



CO L O R A D O

**Department of
Regulatory Agencies**

**2015 Sunset Review:
Standardized Treatment Program for
Sex Offenders**

*Office of Policy, Research and Regulatory Reform
October 15, 2015*



COLORADO

Department of
Regulatory Agencies

Executive Director's Office

October 15, 2015

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The mission of the Department of Regulatory Agencies (DORA) is consumer protection. As a part of the Executive Director's Office within DORA, the Office of Policy, Research and Regulatory Reform seeks to fulfill its statutorily mandated responsibility to conduct sunset reviews with a focus on protecting the health, safety and welfare of all Coloradans.

Programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials, representatives of the regulated profession and other stakeholders. Anyone can submit input on any upcoming sunrise or sunset review via DORA's website at: www.dora.colorado.gov/opr.

DORA has completed the evaluation of the Standardized Treatment Program for Sex Offenders. I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2016 legislative committee of reference. The report is submitted pursuant to section 24-34-104(8)(a), of the Colorado Revised Statutes (C.R.S.), which states in part:

The department of regulatory agencies shall conduct an analysis of the performance of each division, board or agency or each function scheduled for termination under this section...

The department of regulatory agencies shall submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination....

The report discusses the question of whether there is a need for the regulation provided under Article 11.7 of Title 16, C.R.S. The report also discusses the effectiveness of the Division of Criminal Justice staff in carrying out the intent of the statutes and makes recommendations for statutory and administrative changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

Joe Neguse
Executive Director





COLORADO

Department of Regulatory Agencies

2015 Sunset Review Standardized Treatment Program for Sex Offenders

SUMMARY

What Is Regulated?

The Sex Offender Management Board (SOMB) promulgates policies that are implemented by the courts, executive agencies, local government, and private sector practitioners. Significantly, it produces the *Standards and Guidelines for the Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders* and the *Standards and Guidelines for the Evaluation, Assessment, Treatment and Supervision of Juveniles Who Have Committed Sexual Offenses (JS&G)*. These documents serve as the foundation for sex offender treatment in Colorado. The SOMB also qualifies and lists the treatment providers, evaluators, and polygraph examiners who treat sex offenders.

Why Is It Regulated?

To protect the public and to work toward the elimination of sexual offenses, the General Assembly established the SOMB to standardize the evaluation, identification, treatment, management, and monitoring of adult sex offenders and juveniles who have committed sexual offenses at each stage of the criminal or juvenile justice system.

What Does It Cost?

Division of Criminal Justice expenditures averaged approximately \$502,000 and the program staff averaged approximately 4.8 full-time equivalent employees annually during the period examined for this sunset review.

What Activity Is There?

The SOMB provided 190 training sessions attended by nearly 5,500 individuals, produced several publications, and revised the JS&G among other accomplishments during the period examined for this sunset review. Moreover, during fiscal year 13-14, it qualified and listed 26 adult and 19 juvenile polygraph examiners, 211 adult and 157 juvenile treatment providers, and 81 adult and 46 juvenile evaluators.

KEY RECOMMENDATIONS

Continue the Standardized Treatment Program for Sex Offenders for nine years, until 2025.

The SOMB has a bifurcated mission. It develops standardized public policy that is employed by several entities, both inside and outside of government, and it qualifies the individuals who work with the offender population. It is part advisory working group and part regulator.

An independent assembly that develops and revises standardized policies to be employed statewide is far better than having each regionally based implementing organization develop its own policy without standardization. State-wide standardization is key, because each implementing organization has a broader mission and culture than solely managing sex offenders.

Remove the “sufficient funding” caveat from the statute and direct the SOMB and Department of Public Safety to collect and analyze the data necessary to evaluate the efficacy of SOMB-promulgated policies.

The statute creating the Standardized Treatment Program for Sex Offenders states that if the Department of Public Safety acquires “sufficient funding,” the SOMB may request, from listed providers, data to evaluate the effectiveness of SOMB policies. The General Assembly should eliminate the funding caveat and the evaluation of policies should be performed.

METHODOLOGY

As part of this review, Department of Regulatory Agencies staff performed an extensive literature review; interviewed the SOMB staff and SOMB members; reviewed SOMB and court records; interviewed individual stakeholders and stakeholder organizations; reviewed Colorado statutes and rules; and examined similar programs in other states and nations.

MAJOR CONTACTS MADE DURING THIS REVIEW

Advocates for Change
Association for the Treatment of Sexual Abusers
Circles of Support and Accountability
Coalition for Sexual Offense Restoration
Colorado Coalition Against Sexual Assault
Colorado Citizens United for the Rehabilitation
of Errants
Colorado Division of Child Welfare
Colorado Division of Criminal Justice
Colorado Judicial Branch

Colorado Division of Professions and
Occupations
Colorado Division of Youth Corrections
Colorado Organization for Victim Assistance
Circles of Support and Accountability
Department of Corrections
Jefferson County Human Services
Jefferson County District Attorney’s Office
Office of the Colorado Attorney General
Office of the State Public Defender

What is a Sunset Review?

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with protecting the public. In formulating recommendations, sunset reviews consider the public’s right to consistent, high quality professional or occupational services and the ability of businesses to exist and thrive in a competitive market, free from unnecessary regulation.

Sunset Reviews are prepared by:
Colorado Department of Regulatory Agencies
Office of Policy, Research and Regulatory Reform
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www.dora.state.co.us/opr



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Background

Introduction

Enacted in 1976, Colorado's sunset law was the first of its kind in the United States. A sunset provision repeals all or part of a law after a specific date, unless the legislature affirmatively acts to extend it. During the sunset review process, the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria¹ and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are based on the following statutory criteria:

- Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;
- Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;

¹ Criteria may be found at § 24-34-104, C.R.S.

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- Whether the agency through its licensing or certification process imposes any disqualifications on applicants based on past criminal history and, if so, whether the disqualifications serve public safety or commercial or consumer protection interests. To assist in considering this factor, the analysis prepared pursuant to subparagraph (i) of paragraph (a) of subsection (8) of this section shall include data on the number of licenses or certifications that were denied, revoked, or suspended based on a disqualification and the basis for the disqualification; and
 - Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

Types of Regulation

Consistent, flexible, and fair regulatory oversight assures consumers, professionals and businesses an equitable playing field. All Coloradans share a long-term, common interest in a fair marketplace where consumers are protected. Regulation, if done appropriately, should protect consumers. If consumers are not better protected and competition is hindered, then regulation may not be the answer.

As regulatory programs relate to individual professionals, such programs typically entail the establishment of minimum standards for initial entry and continued participation in a given profession or occupation. This serves to protect the public from incompetent practitioners. Similarly, such programs provide a vehicle for limiting or removing from practice those practitioners deemed to have harmed the public.

From a practitioner perspective, regulation can lead to increased prestige and higher income. Accordingly, regulatory programs are often championed by those who will be the subject of regulation.

On the other hand, by erecting barriers to entry into a given profession or occupation, even when justified, regulation can serve to restrict the supply of practitioners. This not only limits consumer choice, but can also lead to an increase in the cost of services.

There are also several levels of regulation.

Licensure

Licensure is the most restrictive form of regulation, yet it provides the greatest level of public protection. Licensing programs typically involve the completion of a prescribed educational program (usually college level or higher) and the passage of an examination that is designed to measure a minimal level of competency. These types of programs usually entail title protection - only those individuals who are properly licensed may use a particular title(s) - and practice exclusivity - only those individuals who are properly licensed may engage in the particular practice. While these requirements can be viewed as barriers to entry, they also afford the highest level of consumer protection in that they ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Certification

Certification programs offer a level of consumer protection similar to licensing programs, but the barriers to entry are generally lower. The required educational program may be more vocational in nature, but the required examination should still measure a minimal level of competency. Additionally, certification programs typically involve a non-governmental entity that establishes the training requirements and owns and administers the examination. State certification is made conditional upon the individual practitioner obtaining and maintaining the relevant private credential. These types of programs also usually entail title protection and practice exclusivity.

While the aforementioned requirements can still be viewed as barriers to entry, they afford a level of consumer protection that is lower than a licensing program. They ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Registration

Registration programs can serve to protect the public with minimal barriers to entry. A typical registration program involves an individual satisfying certain prescribed requirements - typically non-practice related items, such as insurance or the use of a disclosure form - and the state, in turn, placing that individual on the pertinent registry. These types of programs can entail title protection and practice exclusivity. Since the barriers to entry in registration programs are relatively low, registration programs are generally best suited to those professions and occupations where the risk of public harm is relatively low, but nevertheless present. In short, registration programs serve to notify the state of which individuals are engaging in the relevant practice and to notify the public of those who may practice by the title(s) used.

Title Protection

Finally, title protection programs represent one of the lowest levels of regulation. Only those who satisfy certain prescribed requirements may use the relevant prescribed title(s). Practitioners need not register or otherwise notify the state that they are engaging in the relevant practice, and practice exclusivity does not attach. In other words, anyone may engage in the particular practice, but only those who satisfy the prescribed requirements may use the enumerated title(s). This serves to indirectly ensure a minimal level of competency - depending upon the prescribed preconditions for use of the protected title(s) - and the public is alerted to the qualifications of those who may use the particular title(s).

Licensing, certification and registration programs also typically involve some kind of mechanism for removing individuals from practice when such individuals engage in enumerated proscribed activities. This is generally not the case with title protection programs.

Regulation of Businesses

Regulatory programs involving businesses are typically in place to enhance public safety, as with a salon or pharmacy. These programs also help to ensure financial solvency and reliability of continued service for consumers, such as with a public utility, a bank or an insurance company.

Activities can involve auditing of certain capital, bookkeeping and other recordkeeping requirements, such as filing quarterly financial statements with the regulator. Other programs may require onsite examinations of financial records, safety features or service records.

Although these programs are intended to enhance public protection and reliability of service for consumers, costs of compliance are a factor. These administrative costs, if too burdensome, may be passed on to consumers.

Sunset Process

Regulatory programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials and other stakeholders. Anyone can submit input on any upcoming sunrise or sunset review via DORA's website at: www.dora.colorado.gov/opr.

The functions of the Sex Offender Management Board (SOMB) and the Division of Criminal Justice as enumerated in Article 11.7 of Title 16, Colorado Revised Statutes (C.R.S.), shall terminate on September 1, 2016, unless continued by the General Assembly. During the year prior to this date, it is the duty of DORA to conduct an analysis and evaluation pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed program to comprehensively evaluate, identify, treat, manage, and monitor sex offenders who are subject to the supervision of the criminal justice system should be continued. During this review, the SOMB and the Division of Criminal Justice must demonstrate that the program serves the public interest. DORA's findings and recommendations are submitted via this report to the Office of Legislative Legal Services.

Methodology

As part of this review, DORA staff performed an extensive literature review; interviewed the Division of Criminal Justice staff and SOMB members; reviewed SOMB and court records; interviewed individual stakeholders and representatives of stakeholder organizations; reviewed Colorado statutes and rules; and examined similar programs in other states and nations.

Profile of the SOMB

There is at least one victim in every sex crime: an individual who has suffered based on the criminal actions of another. The SOMB is an entity that exists to minimize the chance that someone will become a victim of a sex crime or be victimized by an individual who is in the Colorado criminal justice system for such actions. It is created by the Standardized Treatment Program for Sex Offenders (Act). The SOMB has developed systems, standards, and guidelines for the treatment of individuals who commit sexual offenses and who live in Colorado communities. According to the Act, "treatment" is, "...therapy, monitoring, and supervision of any sex offender which conforms to the standards created by the [SOMB]..."² With that definition in mind, the SOMB develops policies that are employed by multiple governmental agencies, the courts, nonprofits, and professionals who treat offenders.

SOMB Policy-Making

The SOMB's major tasks are developing, measuring the efficacy of, and revising standards and guidelines for treating adult, juvenile, and developmentally disabled (DD) offenders. Presentence evaluations, specialized treatment providers, and management standards have provided levels of safety and quality control that were not available prior to the SOMB's creation.

The 25-member SOMB develops policies which serve as guidelines for the multiple segments of Colorado government that deal with adult sex offenders and juveniles who have committed sexual offenses. Its *Standards and Guidelines for the Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders* and *Standards and Guidelines for the Evaluation, Assessment, Treatment and Supervision of Juveniles Who Have Committed Sexual Offenses*, as well as other policies and research, affect the judicial branch via court decisions and probation practices; Department of Corrections decisions and practices concerning the treatment of individuals both incarcerated and on parole; Department of Human Services, Division of Youth Corrections policies concerning the treatment of juveniles who have committed sexual offenses; counties', municipalities' and citizens' operations and plans for offenders in their jurisdictions; and other processes that are indirectly connected by this policy topic.

Public safety is its overriding concern and employing best practices that are founded on "evidence-based standards," is its mandate.³ To be an informed SOMB member requires a large time commitment and the desire to read a copious amount of sometimes dense research.

² § 16-11.7-102(4), C.R.S.

³ § 16-11.7-101(2), C.R.S.

Because a large, 25-member board can be an impediment to completing specific assignments in a timely manner, much of the SOMB work is performed in subcommittees. When the need arises, the SOMB forms subcommittees to perform specific tasks. Some committees last for short periods of time and others are permanent.

The Containment Model

Many sex offenders are sentenced to probation or are paroled from prison after serving a term of imprisonment. The SOMB has developed a “containment model” as an efficient means to provide for community-based treatment of adult sex offenders and juveniles who have committed sexual offenses. The processes, one for adults and one for juveniles, and each with additional provisions for offenders with developmental disabilities, are geared to monitoring the offenders as needed, treating behaviors, and holding them accountable for their actions while under supervision. The models advocate a comprehensive and collaborative team methodology toward sex offender treatment.

The purpose of the containment model is to treat the individual offender based on his or her risk to the public, to demand accountability, and to provide behavior modification therapy. A key is that the treatment of sex offenders is intended to be individualized. The Community Supervision Team (CST), in the case of adults, or the Multidisciplinary Team (MDT), in the case of juveniles, is the foundation for implementation. Very important to understanding the containment model is in the operationalization of the Act’s definition of treatment. A containment team consists, at minimum, of the supervising officer, the treatment provider and the polygraph examiner.⁴ These are the individuals responsible for the supervision, therapy, and monitoring of each offender. In other words, a team is responsible for the “treatment,” as it is defined by the Act. The team may be expanded to include other community members who are significant in the offender’s life. Ideally the team communicates frequently to ensure maximum management of the offender in the community. The goals of treatment in the community are to help the offender control his or her behavior by regulating surroundings, keeping him or her answerable for his or her actions, and protecting the public.

⁴ SOMB. *Standards and Guidelines for the Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders*. p.10.

An MDT is more fluid in nature than a CST and consists of members who perform specific roles based on their position as part of the MDT for that juvenile. A typical MDT may consist of:⁵

- A court-appointed supervising officer;
- A treatment provider;
- A polygraph examiner (when applicable);
- A Colorado Department of Human Services caseworker, when one is assigned to the subject;
- A Division of Youth Corrections representative, when applicable;
- A victim representative;
- A therapeutic care provider (when applicable);
- The parents, caregivers and other natural support systems; and
- A representative from schools/school districts.

While sex offender management is greatly specialized, the treatment of DD sex offenders is even more specialized. SOMB-developed DD Standards are intended to address the special circumstances presented by that population. In DD cases, the CST and the MDT likely include extra members based on the cognitive ability of the offender. These may include:

- Community Centered Board case managers,
- Residential providers,
- Supported living coordinators,
- Day program providers,
- Vocational or educational providers,
- Guardians,
- Social services personnel,
- Family members, or
- Others, depending on needs.

Though the CST and MDT are meant to standardize treatment, the monitoring of offenders is different depending on where in the state an individual offender lives. Treatment varies among Colorado's regions due to the predispositions of the team members, the resources allocated to support, and the attitudes of the community in which the offender lives.

⁵ SOMB. *Standards and Guidelines for the Evaluation, Assessment, Treatment, and Supervision of Juveniles Who Have Committed Sexual Offenses*. Revised 2014. § 5.110

Legal Framework

History of Regulation

In 1992, the General Assembly created the Sex Offender Management Board (SOMB) as the 12-member, Sex Offender Treatment Board. Its fundamental charge is to develop standards for the treatment of convicted sex offenders. The *Standards and Guidelines for the Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders (AS&G)* was first published in 1996 and has been modified as new data and information regarding sex offender management becomes available. The most recent revision began during July of 2014 and is ongoing as of the publishing of this sunset review.

The General Assembly directed the SOMB to develop the *Standards and Guidelines for the Evaluation, Assessment, Treatment and Supervision of Juveniles Who Have Committed Sexual Offenses (JS&G)* in 2002. It too has been revised since initial publication.

Similar to the evolution of the AS&G and JS&G, SOMB membership has changed over time. What was initially a 12-member board now consists of 25 members who represent stakeholders from various groups affected by sex offender treatment.

Legal Summary

The SOMB and its assigned duties are outlined in the Standardized Treatment Program for Sex Offenders (Act), which can be found in Article 11.7 of Title 16, Colorado Revised Statutes (C.R.S.). The purpose of the SOMB is to establish evidence-based standards for the evaluation, identification, treatment, management, and monitoring of adult sex offenders and juveniles who have committed sexual offenses. The standards are to be employed at each stage of the criminal and juvenile justice systems to enhance public protection and prevent reoccurrence of sex-offense crimes.⁶

There are several misdemeanors and felonies that the Act qualifies as sex offenses, including:⁷

- Sexual assault;
- Unlawful sexual contact;
- Sexual assault on a child;
- Sexual assault on a child by one in a position of trust;
- Sexual assault on a client by a psychotherapist;
- Enticement of a child;
- Incest;

⁶ § 16-11.7-101, C.R.S.

⁷ § 16-11.7-102(3), C.R.S.

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- Aggravated incest;
 - Human trafficking of a minor for sexual servitude;
 - Sexual exploitation of children;
 - Procurement of a child for sexual exploitation;
 - Indecent exposure;
 - Soliciting for child prostitution;
 - Pandering of a child;
 - Procurement of a child;
 - Keeping a place of child prostitution;
 - Pimping of a child;
 - Inducement of child prostitution;
 - Patronizing a prostituted child;
 - Class 4 felony internet luring of a child;
 - Internet sexual exploitation of a child;
 - Public indecency, if a second offense is committed within five years of a previous offense or a third or subsequent offense is committed;
 - Invasion of privacy for sexual gratification; and
 - Criminal attempt, conspiracy, or solicitation to commit any of these offenses.

If a person is convicted of one these enumerated offenses he or she is considered a sex offender according to Colorado law and subject to the provisions of the Act and the policies promulgated by the SOMB.

SOMB Composition

The 25-member SOMB is made up of individuals representing state agencies, the court system, schools, victims, and sex offenders, including:⁸

- A member who represents the Colorado Department of Corrections, appointed by the Executive Director;
- A member who has experience with juveniles who have committed sexual offenses and who are in the public school system, appointed by the Commissioner of Education;
- A member who represents prosecuting attorneys with recognizable expertise in prosecuting sexual offenses, appointed by the Executive Director of the Colorado District Attorneys' Council;
- Three members appointed by the Chief Justice of the Supreme Court:
 - A representative of the Judicial Department,
 - A representative who is a District Court Judge, and
 - A representative who is either a Juvenile Court Judge or Magistrate;

⁸ § 16-11.7-103(1), C.R.S.

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- Three members appointed by the Executive Director of the Colorado Department of Human Services:
 - A representative who has recognizable expertise in child welfare and case management,
 - A representative of the Division of Youth Corrections, and
 - A representative who is a provider of out-of-home placement services with recognizable expertise with juveniles who have committed sexual offenses;
 - 16 members appointed by the Executive Director of the Colorado Department of Public Safety (DPS):
 - A representative from the Division of Criminal Justice;
 - A representative who represents law enforcement with recognizable expertise in addressing sexual offenses and victimization;
 - A member of a community corrections board;
 - A public defender with recognizable expertise related to sexual offenses;
 - A county director of social services;
 - A clinical polygraph examiner;
 - A private criminal defense attorney with recognizable expertise related to sexual offenses;
 - Two licensed mental health professionals with recognizable expertise in the treatment of adult sex offenders;
 - Two licensed mental health professionals with recognizable expertise in the treatment of juveniles who have committed sexual offenses;
 - Two county commissioners or members of the governing council for a jurisdiction that is a contiguous city and county, one from an urban or suburban county and one from a rural county; and
 - Three representatives from sexual abuse victims and victims' rights organizations.

Policy-Oriented Duties

The SOMB is charged with many policy-related duties and promulgates policies encompassing all phases of sex offender treatment. It must develop tools for identifying a sex offender and the risk he or she might present to the community; collaborate with the Judicial Department, Colorado Department of Corrections, and the parole board on policies for sentencing and releasing offenders from incarceration; establish offender community living guidelines; and research and analyze the effectiveness of policies and procedures it has developed.

The SOMB also has prevention- and education-related duties. It is directed to develop a process so people in the community may obtain information about registered sex offenders. This includes a statement, to be used in each public school for the parents of children attending the school, describing procedures by which community members may obtain law enforcement agency information. It also develops general information about adults and juveniles who have committed sexual offenses, including safety concerns, and other relevant materials.⁹

Much of the policy-oriented work is accomplished by the development of the AS&Gs and JS&Gs. These are the foundation of sex offender treatment in Colorado. They lay out the SOMB's philosophies toward offender treatment in the "Guiding Principles," as well as defining who, what, where, when, and how treatment proceeds.

Practice Authorization-Oriented Duties

In addition to its policy-oriented duties, the SOMB is directed to qualify the individuals responsible for offender treatment in the community, as well as therapists and polygraphers used by the Colorado Department of Corrections.

Recall that treatment is defined in the Act as, "...therapy, monitoring, and supervision of any sex offender which conforms to the standards created by the [SOMB]..."¹⁰ The Act states that any juvenile or adult sex offender considered for probation must be evaluated for treatment and risk to the community.¹¹ Likewise, any conviction carrying a sentence of probation, community corrections, or incarceration with the Colorado Department of Corrections, commitment to the Colorado Department of Human Services, placement on parole, or out-of-home placement requires an evaluation for treatment. Treatment may be altered through subsequent recommendations by the Colorado Department of Corrections, the Judicial Department, Colorado Department of Human Services, or DPS, whichever has jurisdiction.¹²

All evaluations as well as any treatment or polygraph services must be provided by individuals who conform to the SOMB standards and guidelines and who are listed with the SOMB.¹³ To be listed, the Act directs the application and review process consist of three parts:

- A criminal history record check which includes a fingerprint investigation. The SOMB must forward the fingerprints to the Colorado Bureau of Investigation for a state criminal history record check and to the Federal Bureau of Investigation for a national criminal history record check.¹⁴
- A verification of qualifications and credentials.¹⁵

⁹ § 16-11.7-103(4)(I), C.R.S.

¹⁰ § 16-11.7-102(4), C.R.S.

¹¹ § 16-11.7-104, C.R.S.

¹² § 16-11.7-105, C.R.S.

¹³ § 16-11.7-106(1), C.R.S.

¹⁴ § 16-11.7-106(2)(a)(I), C.R.S.

¹⁵ § 16-11.7-106(2)(a)(II), C.R.S.

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- Any background investigation deemed necessary beyond the scope of the initial criminal history record check. In conducting this background investigation, the SOMB must acquire information and recommendations applicable to the applicant's fitness to provide treatment.¹⁶

The SOMB also determines a renewal process for all listed providers¹⁷ and has the authority to determine the criteria for an individual to be re-listed once he or she has been delisted.¹⁸

Among the specific qualifications required of an individual who wants to become a listed evaluator or therapy provider is that he or she possess a Department of Regulatory Agencies (DORA)-issued professional mental health license as a psychologist, social worker, marriage and family therapist, professional counselor, or addiction counselor, or be a registered psychotherapist.¹⁹ Because of the dual qualification, there are provisions for interagency notification. Complaints and grievances must be sent to DORA for investigation and DORA must notify the SOMB of the receipt of any complaint or grievance against a provider not referred by the SOMB.²⁰ The applicable DORA licensing board is required to investigate both claims of violations of a professional practice act and the SOMB standards.²¹ Notwithstanding any action by DORA, the SOMB has the authority to delist a listed provider for a violation of the SOMB standards and guidelines.²²

¹⁶ § 16-11.7-106(2)(a)(III), C.R.S.

¹⁷ § 16-11.7-106(5), C.R.S.

¹⁸ § 16-11.7-106(4), C.R.S.

¹⁹ AS&G 4.300(B) and AS&G 4.5(B), JS&G 4.240(C) and JS&G 4.5(B).

²⁰ § 16-11.7-106(7)(a)(I), C.R.S.

²¹ § 16-11.7-106(7)(a)(II), C.R.S.

²² § 16-11.7-106(7)(b)(1), C.R.S.

Program Description and Administration

The Sex Offender Management Board (SOMB) is tasked by the General Assembly to promulgate policies to treat sex offenders in different phases of the criminal justice system. SOMB staff is housed in the Department of Public Safety (DPS), Division of Criminal Justice. Table 1 enumerates the full-time equivalent (FTE) employees allotted and the expenditures made to support SOMB activities during the period under sunset review.

Table 1
SOMB Expenditures
Fiscal Years 09-10 through 13-14

Fiscal Year	Total Program Expenditures	FTE
09-10	\$503,520	4.90
10-11	\$516,947	5.24
11-12	\$485,770	4.53
12-13	\$509,071	4.77
13-14	\$495,301	4.61

Table 1 illustrates that both the program expenditures and the FTE were fairly stable with only slight fluctuations. Program expenditures averaged approximately \$502,000 and the staff averaged approximately 4.8 FTE. The staff are experts in many facets of the SOMB's activities. They perform extensive research, add expert advice, perform training and coordinate educational activities, staff the SOMB and its subcommittees, as well as execute other administrative tasks involved with supporting a policy and regulating entity. In fiscal year 13-14, the staff positions were allotted as follows:

- Program Manager - 0.90 FTE;
- Adult Standards Coordinator - 1.0 FTE;
- Juvenile Standards Coordinator - 0.81 FTE;
- Program Assistant -0.75 FTE;
- Administrative Assistant - 0.35 FTE; and
- Statistical Analyst - 0.80 FTE.

The SOMB is a 25-member group that meets monthly to discuss a wide range of issues concerning the treatment of sex offenders who are part of the Colorado criminal justice system. The SOMB brings together stakeholders from the courts, prisons, the defense bar, mental health fields, and several governmental agencies, as well as advocates for both victims and sex offenders. The purpose is to engage all the voices in developing sound public policy based on the best available research and practices.

Committees

Because the breadth of SOMB policy-affected areas is so wide, because much of the subject matter that the SOMB considers demands specific expertise, rather than general knowledge, and because a 25-member board can be somewhat unwieldy, much of the SOMB's work is performed by subcommittees.

Most often, the committees include members from the SOMB as well as others from the stakeholder community with specific interest or expertise in the subcommittee's subject matter. Each committee is staffed by DPS staff who is generally encouraged, if not expected, to actively participate in committee discussions and research. Additionally, because all meetings, except those that deal with licensing/disciplinary issues, are open to the public, it is rare outside stakeholders are not in attendance. The treatment of sex offenders affects so many individuals, communities, and governmental organizations, that every conversation, deliberation, and decision is monitored by many stakeholder groups and individuals.

Treatment in this circumstance has a very broad definition, "...therapy, monitoring, and supervision of any sex offender which conforms to the standards created by the [SOMB]..."²³ Considering that definition, it is understandable that the groups and individuals involved in, "therapy, monitoring, and supervision," are varied and vast, and come from both inside and outside of government.

Some of the committees are standing and others meet to perform particular tasks and then disband. During the spring of 2015, when much of the research took place for this sunset review, there were several committees that met. Those committees included:

- Adult Standards Revisions Committee,
- Juvenile Standards Revision Committee,
- Application Review Committee,
- Application Review Committee II,
- Best Practices Committee,
- Circles of Support and Accountability Advisory Committee,
- Continuity of Care Committee,
- Domestic Violence/Sex Offense Crossover Committee,
- Risk Assessment Committee,
- School Personnel Reference Guide Committee,
- Sex Offender Registration Legislative Work Group,
- Training Committee, and
- Victim Advocacy Committee.

²³ § 16-11.7-102(4), C.R.S.

Note that with the exception of the Application Review Committees, based on the title of each committee, it can be correctly concluded that the committees met with the purpose of analyzing and developing public policy, the major duty of the SOMB.

Producing the *Standards and Guidelines for the Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders (AS&G)* and the *Standards and Guidelines for the Evaluation, Assessment, Treatment and Supervision of Juveniles Who Have Committed Sexual Offenses (JS&G)* is the fundamental policy task assigned to the SOMB. These documents are developed and vetted in the Adult Standards Revisions and Juvenile Standards Revision Committees. Once published, these documents serve as the foundation for the treatment of sex offenders in the criminal justice system.

Other committees help fulfill the additional statutory directives assigned to the SOMB. For example, the Risk Assessment Committee helps fulfill the directive to, “consult on, approve, and revise,” a risk assessment screening instrument employed by the courts to assist in sentencing.²⁴ Risk assessments are also considered by the Colorado Department of Corrections in parole hearings.

Educating and Reporting

The SOMB produces educational information and trainings, and activity reports covering the many facets of sex offender treatment. Some of this activity is a result of explicit instructions in the Standardized Treatment Program for Sex Offenders (Act) and other information is a byproduct of the research- and policy-oriented activities charged to the SOMB.

The Act directs the SOMB to collaborate with law enforcement, victim advocacy, the Colorado Department of Education, and DPS to develop and revise, as appropriate, educational materials concerning safety issues related to sex offenders. The information is to be used in schools.²⁵ The SOMB produced the *School Resource Guide to Sex Offender Registration* and the *Reference Guide for School Personnel Concerning Juveniles Who Have Committed Sexually Abusive and Offensive Behavior*, both were revised in 2014.

The SOMB makes various trainings available through seminars, webinars, and an annual conference. The conference presents several training sessions for interested parties that attract speakers who are nationally-recognized, subject-matter experts.

²⁴ § 16-11.7-104(4)(d), C.R.S.

²⁵ § 16-11.7-103(4)(l), C.R.S.

Table 2 below lists the number of trainings presented by the SOMB during the period under sunset review.

Table 2
SOMB Trainings
Fiscal years 09-10 through 13-14

Fiscal Year	Number of Trainings	Number of Attendees
09-10	29	965
10-11	29	755
11-12	33	1,397
12-13	35	900
13-14	64	1,450
TOTAL	190	5,467

The substantial increase in the number of trainings offered from fiscal year 12-13 to fiscal year 13-14 is due to improvements made by staff in tracking need and catering the trainings to the audience.

Since 2002, the SOMB, the Colorado Department of Corrections, and the Judicial Department have collaborated on an annual report, the *Lifetime Supervision of Sex Offenders*, to fulfill a General Assembly reporting requirement.²⁶ Since January 2012, the General Assembly has also required the SOMB to report on the status of offender treatment annually.²⁷ To satisfy other statutory obligations, the SOMB has produced reports on the effectiveness of the AS&G and JS&G.

The Act also directs the SOMB to research, analyze, and make recommendations about living arrangements for adult sex offenders living in Colorado communities.²⁸ In 2004, it produced the *Report on Safety Issues Raised by Living Arrangements for and Location of Sex Offenders in the Community* and the *Living Arrangements Guide*. These were followed, in 2009, with the *White Paper on the Use of Residence Restrictions as a Sex Offender Management Strategy*.

²⁶ § 18-1.3-1011, C.R.S.

²⁷ § 16-11.7-109(2), C.R.S.

²⁸ § 16-11.7-103(4)(g), C.R.S.

Table 3 lists some of the research produced by the SOMB during the fiscal years considered for this review.

Table 3
SOMB Research Production
Fiscal Years 11-12 through 14-15

Fiscal Year	SOMB Reports and Reviews
10-11	<ul style="list-style-type: none"> • No Known Cure Guiding Principle Research
11-12	<ul style="list-style-type: none"> • Adult Standards and Guidelines Outcome Evaluation
12-13	<ul style="list-style-type: none"> • Juvenile Standards and Guidelines Outcome Evaluation* • Sex Offender and Suicide Prevention Literature Review • Sex Offender Denial Literature Review • Sexually Stimulating Materials Literature Review
13-14	<ul style="list-style-type: none"> • 2014 Annual Legislative Report* • Cross-over Sexual Offending Behavior • Female Sex Offender Literature Review • Section 8.0 - Victim Clarification and Reunification Literature Review • State Sex Offender Registration Classification • Young Adult Protocol
14-15	<ul style="list-style-type: none"> • 2015 Annual Legislative Report* • Criteria, Protocols, and Procedures for Community Notification Regarding Sexually Violent Predators • Risk, Need, Responsivity: Principles of Effective Treatment and Supervision • School Reference Guide Literature Review

*The SOMB produced annual legislative reports beginning in 2011. The reports were combined with the *Adult Standards and Guidelines Outcome Evaluation* in fiscal year 11-12 and the *Juvenile Standards and Guidelines Outcome Evaluation* in fiscal year 12-13.

On its website, the SOMB also has an “Additional Resources” page which lists a wide array of research. Among other items, it lists books, newsletters, reference guides, resources for circles of support, a self-produced *Educational Information About Sex Offenses* paper, and a *Disaster Emergency Safety Plan*, which is a contract that dictates a sex offender’s conduct and oversight during emergencies such as natural disasters.²⁹

The research conducted by the SOMB is greater than what is listed in this overview. The items are noted because many of these pieces are produced as a result of statutory mandates and they illustrate the broad range of SOMB research and policy activities.

²⁹ Department of Public Safety, Colorado Division of Criminal Justice, *Sex Offender Management Board , Additional Resources*, Downloaded May 5, 2015 from <https://sites.google.com/a/state.co.us/dcjsomb/home/resources>

Provider Listing

The Act requires the SOMB to develop an application and review process for the listing of treatment providers, evaluators, and polygraph examiners. The SOMB qualifies these professionals to work with adult, juvenile, and developmentally disabled (DD) sex offenders. The SOMB has designated an Application Review Committee (ARC) to conduct the listing functions for the SOMB.

The listing process includes a criminal background check and verification of qualifications.³⁰ Each profession has several educational and experience requirements and multiple levels of listing. These requirements also get more stringent as the listing level increases.

At present, any individual who is working towards applying for listed status is able to provide services if supervised by a full operating level professional. In order to do so the individual must file an intent to apply with the SOMB.

To provide services with this classification one must:³¹

- Submit a letter of intent to apply within 30 days of commencing services to sex offenders;
- Submit a fingerprint card and a money order for \$39.50 for a criminal history check;
- Be supervised by a full operating level professional and submit a signed supervision agreement; and
- Agree to submit an application for listing status within one year from the date of *Intent to Apply* status.

To be placed on any list at a more advanced level, an applicant must establish that he or she meets all of the qualifications at the level of listing desired. The qualifications are itemized for each level of each profession in the AS&G and the JS&G and reviewed by the ARC. The SOMB lists only individuals not businesses. Each applicant is required to submit to the SOMB an application pertinent to the level and listing desired.

Every initial and renewal listing application submitted to the SOMB, regardless of the type of listing, must be accompanied by a \$100 fee.

Polygraph Examiners

A person may become a listed, sex offender, polygraph examiner at the associate level or the full operating level.

³⁰ § 16-11.7-106(2)(a), C.R.S.

³¹ Department of Public Safety, Colorado Division of Criminal Justice, *Sex Offender Management Board, Adult Application Material*. Retrieved May 7, 2015 from <https://cdpsdocs.state.co.us/SOMB/APPLICATION/IntentStatus.pdf>

ASSOCIATE LEVEL POLYGRAPH EXAMINER

An associate level polygraph examiner can execute post-conviction, sex offender polygraphs, but only under the supervision of a full operating level polygraph examiner. To qualify for this level of regulation an individual must satisfy all of the following conditions:³²

- Graduate from an accredited American Polygraph Association school;
- Acquire a baccalaureate degree from a four-year college or university;
- Complete at least 50 polygraph examinations on post-conviction sex offenders while at the *Intent to Apply* level;
 - 10 examinations must be with the DD population.
- Complete the 40 hours of training mandated in the AS&G and JS&G;
 - 10 hours of training must be with the DD sex offender population.
- Demonstrate competency and conduct all examinations consistent with the reasonably accepted standards of practice;
- Provide any SOMB-requested references;
- Submit quality assurance protocol forms;
- Submit to a current criminal background check; and
- Demonstrate compliance with the applicable standards.

In addition to these criteria, an applicant may not have a conviction, a deferred judgment, or have a court-accepted plea of guilty or *nolo contendere* for a municipal ordinance violation, misdemeanor, or felony if it is related to the ability of an applicant to practice. In these circumstances, the ability to practice is determined by the ARC.³³

The listing criteria for a juvenile associate level polygraph examiner are only slightly different. The applicant must complete at least 50 polygraph examinations, 25 being with juveniles, while at the *Intent to Apply* level.³⁴

Every associate level polygraph examiner must have a file with the SOMB that includes both the individual's application and a supervision agreement with his or her supervisor. The supervision agreement specifies a minimum of four hours of one-to-one direct supervision monthly, and that the supervisor is responsible for the polygraph results.³⁵

FULL OPERATING LEVEL POLYGRAPH EXAMINER

Each associate level polygraph examiner wishing a change of status to full operating level polygraph examiner must document 200 post-conviction examinations as well as submit a supervisor letter attesting to his or her readiness and completion of requirements.³⁶ If the individual wishes to work with juveniles, 25 of those examinations must have been with juveniles.³⁷

³² AS&G 4.700.

³³ AS&G 4.700(F).

³⁴ JS&G 4.700.

³⁵ AS&G 4.710 and JS&G 4.710.

³⁶ AS&G 4.730 and JS&G 4.730.

³⁷ JS&G 4.730(A).

To qualify for this listing level, an individual must satisfy all of the conditions of the adult associate level plus complete 40 hours of sex offense specific, post-graduate, American Polygraph Association-approved training in evaluation, assessment, treatment and behavioral monitoring, within five years of application. Of the 40 hours, 10 must be specific to adult sex offenders if the individual wants to be listed as an adult examiner or 10 must be specific to juveniles if the individual wants to be listed as a juvenile examiner. All full level polygraph examiners must have 10 hours specific to the DD sex offender population.³⁸

Table 4 enumerates the listed polygraph examiners for the period examined by this sunset review.

Table 4
Listed Polygraph Examiners
Fiscal Years 09-10 through 13-14

Listing Status	FY 09-10	FY 10-11	FY 11-12	FY 12-13	FY 13-14
Adult Polygraph Examiners	20	16	25	26	26
Adult DD Polygraph Examiners	4	8	11	11	14
Juvenile Polygraph Examiners	0*	2	17	20	19
Juvenile DD Polygraph Examiners	0*	0*	1	2	8

*There was no listing status for this category during these years.

Table 4 illustrates that the number of polygraph examiners, in all categories, increased over the period under sunset review.

Polygraph Examiner Renewal

Associate level polygraph examiners must apply for continued placement on the list every three years. Though there are population-specific stipulations, the basic requirements for continued listing are:³⁹

- 40 hours of continuing education;
- 75 polygraph examinations;
- References;
- Peer review annually;
- Current background investigation;
- Standards and SOMB policy compliance; and
- No conviction, deferred judgment, or court-accepted plea of guilty or *nolo contendere* for a municipal ordinance violation misdemeanor or felony if it is related to the ability of an applicant to practice.

³⁸ AS&G 4.800 and JS&G 4.800.

³⁹ AS&G 4.720 and JS&G 4.720.

Requirements for continued placement on the list for full operating level polygraph examiners are similar to the associate level. The difference is that a full operating level provider must perform 100 post-conviction, sex offense examinations during the three-year listing period.⁴⁰

Treatment Providers and Evaluators

As of the writing of this sunset review, the SOMB is transitioning from a tenure-based model for qualifying treatment providers and evaluators to a competency-based model. Consequently, two sets of requirements are in use and broadly described here. Staff expects the newer system to be in place and fully operating by February of 2016.

There are particular requirements depending on the category of sex offender with whom one chooses to work, i.e., adult, juvenile, or adult or juvenile with developmental disabilities. However, every treatment provider and evaluator must currently be a registered psychotherapist or hold a valid Department of Regulatory Agencies (DORA)-issued license as a psychologist, social worker, marriage and family therapist, professional counselor, or addiction counselor. All treatment providers and evaluators must begin at the associate level.⁴¹ Each person practicing at the associate level must work under the supervision of a full level professional who reviews and substantiates work product.⁴² Each listing is valid for three years.

Just as with the polygraphers, there are requirements that each treatment provider and evaluator must:⁴³

- Demonstrate competency and be consistent with the generally accepted standards of practice;
- Provide any requested references;
- Submit to a current criminal background check;
- Demonstrate compliance with the AS&G and/or JS&G; and
- Have no conviction, deferred judgment, or have accepted in court a plea of guilty or *nolo contendere* for a municipal ordinance violation misdemeanor, or felony if it is related to the ability of an applicant to practice.

TREATMENT PROVIDERS

Treatment providers in this context are actually individuals who provide counseling or therapy. This is a more specific definition of “treatment” compared to the statutory definition formalized in the Act.

⁴⁰ AS&G 4.800(B) and 4.810(B.DD).

⁴¹ AS&G 4.2000 and JS&G 4.200.

⁴² AS&G 4.210 and JS&G 4.210.

⁴³ AS&G 4.300 and JS&G 4.300.

In the current tenure-based system, an applicant for an associate level treatment provider must have at least a baccalaureate in a behavioral science, have training or professional experience in counseling or therapy, and be a registered psychotherapist or hold a valid Colorado mental health provider license. He or she must also complete a specifically computed number of hours of supervised, clinical therapy with indicated populations of sex offenders, i.e., adult, adult DD, juvenile, or juvenile DD.

A full operating level treatment provider may treat sex offenders without supervision and supervise associate level treatment providers. To qualify, a provider must be an associate in good standing and hold a valid license issued by a mental health board, or be a psychiatric clinical nurse specialist. There are also specifically enumerated clinical therapy and training hours that must be completed for each listing category.⁴⁴

EVALUATORS

Evaluations identify levels of risk and specific risk factors that require attention in sex offender treatment and supervision. They also aid in the sentencing of adult sex offenders and juveniles who have committed sexual offenses. Evaluators conduct evaluations in a comprehensive and factual manner regardless of the offender's status within the criminal justice system.⁴⁵ An evaluator can be listed as an associate or full operating level who works with adults, juveniles, or both.

To be eligible to apply for listing as an associate level evaluator, an individual must be listed as an associate or full level treatment provider. An associate level evaluator may evaluate sex offenders under the supervision of a full operating level evaluator. He or she must also complete a specifically computed number of evaluations and complete specific number of training hours with the target/listing populations.

A full operating level evaluator may evaluate sex offenders without supervision and supervise evaluators operating at the associate level. To qualify, an evaluator must have a license in good standing issued by a mental health board, or be a psychiatric clinical nurse specialist. A candidate must be applying for a full operating treatment provider listing at the same time, or be currently listed as a full operating level treatment provider. As with the other listed professions in the current regime, there are specifically enumerated training requirements.

⁴⁴ AS&G 4.400 and JS&G 4.320.

⁴⁵ AS&G 2.000.

Tables 5 and 6 recount the number of treatment providers and evaluators listed to treat and evaluate sex offenders during the fiscal years examined for the sunset review.

**Table 5
Number of Adult Providers
Fiscal Years 09-10 through 13-14**

Provider Listing Status	FY 09-10	FY 10-11	FY 11-12	FY 12-13	FY 13-14
Treatment Providers	185	184	203	228	211
DD Treatment Providers	21	20	29	30	34
Evaluators	86	81	81	85	81
DD Evaluators	16	11	12	11	11

Table 5 shows that while the number of adult evaluators has remained fairly stable, the number of treatment providers increased during the cohort. The number of DD treatment providers increased 62 percent.

**Table 6
Number of Juvenile Providers
Fiscal Years 10-11 through 13-14**

Provider Listing Status	FY 10-11	FY 11-12	FY 12-13	FY 13-14
Treatment Providers	108	170	172	157
DD Treatment Providers	2	11	11	22
Evaluators	22	52	56	46
DD Evaluators	1	5	5	7

There was no requirement for DD listing prior to fiscal year 10-11. While there was fluctuation in the number of juvenile providers in each discipline, the total number of providers increased radically during the review period.

Treatment Provider and Evaluator Renewal

ASSOCIATE LEVEL RENEWAL

To remain listed as an associate level provider, currently an individual must deliver a specified number of hours of therapy with the targeted offender population and complete a specified number of hours of continuing education. The requirements must be completed within the three year listing period.⁴⁶

⁴⁶ AS&G 4.310, 4.410, 4.510 and JS&G 4.310, 4.400, 4.510.

FULL OPERATING LEVEL RENEWAL

To renew as a full operating level treatment provider, an individual must be listed in good standing, satisfy continuing education requirements, and be active through clinical experience, supervision, administration, research, training, teaching, consultation and/or policy development.⁴⁷

When renewing as a full operating level evaluator, the evaluator has the option of continuing as both a full operating treatment provider and evaluator, as long as all of the prerequisite requirements are in place. The evaluator also has the option of discontinuing as a sex offender treatment provider and continuing only as a full operating level evaluator, as long as the prerequisite renewal requirements are satisfied.⁴⁸

Tables 7 and 8 recount the renewals and the renewal with modifications in listing level, for adult and juvenile treatment providers and evaluators during the fiscal years examined for the sunset review. The tables also note the number of individuals who modified their listing status. The SOMB recently changed licensing databases. All of the previous data detailing the number of people listed at each listing level, for each profession was not backfilled as of the writing of this sunset review. Consequently, there is no breakdown of renewal by practice specialty.

Table 7
Adult Provider Renewals
Fiscal Years 08-09 through 13-14

	FY 09-10	FY 10-11	FY 11-12	FY 12-13	FY 13-14
Renewal Applications	45	45	49	46	53
Change of Status	9	10	13	16	15

Table 8
Juvenile Provider Renewals
Fiscal Years 08-09 through 13-14

	FY 09-10	FY 10-11	FY 11-12	FY 12-13	FY 13-14
Renewal Applications	51	41	42	28	47
Change of Status	Not Applicable	9	10	13	16

Tables 7 and 8 illustrate that many individuals choose to modify their listing status each year. Between 20 and 46 percent of the practicing professionals chose to increase their level of practice capability among the years reviewed.

⁴⁷ AS&G 4.420(C) and JS&G 4.420.

⁴⁸ AS&G 4.610(B) and JS&G 4.610.

Competency-Based Listing

Under SOMB instruction, the Best Practices Committee developed a new protocol under which treatment providers and evaluators become listed. This new system is in the process of being implemented and is projected to be fully operational by February of 2016. The competency-based protocol measures therapeutic competencies rather than relying solely on specific numbers of hours to qualify treatment providers and evaluators. The new system still requires specific training and supervision hours to be completed but it also evaluates the aptitude of providers in a number of key areas.

Moreover, there is a new provider ranking arrangement. There will no longer be an *Intent to Apply* status. One begins at the associate level, can move to the full operating level, and the highest level is the clinical supervisor. While a full operating level provider may supervise an associate on the job, evaluations for a change in listing status must be performed by a clinical supervisor. The clinical supervisor level is now regulated because the position has the responsibility of determining clinical competency.

There are 10 competencies in which each treatment provider must demonstrate proficiency and an additional one to treat the DD population. Those are:

- Development of Professional Self,
- Assessment and Needs Formulation,
- Clinical Intervention and Goal Setting,
- Professional Communication Skills,
- Knowledge of Normative Development and Sexuality,
- Knowledge and Integration of SOMB Standards and Guidelines,
- Knowledge of Victimization,
- Knowledge of Offense Specific Evaluations,
- Use of Physiological (Plethysmograph and Polygraph) and Psychological (Visual Reaction Time) measures, and
- Adult/Juvenile Treatment.

The additional DD competency is entitled, "Persons with Intellectual Disabilities."

In addition to the treatment provider competencies, evaluators must also demonstrate aptitude in a classification entitled, "Knowledge and Understanding in Conducting Offense Specific Evaluations."

To be a clinical supervisor an individual must demonstrate additional competency in the following three categories:

- Professional knowledge,
- Organization skills, and
- Supervisor duties.

A clinical supervisor is required to rate candidates in each of the competencies using the following seven-choice scale.

Table 9
Competency-Model
Treatment Provider Evaluation Scale

Grade	Definition
NA	No Opportunity to Evaluate this Competency
1	No Demonstrated Competency (Fail)
2	Initial Ability (Beginning ability with support of supervision)
3	Increased Growth (Demonstration of knowledge integration but continues to require substantial guidance and supervision)
4	Improved Consistency (Routinely demonstrates the skill or knowledge required for the competency)
5	Highly Effective (Consistent and accurate use of skill and knowledge required for competency in complex situations)
6	Autonomous/Fully Proficient (Generalizes skills previously learned to new situations)

When an individual applies for a change in listing status, an evaluation covering each of the competencies must accompany each application. The ARC bases its listing decisions on an assessment of both the application and the evaluation.

Complaints/Disciplinary Actions

Because complaints are related to an individual’s ability to practice and maintain listing status, the disposition of complaints is a function of the ARC. When the SOMB staff receives a complaint it is reviewed to determine if the SOMB has jurisdiction over the issue. If staff determines that the SOMB has jurisdiction, it forwards the complaint to the ARC which reviews it for potential AS&G or JS&G violations. If there is a possible violation, further investigation is conducted.

After reviewing the results of the investigation, the ARC may act as an intermediary to resolve a complaint through mutual agreement with the listed provider or it might request the provider and complainant appear before the ARC to resolve the issue. When there is a determination that there is a violation of the AS&G or JS&G, the ARC may address the violation through practice modification, training, or delisting the provider.

If there is a desire by the provider to appeal a decision of the ARC, the appeal is made to the full SOMB. The ARC and the provider each present their positions and the SOMB renders a decision to uphold or overturn the ARC decision. Members of the ARC do not vote on appeals.

Every treatment provider and evaluator must hold a valid license issued by DORA. All provider and evaluator complaints received by the SOMB are also sent to the DORA program that regulates the individual therapist. However, no information can be shared regarding the investigations between the agencies due to privacy issues. In essence, two separate regulatory entities investigate the same issues from different licensing perspectives, but they cannot share factual findings until the results become public.

Table 10, enumerates the total complaints received among all the regulated specialties and the delisting actions taken by the SOMB during the period examined for this sunset review. The only disciplinary action taken by the SOMB is delisting. Any practice modification is considered an agreement between the listed individual and the SOMB, rather than a disciplinary action.

**Table 10
Complaints and Delistings
Fiscal Years 09-10 through 13-14**

Complaints	FY 09-10	FY 10-11	FY 11-12	FY 12-13	FY 13-14
Number of Complaints Reviewed	4	34	69	36	30
Number of Complaints Dismissed	3	31	65	30	21
Number of Complaints Pursued	1	5	7	4	1
Number of Delistings	0	1	0	1	1

The reason these data vary to the extent that they do is twofold. Prior to fiscal year 11-12 these numbers were not reliably recorded. During fiscal year 12-13 when a new data-collection system was being implemented, some data were lost.

Collateral Consequences – Criminal Convictions

Section 24-34-104(9)(b)(VIII.5), Colorado Revised Statutes, requires DORA to determine whether the agency under review, through its licensing processes, imposes any disqualifications on applicants or licensees based on past criminal history, and if so, whether the disqualifications serve public safety or commercial or consumer protection interests.

The SOMB does not keep records of the number of individuals that are refused a listing or delisted based on a criminal record. However, the listing criteria above explain that an individual must undergo a criminal history check prior to initial listing and each renewal. Both the AS&G and the JS&G have the following section included:

The applicant shall not have a conviction of, or a deferred judgment for, a municipal ordinance violation, misdemeanor, felony, or have accepted by a court a plea of guilty or *nolo contendere* to a municipal ordinance violation, misdemeanor, or felony if the municipal ordinance violation, misdemeanor, or felony is related to the ability of the approved applicant to practice under these *Standards* as reviewed and determined by the Application Review Committee. A certified copy of the judgment from a court of competent jurisdiction of such conviction or plea shall be conclusive evidence of such conviction or plea.⁴⁹

A criminal record does not automatically disqualify a person from listing. The ARC evaluates the conviction and circumstances, and decides on an individual basis if a candidate should be disqualified.

While there are no records of any disqualifications, staff indicated that it does occur on occasion.

⁴⁹ AS&G 4.310(E), 4.40(I), 4.410(E), 4.420(E), 4.500(G), 4.510(E), 4.60(H), 4.610(E), 4.62(E), 4.700(F), 4.72(E), 4.800(F), and 4.810(E) and JS&G 4.240(I), 4.300(H), 4.310(E), 4.320(I), 4.400(E), 4.420(E), 4.500(G), 4.510(E), 4.600(H), 4.610(E), 4.620(E), 4.700(F), 4.720(E), 4.800(G), and 4.810(D).

Analysis and Recommendations

Recommendation 1 – Continue the Standardized Treatment Program for Sex Offenders for nine years, until 2025.

The General Assembly created the Sex Offender Management Board (SOMB) to establish:

... evidence-based standards for the evaluation, identification, treatment, management, and monitoring of adult sex offenders and juveniles who have committed sexual offenses at each stage of the criminal or juvenile justice system to prevent offenders from reoffending and enhance the protection of victims and potential victims...⁵⁰

The SOMB has a unique, bifurcated mission in state government. It develops policy that is employed by several entities, both inside and outside of government, and it qualifies the individuals who work with the offender population. It is part advisory working group and part regulator.

In its policy-making capacity, the SOMB operates in a highly democratic fashion allowing input from the outside on virtually all policy decisions. The input comes not only from those who implement policy, but offender and victim advocates as well. While employing a democratic methodology can be frustrating for those participating in the discussions, the decisions generally have a strong measure of buy-in because of the exhaustive vetting process.

The SOMB's policies are implemented by the Colorado Judicial Branch, the Colorado Department of Corrections, the Colorado Department of Public Safety (DPS), the Colorado Department of Human Services, the Colorado Department of Education, county and municipal governments, and hundreds of practitioners, all of whom deal with sex offenders on some level.

The 25-person SOMB membership also necessitates that most of the workload is performed in subcommittees. The subcommittees are better able to digest and synthesize materials and issues to bring to the full SOMB for final decision-making. The subcommittees also sponsor subject matter roundtables to help educate the full SOMB on important subjects.

The SOMB itself has very few implementation duties. Its functions are generally research and education oriented. Its implementation and enforcement powers are limited to the qualification and listing of practitioners. Once its policies are promulgated, the implementing entity interprets and implements the policies as it deems appropriate.

⁵⁰ § 16-11.7-101(2), C.R.S.

The SOMB's regulatory responsibilities come from the portions of the Standardized Treatment Program for Sex Offenders (Act) that direct the SOMB to develop an application and review process for therapy providers, evaluators, and polygraph examiners. It then must publish a list of approved providers.⁵¹

The primary task of a sunset review is to determine if a program is necessary to protect the public's health, safety, and welfare. The SOMB is necessary to protect Colorado's citizens.

Having an independent assembly develop and revise standardized policies is far better than having each implementing organization develop its own policy without standardization. The standardization is key, because each implementing organization has a broader mission and culture than managing sex offenders. The qualifying of individuals involved with sex offender treatment prevents harm from occurring by ensuring a minimum level of competency in practitioners. Notwithstanding, the SOMB's history has shown that consistent scrutiny has been a strong agent for organizational growth. The General Assembly receiving annual reports is important. Likewise, a thorough exploration via sunset review permits the varied stakeholders a chance to evaluate the SOMB and be heard by the General Assembly.

Given that oversight is important, the General Assembly should continue the Act for nine years, until 2025.

Recommendation 2 – Repeal the “sufficient funding” caveat from the Act and direct the SOMB and DPS to collect and analyze the data necessary to evaluate the efficacy of SOMB-promulgated policies.

Section 16-11.7-103(4)(h), Colorado Revised Statutes (C.R.S.) states that if DPS acquires “sufficient funding,” the SOMB may request, from listed providers, data to evaluate the effectiveness of *The Standards and Guidelines for the Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders (AS&G)* and the *Standards and Guidelines for the Evaluation, Assessment, Treatment and Supervision of Juveniles Who Have Committed Sexual Offenses (JS&G)*. This recommendation argues that the data are important enough to standardizing the treatment of sex offenders and protecting Coloradans that the General Assembly should eliminate the funding caveat and the evaluation of policies should be performed.

SOMB members, stakeholders, and the General Assembly have all expressed a desire to gather data to measure the efficacy of SOMB policies, including but not limited to, the AS&G and JS&G.

⁵¹ §§ 16-11.7-106(2)(a) and (2)(b), C.R.S.

The SOMB occupies a special place in state government, as well as the national conversation, concerning sex offender treatment. It develops policies employed by other state executive agencies as well as the Colorado Judicial Branch and yet, other than the listing of practitioners, it does not implement policies itself. Moreover, the SOMB has these many policy-making duties and yet has no authority to require its staff to perform efficacy-related policy research when it determines that it is not collecting enough Colorado- and SOMB policy-based data. It must rely on a DPS interpretation of the subjective phrase "sufficient funding."

The General Assembly ordered an outside evaluation of the SOMB which was presented in January 2014. That report found that the SOMB was deficient in several areas which lead to revisions of the AS&G and JS&G. If the SOMB had the ability to monitor and evaluate itself in an ongoing manner, then an overly critical review would be less likely.

SOMB policy is much better served by removing the barriers to gathering data and evaluating specific policies using data from Colorado conditions.

There are some claims that collecting the data is too burdensome for providers. However, each provider must provide a report to the organization that leads the supervision team, i.e., DPS, Judicial Department, Colorado Department of Corrections, or Colorado Department of Human Services. Thus, some data is already gathered by the provider.

Evaluation is enormously important for making programs accountable to a mission determined by the General Assembly. While a sunset review is a significant piece in making programs accountable, the SOMB and its staff need the resources to do more to ensure its policies are efficacious. Pages 10 through 12 of this sunset review lay out the statutory obligations the SOMB is required to fulfill. At minimum, it should determine what the desired outcome for each is, what data are necessary to measure outcomes (both direct and indirect), and then analyze the data to determine the efficacy of each obligation.

A sunset review is a process by which an agency can show not only that it is necessary in theory, but that it is capable and successful. The third and fourth statutorily established criteria used in sunset analysis ask:

- Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters; and
- Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively.

These questions cannot be fully explored or answered without further data analysis. Therefore, the General Assembly should repeal the “sufficient funding” caveat from the Act and direct the SOMB and DPS to collect and analyze the data necessary to evaluate the efficacy of SOMB-promulgated policies.

Recommendation 3 - Simplify the investigation of complaints and grievances filed against SOMB-listed treatment providers and evaluators.

Treatment providers and evaluators must hold a valid Department of Regulatory Agencies (DORA)-issued registration as a psychotherapist or license as a psychologist, social worker, marriage and family therapist, professional counselor, or addiction counselor.

The Act stipulates that the SOMB must refer all complaints and grievances to the appropriate DORA licensing board for investigation. Section 16-11.7-106(7), C.R.S., further directs that,

The DORA board shall investigate any allegations that may constitute a violation of the professional licensing act and the relevant treatment and evaluation standards adopted by the [SOMB].⁵²

This section was adopted following a recommendation in the 2009 sunset review of the SOMB. The review found that the Act provided no authority for the SOMB to investigate and that the investigations it did conduct were not thorough. It was thought that placing investigative responsibility with the DORA licensing board would solve the problems. The change has not worked as planned.

The dual regulation has caused inefficiency in the investigation of those complaints filed with the SOMB. Because of confidentiality issues surrounding unresolved complaints, DORA-acquired information cannot be used in an SOMB disciplinary investigation unless a disciplinary action is first issued by DORA. All investigation-related information is confidential until discipline is rendered.⁵³ This problem necessitated the creation of an added layer of administration in the SOMB. The Application Review Committee II reviews complaints against providers for compliance with the AS&G and JS&G for the DORA investigation. The sole reason for this committee’s existence is to review information from and for DORA. Again, any information it reviews cannot be used by the SOMB unless the case results in a disciplinary action by DORA. Furthermore, if the DORA board dismisses a case, because a dismissal is not a disciplinary action, the SOMB may not use any of the DORA investigation work product regardless of its relevance in an SOMB case. Because of these issues, the SOMB must still perform its own separate, independent investigation.

What was meant to promote efficiency has created gross inefficiency.

⁵² §§ 16-11.7-106(7)(a)(I) and 7(a)(II), C.R.S.

⁵³ § 12-43-224(4), C.R.S.

Correcting the inefficiencies necessitates four statutory changes:

- Repeal section 16-11.7-106(7), C.R.S.;
- Direct the SOMB to investigate complaints and grievances to determine compliance under its standards;
- Clarify that DORA boards may investigate to determine compliance under their practice acts and the SOMB standards as well; and
- Require each regulator to report complaints, grievances, and final actions concerning regulated practitioners to its counterpart. The report is to ensure that each is aware of any potential practice issues that should be investigated.

For these reasons, the General Assembly should simplify the investigation of complaints and grievances filed against SOMB-listed treatment providers and evaluators.

Administrative Recommendation 1 – DPS should track listing disqualifications based on criminal history.

During the 2013 legislative session, the General Assembly added a criterion to those that govern the research and reporting in sunset reviews. Criterion VIII.5 asks,

Whether the agency through its licensing or certification process imposes any disqualifications on applicants based on past criminal history and, if so, whether the disqualifications serve public safety or commercial or consumer protection interests. To assist in considering this factor, the analysis prepared pursuant to subparagraph (i) of paragraph (a) of subsection (8) of this section shall include data on the number of licenses or certifications that were denied, revoked, or suspended based on a disqualification and the basis for the disqualification.⁵⁴

Because it is a newer reporting requirement, some programs and organizations, such as the SOMB, do not track this information. Because the General Assembly finds this information to be an important function of a sunset review, the licensing authority should track disqualifications for licenses based on past criminal history.

⁵⁴ § 24-34-104(9)(b)(VIII.5), C.R.S.