

Colorado Sex Offender Management Board (SOMB)
Position Regarding A Sex Offender's Contact with His or Her Own Child
Approved March 18, 2016

Currently, in the State of Colorado, a person defined as a "sex offender" in C.R.S. §16-11.7-102 (2) and required to complete sex offense-specific treatment under the SOMB's *Adult Standards and Guidelines for the Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders* (herein referred to as *Standards & Guidelines*) is not allowed contact with his or her own child,¹ unless one of two conditions are met:

1. The offender meets the criteria for a Child Contact Assessment (CCA), completes the evaluation process with favorable recommendations, and the Community Supervision Team adopts those recommendations; or
2. The offender engages in treatment and meets the criteria as outlined in 5.700 of the *Adult Standards and Guidelines for the Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders* (herein referred to as *Standards & Guidelines*).

The recent Court ruling in the *United States vs. Burns*, 775 F.3d 1221 (10th Cir. 2014) impacts Colorado's current approach to parent-child contact and therefore necessitates Colorado re-evaluate its approach. In *Burns*, the Court ruled that a parent has a constitutional right to familial association. In part, "A father has a fundamental liberty interest in maintaining his familial relationship with his [child]." *Burns* at 1223, citing *United States v. Edgin*, 92 F.3d 1044, 1049 (10th Cir. 1996). The Court continued, stating that "When a court imposes a special condition that limits a fundamental right or liberty interest, the court must justify the condition with compelling circumstances." *Id.* At 1223. A conviction, alone, may not meet the criteria for compelling evidence for restraining a parent's constitutional right to parental association.

In light of this recent ruling, lawyers, probation officers, evaluators and therapists, among others, must determine how to best assist the Judge in making informed decisions. Courts must balance a parent's constitutional right to parental association with concerns of posing undue risk to the children of sexual offenders.

In order to assist the Courts in determining whether or not compelling circumstances to limit such contact exist, it is now recommended that evaluators add information to the sex offense specific evaluation discussing the risk factors that may impact the risk a client poses to his/her child(ren). The SOMB recognizes there are few empirically identified risk factors that predict a convicted sex offender's risk for sexually offending against his/her own child. The discussion should rely on the research

¹ Per Section 5.710 of the *Standards and Guidelines*, an own minor child is defined as "a minor child with whom the offender has a parental role, including but not limited to, biological, adoptive, and step-child(ren)." In addition, per the *United States vs. White*, 782 F.3d 1118 (10th Circuit 2015), an emphasis is given to those who have a "custodial" relationship with their own child.

supported evidence regarding risk of sexual re-offense and should include potential risk for the offender to victimize across gender and age categories.² This section should explain how these factors may or may not translate to risk of a new sexual offense against a child. Protective factors are important and should be considered. The suggested risk factors that are consistently identified in research, and that may be relevant to identify and discuss in the evaluation, include, but are not limited to:

- Risk Level for sexual recidivism³
- Number of convictions for sexual offenses⁴
- Number of sexual offenses (does not have to be a conviction) involving minors⁵
- The nature of the relationship of the offender to the victim(s)⁶
- Number of victims⁷
- Age and gender⁸
- Intellectual and developmental disabilities of the victim and the offender⁹

² Cann, J., Friendship, C. & Gozna, L. (2007). Assessing crossover in a sample of sexual offenders with multiple victims. *Legal and Criminological Psychology*, 12(1), 149–163; Harkins & Beech (2007). A review of the factors that can influence the effectiveness of sexual offender treatment - Risk, need, responsibility, and process issues. *Aggression and Violent Behavior*, 12(6), 615–627; Howard P., D., Barnett, G., D., & Mann, R., E. (2014). Specialization in and within sexual offending in England and Wales. *Sexual Abuse: A Journal of Research and Treatment*, 26(3), 225–251; Knight, R. A., & Thornton, D. (2007). Evaluating and improving risk assessment schemes for sexual recidivism: A long-term follow-up of convicted sexual offenders (Document No. 217618). *Washington, DC: U.S. Department of Justice*; Mann, R., Hanson, K., & Thorton, D. (2010). Assessing risk for sexual recidivism - some proposals on the nature of psychologically meaningful risk factors. *Sexual Abuse: A Journal of Research and Treatment*, 22(2), 191-217.

³ Hanson, R., K., Harris, A. J. R., Scoot, T. L., & Helmus, L. (2007). Assessing the risk of sexual offenders on community supervision: The Dynamic Supervision Project. *Ottawa, Canada: Public Safety Canada*; Helmus, L., Thornton, D., Hanson, R. K., & Babchishin, K. M. (2012). Improving the predictive accuracy of Static-99 and Static-2002 with older sex offenders: Revised age weights. *Sexual Abuse: Journal of Research and Treatment*, 24(1), 64–101; McGrath, R., Allin, H. M., & Cumming, G. (2015). Risk of Sexual Abuse of Children (ROSAC): Structured Professional Guidelines for Assessing the Risk a Sexual Abuser Poses to a Child and Making Contact Decisions. *The Safer Society Press, Brandon, VT*; McGrath, R., Lasher, M., Cumming, G., Langton, C., and Hoke, S. (2014). Development of Vermont Assessment of Sex Offender Risk-2 (VASOR-2) Reoffense Risk Scale. *Sexual Abuse: A Journal of Research and Treatment*, 26(3) 271–290; Neutze, J., Grundmann, D., Scherner, G., & Beier, K., M. (2012). Undetected and detected child sexual abuse and child pornography offenders. *International Journal of Law and Psychiatry*, 35(3), 168–175; Olver, M. E., Wong, S. C. P., Nicholaichuk, T. P., & Gordon, A. E. (2007). The validity and reliability of the Violence Risk Scale-Sexual Offender version: Assessing sex offender risk and evaluating therapeutic change. *Psychological Assessment*, 19, 318-329.

⁴ McGrath, R., Lasher, M., Cumming, G., Langton, C., and Hoke, S. (2014). Development of Vermont Assessment of Sex Offender Risk-2 (VASOR-2) Reoffense Risk Scale. *Sexual Abuse: A Journal of Research and Treatment*, 26(3) 271–290.

⁵ Hanson, R., & Thornton, D. (2000). Improving risk assessments for sex offenders: A comparison of three actuarial scales. *Law and Human Behavior*, 24(1), 119–136; Helmus, L., Thornton, D., Hanson, R. K., & Babchishin, K. M. (2012). Improving the predictive accuracy of Static-99 and Static-2002 with older sex offenders: Revised age weights. *Sexual Abuse: Journal of Research and Treatment*, 24(1), 64–101.

⁶ Heil, P., Ahlmeyer, S., & Simons, D. (2003). Crossover Sexual Offenses. *Sex Abuse: A Journal of Research and Treatment*, 15(4), 221-236; McGrath, R., Lasher, M., Cumming, G., Langton, C., and Hoke, S. (2014). Development of Vermont Assessment of Sex Offender Risk-2 (VASOR-2) Reoffense Risk Scale. *Sexual Abuse: A Journal of Research and Treatment*, 26(3) 271–290.

⁷ Sim, D. & Proeve, M. (2010). Crossover and stability of victim type in child molesters. *Legal and Criminological Psychology*, 15(2), 401-413; Turner, D., Rettenberger, M., Lohmann, L., Eher, R., Briken, P. (2014). Pedophilic sexual interests and psychopathy in child sexual abusers working with children. *Child Abuse & Neglect*, 38(2), 326-335.

⁸ Carlstedt, A., Nilsson, T., Hofvander, B., Brimse, A., Innala, S., & Anckarsäter, H. (2009). Does Victim Age Differentiate Between Perpetrators of Sexual Child Abuse? A Study of Mental Health, Psychosocial Circumstances, and Crimes. *Sexual Abuse: A Journal of Research and Treatment*, 21(4), 442-454; Finkelhor, D., Ormrod, R. K., and Turner, H. A. (2007). Re-victimization patterns in a national longitudinal sample of children and youth. *Child Abuse & Neglect*, 31(5), 479-502; Heil, P., & Simons, D. (2008). Multiple Paraphilias: Prevalence, Etiology, Assessment and Treatment. Chapter 28 in Laws, D. R., & O'Donohue, W. T. *Sexual deviance: Theory, assessment, and treatment*. New York: Guilford Press; Kleban, H., Chesin, M., S., Jeglic, E., L., & Mercado, C., C. (2013). An Exploration of Crossover Sexual Offending. *Sexual Abuse: A Journal of Research and Treatment*, 25(5) 427–443; Levenson, J., Becker, J., & Morin, J., W. (2008). The Relationship Between Victim Age and Gender Crossover Among Sex Offenders. *Sexual Abuse: A Journal of Research and Treatment Volume*, 20(1), 43-60; Lussier, Leclerc, Healey, et al. (2007). Developmental pathways of deviance in sexual aggressors. *Criminal Justice and Behavior* 34(11), 1441-1462.

⁹ Crosse, S., Kaye, E., & Ratnofsky, A. (1993). A report on the maltreatment of children with disabilities. *Washington, DC: National Clearinghouse on Child Abuse and Neglect Information*; Hibbard, R., A., Desch, L. D., Committee on Child Abuse and Neglect, & Council

- Age, gender and abuse history of the offender¹⁰
- Sexual offense responsibility¹¹
- Results of a sexual interest/sexual arousal assessment¹²
- Diagnosis of pedophilia¹³
- Psychopathy or psychopathology (via PCL-R, Millon Clinical Inventory, etc.)¹⁴
- Cognitive distortions related to child victims or children in general¹⁵
- Years sex offense free in the community¹⁶

Some of the above risk factors are also identified in other sections of the sex offense specific evaluation. However, it may be helpful to summarize those factors specifically related to an offender's contact with his or her own child.

In addition, it is recognized that the necessary information to discuss each listed factor may not be available at the time of the sex offense specific evaluation. In those circumstances, it is appropriate to note the limitations of the available information.

on Children with Disabilities (2007). Clinical report: Maltreatment of children with disabilities. *Pediatrics*, 119(5), 1018-1025; Sullivan & Knutson (2000). Maltreatment and disabilities: a population-based epidemiological study. *Child Abuse and Neglect*, 24(10), 1257-1273.

¹⁰ Bader S., M., Welsh, R., & Scalora, M., J. (2010). Recidivism among female child molesters. *Violence And Victims*, 25(3), 349-62; Barbaree, H. E., Langton, C. M., Blanchard, R., & Cantor, J. M. (2009). Aging versus stable enduring traits as explanatory constructs in sex offender recidivism: Partitioning actuarial prediction into conceptually meaningful components. *Criminal Justice and Behavior*, 36(5), 443-465; Janka, C., Gallasch-Nemitz, F., Biedermann, J., Dahle, K. (2012). The significance of offending behavior for predicting sexual recidivism among sex offenders of various age groups. *International Journal of Law and Psychiatry*, 35(3), 159-164; Nunes, K., L., Hermann, C., A., Renee Malcom, J., & Lavoie, K. (2013). Childhood sexual victimization, pedophilic interest, and sexual recidivism. *Child Abuse & Neglect*, 37(9), 703-711; Wollert et al. (2010). Recent research (N = 9,305) underscores the importance of using age-stratified actuarial tables in sex offender risk assessments. *Sexual Abuse: A Journal of Research and Treatment*, 22(4), 471-90.

¹¹ Brown, A., Gray, N., & Snowden, R. (2009). Implicit Measurement of Sexual Associations in Child Sex Abusers Role of Victim Type and Denial. *Sexual Abuse: A Journal of Research and Treatment*, 21(2), 166-180; McGrath, R.J., Cumming, G.F. & Lasher, M.P. (2012). *Sex Offender Treatment Intervention and Progress Scale*. Nunes et al. (2007). Denial Predicts Recidivism for Some Sexual Offenders. *Sexual Abuse: A Journal of Research and Treatment*, 19(2), 91-105; Yates, P. (2009). Is sexual offender denial related to sex offence risk and recidivism? A review and treatment implications. *Psychology, Crime & Law*, 15(2-3), 183-199.

¹² Hanson, R. K., & Morton-Bourgon, K. (2005). The characteristics of persistent sexual offenders: A meta-analysis of recidivism studies. *Journal of Consulting and Clinical Psychology*, 73(6), 1154-1163; Michaud, P., & Proulx, J. (2009). Penile-Response Profiles of Sexual Aggressors During Phallometric Testing. *Sexual Abuse: A Journal of Research and Treatment*, 21(3), 308-334; Seto, M., Harris, G., Rice, M., & (2004). The screening scale for pedophilic interests predicts recidivism among adult sex offenders with child victims. *Archives of Sexual Behavior*, 33(5), 455-466.

¹³ Marshall, W. (2007). Diagnostic issues, multiple paraphilias, and comorbid disorders in sexual offenders - Their incidence and treatment. *Aggression and Violent Behavior*, 12(1), 16-35; Nunes, K., L., Hermann, C., A., Renee Malcom, J., & Lavoie, K. (2013). Childhood sexual victimization, pedophilic interest, and sexual recidivism. *Child Abuse & Neglect*, 37(9), 703-711; Turner, D., Rettenberger, M., Lohmann, L., Eher, R., Briken, P. (2014). Pedophilic sexual interests and psychopathy in child sexual abusers working with children. *Child Abuse & Neglect*, 38(2), 326-335.

¹⁴ Brown, A., Dargis, M., Mattern, A., Tsonis, M., & Newman, J. (2015). Elevated Psychopathy Scores Among Mixed Sexual Offenders: Replication and Extension. *Criminal Justice and Behavior*, 42(10), 1032-1044; Hanson, R. K., & Morton-Bourgon, K. (2005). The characteristics of persistent sexual offenders: A meta-analysis of recidivism studies. *Journal of Consulting and Clinical Psychology*, 73(6), 1154-1163; Rice, M.E., Harris, G.T., & Lang, C. (2013). Validation of and revision to the VRAG and SORAG: The Violence Risk Appraisal Guide—Revised (VRAG-R). *Psychological Assessment*, 25(3), 951-965; Langevin, R., & Curnoe, S. (2011). Psychopathy, ADHD, and brain dysfunction as predictors of lifetime recidivism among sex offenders. *International Journal of Offender Therapy and Comparative Criminology*, 55(1), 5-26; Olver, M. E., & Wong, S. C. P. (2006). Psychopathy, sexual deviance, and recidivism among sex offenders. *Sexual Abuse: A Journal of Research and Treatment*, 18(1), 65-82; Turner, D., Rettenberger, M., Lohmann, L., Eher, R., Briken, P. (2014). Pedophilic sexual interests and psychopathy in child sexual abusers working with children. *Child Abuse & Neglect*, 38(2), 326-335.

¹⁵ Brown, A., Gray, N., Snowden, R. (2009). Implicit Measurement of Sexual Associations in Child Sex Abusers Role of Victim Type and Denial. *Sexual Abuse: A Journal of Research and Treatment*, 21(2), 166-180; Helmus et al. (2013). Attitudes Supportive of Sexual Offending Predict Recidivism: A Meta-Analysis. *Trauma Violence Abuse*, 14(1), 34-53; Hempel, I., S., Buck, N., M., Goethals, K., R., & Marle, H., J., C. (2012). Unraveling sexual associations in contact and noncontact child sex offenders using the single category - implicit association test. *Sexual Abuse: A Journal of Research and Treatment*, 25(5) 444-460; Whitaker et al. (2008). Risk factors for the perpetration of child sexual abuse: a review and meta-analysis. *Child Abuse & Neglect*, 32(5), 529-548.

¹⁶ Hanson R. K., Harris, A., R., J., Helmus, L., & Thorton, D. (2014). High-risk sex offenders may not be high risk forever. *Journal of Interpersonal Violence*, 29(15), 2792-2813.

This information should be clearly identified in the sex offense specific evaluation. Please note, evaluators are not required to make a recommendation either for or against such contact, unless the evaluator chooses to include such a recommendation, but rather to provide information to assist a judge in decision formulation.