

Trent Bushner
Yuma County Commissioner
5586 County Road 48
Yuma, CO 80759
970-630-2818

SEX OFFENDER MANAGEMENT BOARD
2019 Report
Decision Making Processes
Conflict of Interest

Introduction:

In 1992, the Colorado General Assembly passed legislation to create the Sex Offender Treatment Board, which was, renamed the Sex Offender Management Board. The purpose and duties of the board as delegated in numerous C.R.S is to create a program that establishes evidence-based standards for the evaluation, identification, treatment, management, and monitoring of adult and juvenile sex offenders. As a former certified Parliamentarian and current sitting County Commissioner, I was engaged to conduct an audit to help evaluate the processes the SOMB utilizes in their decision-making and to identify and evaluate any potential conflicts of interest.

As per the bylaws of the SOMB, I utilized the most recent version of Roberts Rules of Order, 11th Edition, for all parliamentary matters. I also utilized attorney Kenneth Fellman of Kissinger and Fellman, P.C. to evaluate and make recommendations for any current or potential conflicts of interests associated with the board.

Executive Summary:

The board is comprised of professional stakeholders committed to both victim advocacy and offender treatment and management. This board makes tough decisions that rarely get a full consensus because of the diversity of stakeholders represented. This board might be the most diverse board I have ever evaluated. Board

members are professional, dedicated and knowledgeable. Like all boards, some members do appear to be more dedicated to the process than others. These members tend to carry the load so to speak. My impression is those board members seem to have more of a dog in the fight because they work directly with either the victim or the offender. In some cases, they may work with both. The board utilizes a research-based process for decision making when available. The Standards and Guidelines that have been drafted by the board are quite lengthy and thorough. All guidelines must be changed or adapted periodically based on new research or mandates placed on the board.

My overall impression is the board including the committee structure works quite well. Leadership from the board chair and the committees is quite good. The staff support for the SOMB is professional, knowledgeable, and accessible.

Board meeting tend to be quite long for a couple of reasons. First, the board is very large and diverse. Discussion gets quite lengthy. Secondly, public comment is encouraged which adds to the length of the debate. Committees tend to wordsmith changes in the Standards and Guidelines a bit more than necessary. The public is also encouraged to attend these committee meetings, which can also slow down the process.

Findings:

Board Structure

Robert's Rules of Order has been designated as the official guide as outlined in the By-Laws of the Colorado Sex Offender Management Board, Article 12.

Robert's addresses the board make-up in Chapter 1, Section 1 as follows: Boards shall have no minimum size. A board may not function autonomously; its operation is determined by responsibilities and powers delegated to it or conferred upon it by authority outside itself. This authority resides in C.R.S. 16-11.7-103.

The size of the board is quite large. Not being a subject matter expert on sexual offenses, it is hard to evaluate the intent of the legislature

to balance the membership of the board. Currently the board is comprised of 25 members, both rural and urban. The board is quite diverse, mostly comprised of experts in adult and juvenile issues relating to persons who commit sex offenses. In my opinion the board is too large. From my personal experience as a county commissioner, I cannot understand why county commissioners have a seat at the table. Commissioners typically rely on the expert opinions from the other members comprising a board where commissioners do not have a direct relationship with the board's function. This is only one example where a direct relationship may not exist. There also appears to be some duplication of membership on the board as well. (C.R.S. 16-11.7-103)

Recommendation: The state legislature should form a committee to evaluate the size and make-up of the board and strive to reconstitute the board to eleven (11) members, fifteen (15) maximum. The current board is too large to be efficient. An advisory committee could be utilized in order to make sure all stakeholders have a seat at the table.

Rules

Under general parliamentary law, Robert's, Chapter 1, Section 2, an assembly is free to adopt any rules it may wish providing the procedure for adopting them follows parliamentary law or its own already existing rules. These rules facilitate the smooth functioning of the assembly and provide a firm basis for resolving questions of procedure. When an assembly has adopted these rules, they are binding upon it at all times as long as they are not inconsistent with the by-laws or any special rules of order of the body, or any provisions of local, state, or national law.

The SOMB utilizes a system that includes presentations, reviews, committee reports, public comment review, and most importantly motions on items of business. The format for motions is a bit confusing for anyone who is new to the board process. Robert's is silent on the format the board uses for this process. The terms utilized are "Action Item" and "Decision Item". Upon discovery, "Decision Items" are essentially the main motion. An "Action Item"

appears to be more of a concept for discussion that will potentially end up as a "Decision Item" at a subsequent meeting. These terms tend to work well for conducting business, however I was not able to find documentation of rules that outline the use of these terms.

Recommendation: Develop and publish to the website the rules for adopting business. These rules should also contain content that establishes the procedure for public comment and any other meeting rules. Currently public comment appears to be taken at the end of debate on either an action or decision item. Public comment should never be taken during board debate. The board should only answer questions arising from public comment. Do not debate the public. I would recommend that the public comment be limited to time per debate and/or total time for comment. Also there are some rules printed at the bottom of the agenda for each meeting. I would recommend that those rules are published on the web site as discussed previously and they are read before public comment is taken.

Quorum

Robert's is strict about the loss of a quorum, Chapter XI, Section 40. If a quorum is lost, debate can continue unless someone in the body determines that the quorum was lost. When that occurs, all debate and business is halted. The prohibition against transacting business in the absence of a quorum cannot be waived even by unanimous consent. If a quorum cannot be re-established, then the meeting should be adjourned. Where business must be acted on such as an emergency, the members are acting at their own risk.

Recommendation: Amend Article 5, Quorum of the SOMB By-Laws to strike out the following: "Ratification of provisionally transacted business shall occur at such time as a quorum is present, or at the next regular meeting, or through written or electronic voting coordinated by the staff liaison." That clause in the bylaws is a slippery slope. Full transparency should be the goal of the board.

Decision and Action Items

Motions tend to be offered at the end of debate on topics introduced from the agenda. Not typically done that way but appears to be an effective way of doing business for the board.

Debate on items should be handled in an appropriate way in order to protect the rights of the minority but also streamline the process.

Recommendations:

1. Members should raise hands and be formally addressed by name by the chair in order to offer debate. Speakers should identify themselves by name and title before offering debate. All speakers should speak directly into the microphones provided in the meeting room. These rules would allow for non-board members to determine who is speaking and also help with better identification of speakers when listening to the recorded minutes.
2. No one is entitled to a second debate as long as any other member who has not yet debated desires the floor.
3. Chairs should encourage and ask for discussion from all members on specific topics.
4. The chair should as much as possible alternate between those in favor and those opposed. On contentious issues, the chair can usually tell who is in favor and opposed on an issue.
5. The chair should be aware of direct or potential conflicts of interest. Those in conflict should not participate as per By-Laws. If the chair is uncertain about a direct or potential conflict, they should address the body to determine if a conflict exists. (See Attachments.)
6. The By-Laws should be amended to force the chair to vote on all business. Article 6, Section 6.5. In most cases the chair only votes if their vote will affect the outcome. Robert's, Chapter XIII, Section 44. However, the body can make their own rule on this subject. Transparency is the goal with this recommendation.
7. The term "I move" should be used on all motions. That should also be the written form in the minutes. I realize this is a bit picky, but it is the proper way to present a motion. Robert's Chapter 2, Section 4.
8. A member cannot withdraw a motion after the chair has restated the motion. Robert's, Chapter VI, Section 33. The member who moved the motion can ask for permission before the vote, but any

objection will render the motion to the body for consideration. Motions including those with amendments can be withdrawn at any time before voting on the question has begun.

Minutes/Agenda

The meeting minutes of the SOMB are written comprehensively and professionally.

Attention to detail especially with debate is quite good.

The agenda should be more comprehensive.

Recommendations:

1. All committee reports should be acted upon and minutes of the committee meetings included in the record in full or as an attachment. All committees should have a recording secretary for this purpose.
2. All points of order or appeals should be included in the minutes and the reason for the ruling by the chair.
3. The recording secretary and the chair should sign all minutes, after approval of the board.
4. The chairman and recording secretary should be identified as such in the members and staff section of the minutes.
5. Board meeting minutes after approval by the board are published and available per statute. I recommend not later than 5 working days after the meeting.
6. Establish a link on the website for all meeting materials in advance of any board or committee meeting as per statute or no later than 5 working days before any meeting.
7. An RSVP to attend a public meeting is probably not an appropriate means of doing business. If the public has access to all documents before the meeting, this requirement should be discontinued. If space is the issue, find a bigger meeting room.
8. The electronic/recorded copy of the minutes should also be made available on the website. A link to the recording should be uploaded no less than 5 working days after the meeting.

New Board Orientation

During the course of my review, several members of the board expressed a desire for additional training for new board/committee members. Several board members also mentioned a board mentorship program. Upon investigation, I was unable to find any documents relating to board member training specific to the SOMB and its operation.

Recommendation:

1. Develop a board/committee mentor program.
2. Develop a new board/committee member packet, preferably accessible on line.
3. Utilize webinars for board/committee trainings.

Committee Meetings

The SOMB has utilized as many as 14 committees. These committees are charged with researching current best practices as they relate to the adult and juvenile standards and guidelines. Much of the heavy lifting so to speak of the board is accomplished in these committees. These committees are comprised of both board and citizen representatives. All board meetings are open to the public. A listing of current committees meeting schedules can be found on the DOJ Public Meetings Calendar.

Upon observation of the committee meeting I have attended, some thoughts:

1. Board members in attendance are really engaged. Phone attendance not as engaged.
2. The committee members appeared to be very prepared.
3. There was a general level of respect for fellow members and the support staff.
4. Most of the members were engaged throughout the meeting.
5. The support staff is very knowledgeable.
6. The strength of the committees lies within the skill of the chair.
7. Wordsmith was a bit overboard.

Recommendations:

1. Develop a tight agenda and stick to it.

2. Members should come prepared. Do not waste time educating members.
3. Do not allow non-member public comment during committee debate. Public comment should be during a set time, not at random times. Public comments should be germane to the discussion at all times.
4. The chair should engage all members by asking for their opinion on the specific topic. This will encourage more participation.
5. The chair should not allow a committee member to dominate the discussion. No one is entitled to a second debate as long as any other member who has not yet debated desires the floor.
6. The chair should as much as possible alternate between those in favor and those opposed. On contentious issues, the chair can usually tell who is in favor and opposed on an issue.
7. Ask for consensus on all topics before moving on. If a consensus cannot be reached, a strong majority is recommended.
8. The SOMB Committee Meeting Norms document should be strictly followed. This document should be available on the website.
9. Committee chairs should always be aware of conflicts or potential conflicts of interest. Members should strictly adhere to Article 7, section 7.2 of the bylaws. All committee members should fill out and sign a conflict of interest disclosure each year.

End