjects another not his or her spouse to any sexual contact commits sexual assault on a child by one in a position of trust if the victim is a child less than eighteen years of age and the actor committing the offense is one in a position of trust with respect to the victim.

(2) Sexual assault on a child by one in a position of trust is a class 3 felony if:

(a) The victim is less than fifteen years of age; or

(b) The actor commits the offense as a part of a pattern of sexual abuse as described in subsection (1) of this section. No specific date or time need be alleged for the pattern of sexual abuse; except that the acts constituting the pattern of sexual abuse whether charged in the information or indictment or committed prior to or at any time after the offense charged in the information or indictment, shall be subject to the provisions of section 16-5-401 (1) (a), C.R.S., concerning sex offenses against children. The offense charged in the information or indictment shall constitute one of the incidents of sexual contact involving a child necessary to form a pattern of sexual abuse as defined in section 18-3-401 (2.5).

(3) Sexual assault on a child by one in a position of trust is a class 4 felony if the victim is fifteen years of age or older but less than eighteen years of age and the offense is not committed as part of a pattern of sexual abuse, as described in paragraph (b) of subsection (2) of this section.

(4) If a defendant is convicted of the class 3 felony of sexual assault on a child pursuant to paragraph (b) of subsection (2) of this section, the court shall sentence the defendant in accordance with the provisions of section 18-1.3-406.

**16-22-108(1)(d). Registration.**

(d) (I) Any person who is a sexually violent predator and any person who is convicted as an adult of any of the offenses specified in subparagraph (II) of this paragraph (d) has a duty to register for the remainder of his or her natural life; except that, if the person receives a deferred judgment and sentence for one of the offenses specified in subparagraph (II) of this paragraph (d), the person may petition the court for discontinuation of the duty to register as provided in section 16-22-113 (1) (d). In addition to registering as required in paragraph (a) of this subsection (1), such person shall reregister ninety days after the date he or she was released from incarceration for commission of the offense requiring registration, or ninety days after the date he or she received notice of the duty to register, if the person was not incarcerated, and every ninety days thereafter until such person's birthday. Such person shall reregister on his or her birthday and shall reregister every ninety days thereafter. If a person's birthday or other reregistration day falls on a Saturday, Sunday, or holiday, the person shall reregister on the first business day following his or her birthday or other reregistration day. Such person shall reregister pursuant to this paragraph (d) with the local law enforcement agency of each jurisdiction in which the person resides on the reregistration date, in the manner provided in paragraph (a) of this subsection (1).

**16-22-1111. Internet posting of sex offenders-procedure.**

(1) The CBI shall post a link on the state of Colorado homepage on the internet to a list containing the names, addresses, and physical descriptions of certain persons and descriptions of the offenses committed by said persons. A person's physical description shall include, but need not be limited to, the person's sex, height, and weight, any identifying characteristics of the person, and a digitized photograph or image of the person. The list shall specifically exclude any reference to any victims of the offenses. The list shall include the following persons:

(a) Any person who is a sexually violent predator;

(b) Any person sentenced as or found to be a sexually violent predator under the laws of another state or jurisdiction;

(c) Any person who is required to register pursuant to section 16-22-103 and who has been convicted as an adult of two or more of the following offenses:

(I) A felony offense involving unlawful sexual behavior; or

(II) A crime of violence as defined in section 18-1.3-406, C.R.S.; and

(d) Any person who is required to register pursuant to section 16-22-103 because the person was convicted of a felony as an adult and who fails to register as required by section 16-22-108.

(1.5) In addition to the posting required by subsection (1) of this section, the CBI may post a link on the state of Colorado homepage on the internet to a list, including but not limited to the names, addresses, and physical descriptions of any person required to register pursuant to section 16-22-103, as a result of a conviction for a felony. A person's physical description shall include, but need not be limited to, the person's sex, height, weight, and any other identifying characteristics of the person. The list shall specifically exclude any reference to any victims of the offenses.

(2) (a) For purposes of paragraph (d) of subsection (1) of this section, a person's failure to register shall be determined by the CBI. Whenever the CBI's records show that a person has failed to register as required by this article, the CBI shall forward to each law enforcement agency with which the person is required to register notice of the person's failure to register by the required date. Each law enforcement agency, within three business days after receiving the notice, shall submit to the CBI written confirmation of the person's failure to register. Upon receipt of the written confirmation from the law enforcement agency, the CBI shall post the information concerning the person on the internet as required in this section.

(b) If a local law enforcement agency files criminal charges against a person for failure to register as a sex offender, as described in section 18-3-412.5, C.R.S., the local law enforcement agency shall notify the CBI. On receipt of the notification, the CBI shall post the information concerning the person on the internet, as specified in subsection (1) of this section.

(3) The internet posting required by this section shall be in addition to any other release of information authorized pursuant to this article or pursuant to part 9 of article 13 of this title, or any other provision of law.

**16-13-903. Sexually violent predator subject to community notification-determination-implementation.**

(1) A sexually violent predator shall be subject to community notification as provided in this part 9, pursuant to criteria, protocols, and procedures established by the management board pursuant to section 16-13-904.

(2) (Deleted by amendment, L. 2006, p. 1312, § 3, effective May 30, 2006.)

(3) (a) When a sexually violent predator is sentenced to probation or community corrections or is released into the community following incarceration, the sexually violent predator's supervising officer, or the official in charge of the releasing facility or his or her designee if there is no supervising officer, shall notify the local law enforcement agency for the jurisdiction in which the sexually violent predator resides or plans to reside upon release from incarceration. The local law enforcement agency shall notify the Colorado bureau of investigation, and the sexually violent predator's status as being subject to community notification shall be entered in the central registry of persons required to register as sex offenders created pursuant to section 16-22-110.

(b) When a sexually violent predator living in a community changes residence, upon registration in the new community or notification to the new community's law enforcement agency, that agency shall notify the Colorado bureau of investigation and implement community notification protocols.

(4) Nothing in this section shall be construed to abrogate or limit the sovereign immunity granted to public entities pursuant to the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S.