

Colorado Commission on Criminal and Juvenile Justice Sex Offense/Offender Task Force FINAL REPORT with REVISIONS

March 9, 2012
(revised March 12, 2012)

The Sex Offense/ Offender Task Force concluded its final meeting on February 29, 2012. This handout contains the final elements of work and feedback for consideration by the Commission. *Following the final presentation at the March 2012 CCJJ meeting, this report was revised to reflect the outcomes of the Commission meeting and to summarize all of the work of the task force.*

TASK FORCE MEMBERS

- David Kaplan*, Chair
- Steve Siegel*, 2nd Judicial District representing Victim's Organizations
- Norma Anderson, Former State Senator
- Michael Anderson, CO State Board of Parole
- Maureen Cain, CO Criminal Defense Bar
- Peggy Heil, Department of Corrections
- Erin Jemison, Colorado Coalition Against Sexual Assault
- Laurie Rose Kepros, Sex Offender Defense, State Public Defender's Office

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- Dianna Lawyer-Brook, Boulder Community Corrections Board, SOMB and CURE
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TABLED RECOMMENDATIONS

The following were recommendations tabled by the Commission on October 14, 2011.

UPDATE: Each of these recommendations, #5, #9 and #11 passed at the March 2012 CCJJ meeting.

CCJJ-PASS: 16-6-0 (100% - 0%)

FY12-SO5. Support funding an enhanced per diem differential (\$33.02) that applies to specialized Diversion, Transition, Condition of Probation and Condition of Parole community corrections programs for sex offenders.

The goal of this recommendation is to increase community corrections placement options and bed capacity for sex offenders as an intermediate alternative to placement in the Department of Corrections or Probation. When appropriate and warranted, based on evidence-based practice and public safety considerations, some sex offenders could be managed and treated more cost effectively in community corrections. Without this intermediate option, the only options become either the most expensive but, possibly, excessive option - incarceration - or the less expensive but, possibly, insufficient option - probation or parole.

Currently, the funding for the enhanced per diem differential is supported by a Justice Assistance Grant that expires at the end of FY 2012. Without the enhanced per diem, most programs will not accept sex offenders because higher paid, specialized staff are required to work with sex offenders. Additional costs to programs are incurred because sex offenders are less able to pay the required subsistence fees due to the greater challenge for sex offenders to find and maintain employment while paying for treatment and monitoring costs. The Office of Community Corrections (OCC) at the Division of Criminal Justice (DCJ) would define the program criteria and specialized scope of work to qualify for the enhanced per diem which would include having a minimum of 5 beds in each funded program. The implementation of this recommendation would be most effective in conjunction with Recommendation #6.

CCJJ-PASS: 19-3-0 (100% - 0%)

FY12-SO9. Support funding for the Division of Parole (DOC) to negotiate an increase in the number of beds in Community Corrections agencies and programs to house COPa (condition of parole) sex offenders for residential sex offender treatment.

Currently there are only 10 beds funded through HB10-1360 that are designated for the residential treatment of sex offenders in community corrections.

CCJJ-PASS: 19-2-1 (95% - 5%)

FY12-SO11. Support continued funding of the Sex Offender Victim Specialist (SOVS) FTE to work in coordination with the sex offender treatment program to continue the current DOC grant-funded SOVS services.

This Specialist is assigned to provide education to victims (enrolled in the DOC victim notification program) regarding sex offender treatment in DOC, to prepare victims for parole release applications hearings, and to prepare victims for the possible re-entry of sex offenders into the community. If victims are amenable, the specialist can provide an opportunity for victims to be informed of and to provide input into the offender's treatment. The funding for this grant-funded position expires September 30, 2012.

MOOT - Task Force recommends no further action. No action taken by CCJJ.

FY12-SO6. Change the DCJ OCC rule to remove the 30-day funding limit for treatment of sex offenders in community corrections.

There are several instances where Probation has requested that the Office of Community Corrections (OCC) of the Division of Criminal Justice fund the placement of COPr (Condition of Probation) sex offenders in community corrections. The OCC enforces a contractual funding imperative that places a 30-day maximum for regular COPr offenders. This 30-day period is not a sufficient length of stay for sex offenders in residential supervision and treatment. Given an enhanced differential per diem, the OCC should change this limitation for COPr sex offenders in order to provide a sufficient length of stay for supervision and treatment. This recommendation would enhance the implementation of Recommendation #5.

Sex Offenders in Community Corrections Summary (November 2011)

JD	Program	Currently Accept Sex Offenders?	If Yes, Accept SVP?	Any plans to accept SXO?	Barriers to Accepting Sex Offenders?
1	ICCS-Jeffco	Yes	No	NA	NA
2	CMI-Dahlia	No	NA	No	Funding, Staff, Community, Neighborhood
2	CMI-Fox	No	NA	No	Funding, Staff, Community, Neighborhood
2	CMI-Ulster	No	NA	No	Funding, Staff, Community, Neighborhood
2	CMI-Columbine	No	No	No	Funding, Staff, Community, Neighborhood
2	Peer I	No	NA	No	Focus on Substance Abuse
2	Haven	No	No	No	Not qualified, children on grounds
2	Tooley Hall	No	NA	No	Family Programming
2	Williams St. Ctr.	No	No	NA	Location
2	Ind House - Pecos	No	NA	No	Lack of funding, training, DVOMB and DCJ standards
2	Ind House - Fillmore	No	NA	No	Dual DX is conducive to SOM at the same time
2	Phase I	Yes	No	NA	NA
4	CAE	No	NA	Unknown	Cost of programming, staff, training, liability
4	COMCOR Inc	Yes	No	NA	NA
4	Gateway	Yes	No	NA	NA
6	Hilltop House	No	NA	Yes	Location to parks, transitional housing, shelters and soup kitchens
8	Larimer County	Yes	Yes	NA	NA
9	Garfield	No	NA	Yes	Training for the staff
10	Crossroads TC	No	NA	No	Board will not allow
10	Minnequa	No	NA	NA	Board will not allow
10	CCSI	No	NA	NA	The board
12	SLVCC	Yes	No	NA	High risk community
13	ATC-Sterling	Yes	No	NA	NA
14	CAPS	No	NA	No	Do not meet SOMB req, Case Managmt. training, negative comm, lack of recruitmt.
17	TTC - Adams	No	NA	Yes	Zoning
17	TTC - Commerce City	No	NA	No	Zoning
17	Phoenix Center	Yes	Yes	NA	NA
18	CCTC	No	NA	No	Conditional Use Permit
18	ACTC	Yes	No	NA	NA
18	ACRC	No	NA	No	Littleton conditional use permit
19	ICCS-Weld	Yes	Yes	NA	NA
20	CMI-BCTC	Yes	Yes	NA	NA
20	CMI-LCTC	Yes	Yes	NA	NA
21	Mesa County	Yes	Yes	NA	NA

Census of Sex Offenders (November 10, 2011)

Judicial District	Provider	Diversion	Transition	Condition of Parole	Total	Number of Beds with Enhanced Per Diem
1	ICCS Jeffco	9	10	2	21	8
4	COMCOR Inc	21	4	1	26	16
8	Larimer	11	7	10	28	13
12	SLVCC	1	1	0	2	0
13	ATC Sterling	1	0	2	3	0
17	Phoenix Center	14	18	4	36	0
18	ACTC	3	1	0	4	0
19	ICCS-Weld	7	2	1	10	0
20	BCTC	3	1	0	4	0
20	LCTC	0	0	0	0	0
21	Mesa	22	4	2	28	2
Overall Total		92	48	22	162	39

Shaded = Primary locations for Specialized Beds at Enhanced Per Diem

Sex Offender Differential Per Diem

Base Facts (from Fiscal Year 11 Data Analysis)

- The average length of stay for sex offenders in residential community corrections is 275 days for successful clients.
- Without a differential per diem, the average sex offender participates in a total of 32 treatment sessions per stay (individual and group sessions)

General Funding Basis

- Rate: \$33.02 Differential Per Diem
- Amount: \$12,052 per bed (per year)
\$9,080 per offender (based on 275 day Avg. LOS x Per Diem of \$33.02)

General Assumptions and Premise

- Sex offenders must be supervised and treated according to individualized risk and needs. Therefore, sex offenders in community corrections do not require identical service profiles.
- The enhanced funding proposal is based on an estimation of a “typical” sex offender client. However, the *typical sex offender* needs profile is without deference to the index offense or actual risk/need differences among convicted sex offenders.
- The enhanced funding must be flexible enough to adapt to changing needs among sex offenders.
- The enhanced funding would be directed at the following services and costs for a maximum period of 12 months. After 12 months of residential supervision, sex offenders would assume financial responsibility for their offense-specific supervision and treatment costs.
- The base per diem of \$37.74 is not intended for any specialized sex offender services. This basic funding level is the same as it was in 2003 with no net increases since that time despite cost increases to providers.
- The proposal for enhanced per diem for sex offenders is considered most effective when a single provider has a minimum of five (5) beds that are allocated for specialized sex offender supervision, management, and treatment.

Funding Summary

- **Direct Client Services** - \$8,980 per client, per year (average)
- **Indirect/Discretionary Client Services** - \$7,120 per client, per year (maximum)
- **TOTAL CLIENT SERVICES – Maximum of \$16,100 per client, per year**
- **Additional Program Costs** – Amount unspecified

Direct Client Services (Annualized for a Single Client)

Direct Client Services				
Service	Average Cost Per Service	Unit	Average Number of Services, per Client, Per Year	Cost Per Year
Intakes (annual intake)	\$100.00	per service	1	\$100.00
Individual Sessions (semi-monthly treatment)	\$100.00	per service	24	\$2,400.00
Group Sessions (weekly treatment)	\$65.00	per service	52	\$3,380.00
Polygraphs (quarterly polygraphs)	\$300.00	per service	4	\$1,200.00
PPG/Abel (annual service)	\$275.00	per service	1	\$275.00
Psychosexual Evaluations (one time service)	\$950.00	per service	1	\$950.00
Family Session (quarterly service)	\$150.00	per service	4	\$600.00
Sex Offender Registration (quarterly requirement)	\$75.00	per service	1	\$75.00
SUBTOTAL - Direct Client Services				\$8,980

Indirect/Discretionary Client Services (Annualized for a Single Client)

Indirect/Discretionary Client Services				
Service	Average Cost Per Service	Unit	Average Number of Services, per Client, Per Year	Cost Per Year
GPS Monitoring	\$330.00	per month	12	\$3,960.00
Treatment Community Supervision (Trackers)	\$30.00	per hour	20	\$600.00
Subsistence Offset for 90 Days	\$17.00	per day for 90 days	1	\$1,530.00
Parental Risk Assessment	\$850.00	per service	1	\$850.00
Transportation Assistance to Services (3 month Bus Pass)	\$60.00	per month	3	\$180.00
SUBTOTAL - Indirect/Discretionary Client Services				\$7,120.00

TOTAL - Direct and Indirect/Discretionary Client Services	\$16,100.00
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Sex Offender Differential Per Diem (cont'd)

Additional Program Costs

In addition to direct and indirect/discretionary client services, programs often realize additional costs related to sex offender supervision and treatment. Any funds that are not spent in direct or indirect client service costs should be used to offset the program costs below.

Staff and Management Training Including Travel and Registration

- 40 to 60 Hours of Formal Initial and Ongoing Training
- Experienced staff training new staff on sex offender management policies, and sex offender research

Program Infrastructure

- Some providers may elect to compensate sex offender case managers more in order to retain them longer as employees. Staff retention in community corrections is a problem. Programs must invest in high levels of training for sex offender case manager staff and may need to pay higher salaries in order to avoid staff turnover among well-trained staff.
- State contracts result in requirements for providers to maintain certain levels of liability insurance. Often, adding sex offenders to program populations requires additional levels of liability insurance for providers.

Intensive and Enhanced Case Management Services

- Additional Sex Offender Risk Assessments
- Review and Approval of Safety Plans
- Supervision Team Staffings
- Safety Plan Education for Clients
- Additional Time in Weekly Case Management Meetings
- Sex Offender Family Orientation
- Additional Work for Setting up Intakes, Polygraphs, GPS, Registration, and other specialized sex offender services
- Reading Client Journals, Polygraphs, and Treatment Documents
- Inspecting Client Email accounts, cell phones
- Smaller caseloads for sex offender case managers result in larger caseloads for other staff and, sometimes, additional case management staff/FTE. Often case managers have caseloads 40% to 50% smaller than regular offenders due to more intensive SOMB and DCJ standard requirements.
- Additional room searches, pat downs, off site monitoring and training for security staff
- Additional on-site verifications for sex offenders who have sign out privileges
- Pre-acceptance interviewing, screening and staffing with community corrections board
- Additional phone contact with therapist, polygraphist, and referral agency

Sex Offender Differential Per Diem (cont'd)

Offender Types

Community Corrections serves adult offenders who have been convicted of felony offenses. There are two major groups of community corrections offenders: Diversion and Transition. Diversion offenders are sentenced directly by the courts or, in rare instances, have been sentenced as a condition of a probation placement for up to 30 days.

DIVERSION BEDS (Including Condition of Probation Placements)

"Diversion" is the component of Community Corrections that provides a sentencing option to judges at the time of conviction. Judges may place offenders on probation, or sentence any felon to prison or to Community Corrections. An offender may be sentenced directly to a diversion placement, or may be sentenced as a condition of probation for up to 30 days.

The legislative preference has been to use Community Corrections Diversion primarily as an alternative to a prison sentence. Diversion beds also serve as an option for judges when probationers violate their *terms and conditions* of probation supervision. This is an intermediate sanction sentencing option for judges in lieu of a prison sentence for violations of probation supervision.

TRANSITION BEDS

"Transition" refers to the component of Community Corrections that places prison inmates in local residential facilities prior to their parole release. The purpose is to establish employment, begin contacts with family, and develop community support systems within a structured setting before full release to the community.

PAROLE BEDS

Legislative changes in 1987 enabled the Parole Board to refer parolees to Community Corrections. The availability of Parole beds allows the Parole Board to place parolees who are exhibiting unstable behavior in the community, into a residential bed to control the behavior, stabilize the offender and reduce the number of regressions or revocations of parolees who violate "technical" conditions of their parole agreement. Parolees committing new crimes or who are involved in serious violations of parole must be returned to secure facilities. "Technical" conditions refer to rules of parole release, such as reporting to a parole officer, that do not involve violations of laws or ordinances.

Sex Offender Differential Per Diem (cont'd)

Contracting Mechanism:

Requirements for Providers to be Eligible for Enhanced Per Diem

The Office of Community Corrections uses the Request for Proposal (RFP) procurement method in order to secure contracts with providers for specialized supervision and treatment programs that have enhanced funding. Only those offerors that score highest in the RFP process are awarded an increased per diem for a specified number of beds. Below is a brief summary of the RFP process in community corrections:

- 1) The DCJ issues a Request for Proposal (RFP) outlining the program requirements and expectations for the enhanced funding. The RFP also sets forth formal evaluation criteria for the award process.
- 2) Proposals are submitted by providers that are interested in being awarded the specialized contract. Providers that do not submit a proposal are ineligible for the funds.
- 3) All proposals are reviewed by a panel of Subject Matter Experts (SME) that are experienced and knowledgeable about specialized offender supervision and treatment programs – in this case – sex offender programs.
- 4) The SME panel meets and scores each proposal against several criteria that are established in the RFP document. All proposals are ranked, according to their total score. With highest scoring proposals being ranked higher than lower scoring proposals.
- 5) Contract awards are allocated to the most appropriate and responsive provider(s) – as measured by their scores in the evaluation process. Providers with completely inadequate or incomplete proposals are not eligible for a contract award.
- 6) One of the statutory functions for the Office of Community Corrections is to audit programs regarding their compliance with Colorado Community Corrections Standards. The Standards and Guidelines of the Sex Offender Management Board, and any special contract requirements. Accordingly, the OCC is enabled and required by law to assess the degree to which a provider meets the Scope of Work and contract requirements of the RFP contracting process.

Sex Offender Differential Per Diem (cont'd)

Larimer County Community Corrections Outcomes

Larimer County Community Corrections provided a narrative report entitled, *Treatment Support for Sex Offenders in Community Corrections: A Demonstration Project*, to the Division of Criminal Justice following the conclusion of a recent JAG grant. There were 10 beds in the program funded at the enhanced per diem. The program has another JAG grant to continue 9 beds for another year. The following is a summary (compiled by Glenn Tapia) of the services and outcomes provided in the report mentioned above:

- The program served a total of 30 sex offenders in community corrections.
- The funding led to all sex offenders starting treatment immediately rather than having to wait to find employment.
- No offenders were terminated from offense specific treatment due to inability to pay.
- All offenders had 100% of their polygraphs paid for.
- All offenders had 100% of treatment costs paid for during the first 30 days of supervision.
- All offenders had 50% of their treatment paid for after the first 30 days.
- No sex offenders in the program were charged with new sex offenses while under supervision.
- The funding facilitated better transition to independent living since offenders could use earned wages to find suitable housing – a major challenge for convicted sex offenders.
- Program successful completion rates are increasing as a result of the funding.
- Offenders have become less of a management problem for staff as their attitudes toward supervision and treatment are improved due to grant-supported treatment funding.
- Staff attitudes toward offenders have improved.
- Due to increased polygraphs, GPS monitoring, and treatment information, public safety has been greatly enhanced due to program staff having more information about sex offender behavior and treatment progress. Staff are able to better and more closely supervise sex offenders and to make better decisions accordingly.
- Compliance with SOMB standards has increased by the provider due to ability to pay for treatment and additional supervision costs.
- Acceptance rates of sex offenders by the Community Corrections board have increased since they are aware that funding is available to properly supervise and treat the sex offender population.

FEEDBACK TO CCJJ**#1. The Sex Offense/Offender Task Force issues a unanimous proposal that the Commission address the following as a priority for future efforts:**

- **CCJJ should seat a Data Task Force or Subcommittee** to explore the improvement and consistency of criminal justice data collection systems and to propose methods for simpler access to criminal justice data (by approved agencies) for the purpose of research and evaluation. If such a task force is seated, the Sex Offense/Offender Task Force requests the inclusion of sex offender-related data as part of the charge to this task force.

and/or

- **CCJJ should, as part of the work of the above or as a separate effort, define and recommend a Colorado Institute of Data and Public Policy** (modeled after the Washington State Institute of Public Policy) to improve criminal justice data collection systems, to propose and establish methods for simpler access to criminal justice data, and to conduct criminal justice policy and cost benefit research. The definition of the Policy Institute should differentiate the role and function of the proposed Policy Institute, the Colorado Legislative Council, the Joint Budget Committee, and the various research units located within state agencies.

#2. The Sex Offense/Offender Task Force issues a divided* position statement that the following is a priority for the State of Colorado in regard to compliance with the Adam Walsh Act:

The Sex Offense/Offender Task Force urges the State of Colorado to not implement any requirement that employer address be a part of the public access portion of the sex offender registry.

* Reflects a 6-5 (2 absent) vote in favor on practical considerations, although all agree philosophically with the position.

The following are supplemental advisements regarding CCJJ-approved, FY12 Sex Offense/Offender Task Force recommendations for the purpose of tracking for performance measurement:

FY12-SO2. Develop collaborative training programs.

Recommend the Sex Offender Management Board organize a collaborative effort (with identified partners, such as agency and/or EPIC staff) to provide regular training through agency resource sharing and report back to CCJJ by January 2013. Recommend the collaborative effort also address the training needs identified in FY12-SO12: Parole Board training on Lifetime Supervision.

FY12-SO3. Improve the collection and consistency of data to evaluate the impact of the lifetime supervision act.

See "Recommendations for Future CCJJ Priorities" above.

FY12-SO12. Conduct regular and ongoing training on Lifetime Supervision and sex offender management as a part of the required Parole Board member training.

As mentioned previously as a part of this recommendation, it is recommended that regular lifetime supervision sentence training be included in the Parole Board Policy Manual.

FY12-SO13. The State Board of Parole and treatment staff of the DOC Sex Offender Treatment and Monitoring Program should develop a regular system of feedback when sex offenders who meet SOMB criteria are denied parole.

Recommend the Parole Board and SOTMP develop a system of feedback, document the process in the parole board manual and report back to the CCJJ by February 2013.

FY12-SO15. The commission supports a statewide public policy and an education strategy led by the Sex Offender Management Board to promote the use of child safety zones in lieu of residency restrictions and zoning ordinances regarding sex offender housing.

Request a report to CCJJ on January 11, 2013 by the Sex Offender Management Board on the efforts and accomplishments regarding work with stakeholders, including representatives of Colorado counties and municipalities, to provide education about sex offender housing restrictions and ordinances and evidence-based practices of shared living arrangements. When these efforts are determined to be sufficient, the outcome should be a recommendation for legislation to address restrictions and ordinances regarding sex offender housing.

FY 2012 RECOMMENDATIONS

Reflects the complete list of FY 2012 recommendations approved by CCJJ through the March 2012 meeting.

CCJJ-PASS: 14-2-3 (84% - 16%)**FY12-SO1. Clarify and create in statute the registration requirement for and self-verification by sex offenders who “Lack a Fixed Residence.”**

DISCUSSION: The registration of offenders who lack a fixed residence (often referred to as “transient” or “homeless”) is implied but not explicitly defined in Colorado statute. Law enforcement jurisdictions have differing policies regarding the treatment of such offenders. In some cases, the registration of these offenders is accepted and in other cases the registration of these offenders is not accepted and offenders are encouraged to travel to a jurisdiction where their registration will be accepted. This places an unfair burden on “accepting jurisdictions.” Additionally, the People v. Griffin case regarding intent to reside is pending in Colorado courts and may require statutory clarification regarding the definition of “residence.”

Colorado statute should be modified to clarify the responsibility of offenders, who lack a fixed residence, to register and to require that law enforcement jurisdictions accept the registration of such offenders. Offenders who find themselves without a traditional, stable living situation will not be referenced as “transient” or as “homeless,” but as offenders who “lack a fixed residence.” The terms “transient” and “homeless” have specific meaning defined by Federal law that direct specific provision of services and individual rights. The following 9 items comprise this single recommendation.

- a) **“Lacks a Fixed Residence.”** Add definition: 16-22-102 (7.6) – “lacks a fixed residence” means that a person does not have a living situation that meets the definition of residence pursuant to 16 -22-102(5.7). This includes, but is not limited to, outdoor sleeping locations or any public or private locations not designed as **TRADITIONAL LIVING** ~~regular sleeping~~ accommodations. “Lacks a fixed residence” also includes public or private housing or temporary shelter facilities, residential treatment facilities, or any other residential program or facility if the owner or facility providing the housing consents to the person utilizing the location as his or her temporary address for purposes of registration as a person without a fixed residence and if the person remains at the location for less than 30 days.

Also, Move 16-22-102 (5.7) to 16-22-102 (7.5).

[PLEASE NOTE: This definition will conflict with language in 16-22-105(3) which says, “Notwithstanding the existence of any other evidence of intent, occupying or inhabiting a dwelling for more than 14 days in a thirty day period shall constitute the establishment of a residence.” Also, language throughout article 22 of title 16 is currently in dispute in the case of People vs. Griffin (08CA2694) regarding “intent” to reside. Modifications of the above (and other conforming revisions of statute) may be required by the Griffin case.]

- b) **Shelters as a residence.** Amend definition in 16-22-102(5.7) of “residence” to clarify that it only applies to occupancy in a shelter for a time period longer than 30 days.
- c) **Requirement to register and to accept registrations.** Change 16-22 -108 -- each person who is required to register pursuant to 16-22-103 shall register with local law enforcement in each jurisdiction in which the person resides “or is located without a fixed residence pursuant to 16-22-102 (7.6).” Law enforcement is required to accept the registration of offenders who “lack a fixed residence.”

If the location at which a person attempts to register would be in violation of a local ordinance, law enforcement shall so advise the offender. The offender shall then be required to secure alternate residence and remain in compliance with all other provisions of this article. Law enforcement officials are not required to accept a person’s registration to an unlawful location or residence.

FY12-SO1 (continued)

- d) **“Geo-locations.”** Change 16-22-109(1) – If a person lacks a fixed residence as defined in 16-22-102 (7.6), the person shall be required to provide to local law enforcement the public or private locations where the offender habitually sleeps. This can include, but is not limited to cross streets, intersections, direction and identifiable landmarks of the locations.
- e) **Self-verification.** Change 16-22-109 (3.5) to add:
(I) If a person lacks a fixed residence, verification of the location reported by the registrant shall be accomplished by self-verification reporting as described in section 16-22- (INSERT THE NEW SECTION REFERENCE HERE THAT DEFINES THE ENHANCED REPORTING REQUIREMENTS/VERIFICATION EVENT AS SEEN BELOW IN “1g”).
Also, add language that says:
(II) “Law enforcement shall not be required to verify the physical address of an offender who is required to comply with section 16-22-.... (AS SEEN in “1g”)
- f) **Residence/non-fixed residence changes.** Add new section regarding changing to and from “lacks a fixed residence”:
- i. a person with a residence as defined in 16-22-102 (7.5) who vacates the residence and, subsequently, has no fixed residence shall report that change in status within 5 days after ceasing to have a fixed residence and shall comply with the requirements of 16-22 – (AS SEEN IN “1g”) and 16-22-109 for the time period during which the person has no fixed residence.
 - ii. A person who lacks a fixed residence as defined in 16-22-102 (7.6) who obtains fixed residence as defined in 16-22-102 (7.5) shall report the change in status within 5 days after establishing the residence.
 - iii. Make clear that failure to comply with this section is a failure to report a change of address and punishable as provided under current law as a failure to register.
- g) **Reporting requirements and Penalties.** Add a new section regarding the self-verification process describing the enhanced reporting requirements and penalties:
- i. In addition to any other requirements pursuant to this section, a person who is subject to annual registration and without a fixed residence shall, **AT LEAST** every 90 days, report to local law enforcement in whose jurisdiction or jurisdictions the person is registered for self-verification of the location of the offender. This self-verification process shall be accomplished consistent with any time schedule established by the local jurisdiction, **WHICH MAY INCLUDE A TIME SCHEDULE THAT IS WITHIN 5 BUSINESS DAYS BEFORE OR AFTER THE OFFENDER’S BIRTHDATE.** The person shall verify his or her location and provide any information required to be reported pursuant 16-22-109.
 - ii. In addition to any other requirements pursuant to this section, a person who is subject to quarterly registration pursuant to this section and who is without a fixed residence shall, **AT LEAST** every 30 days, report to local law enforcement in whose jurisdiction or jurisdictions the person is registered for self-verification of the location of the offender. This self-verification reporting shall be accomplished consistent with any time schedule established by the local jurisdiction, **WHICH MAY INCLUDE A TIME SCHEDULE THAT IS WITHIN 5 BUSINESS DAYS BEFORE OR AFTER THE OFFENDER’S BIRTHDATE.** The person shall verify his or her location and provide any information required to be reported pursuant 16-22-109.

FY12-SO1 (continued)

- iii. An offender without a fixed residence who fails to comply with the provision of this section shall be subject to prosecution for the crime of failure to verify location. Failure to verify location by an offender without a fixed residence shall constitute a criminal misdemeanor offense punishable by a sentence to the county jail of up to 30 days. A third or subsequent offense shall constitute a misdemeanor offense punishable by a sentence of up to one year in the county jail. Failure to verify location shall not be labeled a sex offense per 16-11.7-102(2)(a)(II) which would subject the offender to the requirements of evaluation and identification required in CRS 16-11.7-104 and the treatment required by CRS 16-11.7-105.
- iv. Determine whether the drafter thinks this offense should be in Title 18.
- h) **Offender notification.** Amend section 16-22- 106 and 107 to require a notification to any offender required to register, pursuant to this section, of the duty to report the change of address to “lacks a fixed residence” status and the requirement to comply with the statutory provisions regarding self-verification.
- i) **Data reporting.** Add language that requires local law enforcement and CBI to report to CDPS information regarding the number of offenders who lack a fixed residence and any other information requested by the Department to follow up with this legislation to assess its effectiveness and/or need for modification.

CCJJ-PASS: 19-0-0 (100% - 0%)**FY12-SO2. Develop collaborative training programs.**

Individuals from, but not limited to, the Sex Offender Management Board, the Judicial Department, law enforcement, the Department of Corrections, and the EPIC project* shall collaborate to develop and provide a uniform curriculum of sex offender training modules that could be offered to various groups (supervising officers, treatment providers, community corrections staff, State Board of Parole, judges, legislators, law enforcement, etc.). It is anticipated that training could be offered more frequently and consistently through this collaborative effort to address such topics as information on the Lifetime Supervision Act, an overview of the SOMB standards, motivational interviewing, and trauma informed treatment.

(*The Evidence-Based Practice Implementation for Capacity project would require funding to continue beyond its current funding conclusion date. See cdpsweb.state.co.us/ccjj/epic.html)

CCJJ-PASS: 17-1-0 (100% - 0%)**FY12-SO3. Improve the collection and consistency of data to evaluate the impact of the lifetime supervision act.**

A committee shall be created including, but not limited to, representatives from the Department of Corrections, the Colorado Bureau of Investigation, the Division of Criminal justice, and the Judicial Branch, to evaluate and improve the consistency of data collected across agencies to facilitate the study of the impact of the Lifetime Supervision Act. The collaborating agencies should identify and resolve the gaps and inconsistencies in electronic databases. The agencies shall review and provide recommendations to improve the annual Lifetime Supervision Report by July 1, 2012.

CCJJ-FAIL: 4-7-7 (61% - 39%)**FY12-SO4. Identify a group to study sex offender specialty courts and determine their viability in Colorado.**

Gather information on other states' experiences with sex offender courts to determine the viability of sex offender courts in Colorado and whether such courts would increase communication, consistency, and public education and would result in more informed decisions regarding sex offender management in the criminal justice system. At a minimum, this group could include representatives from the Judicial Department, the Sex Offender Management Board, and the Department of Corrections and the work should be conducted within the Refinement Working Group of the Sex Offense/Offender Task Force, or a succeeding group as designated by the CCJJ.

TABLED October 14, 2011. APPROVED at the March 2012 meeting.

CCJJ-PASS: 16-6-0 (100% - 0%)**FY12-SO5. Support funding an enhanced per diem differential (\$33.02) that applies to specialized Diversion, Transition, Condition of Probation and Condition of Parole community corrections programs for sex offenders.**

The goal of this recommendation is to increase community corrections placement options and bed capacity for sex offenders as an intermediate alternative to placement in the Department of Corrections or Probation. When appropriate and warranted, based on evidence-based practice and public safety considerations, some sex offenders could be managed and treated more cost effectively in community corrections. Without this intermediate option, the only options become either the most expensive but, possibly, excessive option - incarceration - or the less expensive but, possibly, insufficient option - probation or parole.

Currently, the funding for the enhanced per diem differential is supported by a Justice Assistance Grant that expires at the end of FY 2012. Without the enhanced per diem, most programs will not accept sex offenders because higher paid, specialized staff are required to work with sex offenders. Additional costs to programs are incurred because sex offenders are less able to pay the required subsistence fees due to the greater challenge for sex offenders to find and maintain employment while paying for treatment and monitoring costs. The Office of Community Corrections (OCC) at the Division of Criminal Justice (DCJ) would define the program criteria and specialized scope of work to qualify for the enhanced per diem which would include having a minimum of 5 beds in each funded program. The implementation of this recommendation would be most effective in conjunction with Recommendation #6.

TABLED October 14, 2011. MOOT - Task Force recommends no further action. No action taken by CCJJ.

FY12-SO6. Change the DCJ OCC rule to remove the 30-day funding limit for treatment of sex offenders in community corrections.

There are several instances where Probation has requested that the Office of Community Corrections (OCC) of the Division of Criminal Justice fund the placement of COPr (Condition of Probation) sex offenders in community corrections. The OCC enforces a contractual funding imperative that places a 30-day maximum for regular COPr offenders. This 30-day period is not a sufficient length of stay for sex offenders in residential supervision and treatment. Given an enhanced differential per diem, the OCC should change this limitation for COPr sex offenders in order to provide a sufficient length of stay for supervision and treatment. This recommendation would enhance the implementation of Recommendation #5.

CCJJ-PASS: 14-3-1 (94% - 6%)

FY12-SO7. Charge the Refinement Working Group of the Sex Offense/Offender Task Force or a succeeding group as designated by the CCJJ to work in collaboration with, but not limited to, the Division of Criminal Justice, the Department of Corrections, and Probation, to study the potential, long-term cost savings related to the placement of sex offenders in community corrections (with enhanced per diem) relative to the costs of the retention of sex offenders in or revocation of sex offenders to DOC. This work must be completed by January 1, 2012.

It is expected that the intermediate placement option in community corrections for sex offenders determined to be appropriate for this placement will result in a cost savings relative to placement or retention in the Department of Corrections. This cost savings could fund the increased availability and the enhanced per diem of this intermediate community corrections option. The average length of stay for the treatment of specific and appropriate offenders may be shorter in community corrections than if these offenders are retained or returned to the Department of Corrections. Due to the potential wait time for treatment and for parole release, the length of stay in DOC is likely to extend well beyond the stay for the necessary treatment in community corrections. This recommendation would support the implementation of Recommendations #5 and 6.

CCJJ-PASS: 18-0-0 (100% - 0%)

FY12-SO8. The Office of Community Corrections in the Division of Criminal Justice in collaboration with the SOMB shall work with the CACCB* and the GCCAC^ on training for community corrections board members regarding the Lifetime Supervision Act and sex offender supervision.

Community corrections board members are especially cautious about accepting sex offenders into community corrections programs. Training to address the standards and specifics of treatment and supervision of sex offenders could enhance understanding and inform the evaluation of sex offender application for community corrections programs. (*Colorado Association of Community Corrections Boards; ^Governor's Community Corrections Advisory Council)

TABLED October 14, 2011. APPROVED at the March 2012 meeting.

CCJJ-PASS: 19-3-0 (100% - 0%)

FY12-SO9. Support funding for the Division of Parole (DOC) to negotiate an increase in the number of beds in Community Corrections agencies and programs to house COPa (condition of parole) sex offenders for residential sex offender treatment.

Currently there are only 10 beds funded through HB10-1360 that are designated for the residential treatment of sex offenders in community corrections.

CCJJ-PASS: 18-1-1 (95% - 5%)

FY12-SO10. Increase treatment resources at DOC.

Expanded treatment resources would increase the availability of treatment for the backlog of wait-listed lifetime supervision offenders (indeterminate sentence) and provide treatment to sex offenders with determinate sentences.

TABLED October 14, 2011. APPROVED at the March 2012 meeting.

CCJJ-PASS: 19-2-1 (95% - 5%)

FY12-SO11. Support continued funding of the Sex Offender Victim Specialist (SOVS) FTE to work in coordination with the sex offender treatment program to continue the current DOC grant-funded SOVS services.

This Specialist is assigned to provide education to victims (enrolled in the DOC victim notification program) regarding sex offender treatment in DOC, to prepare victims for parole release applications hearings, and to prepare victims for the possible re-entry of sex offenders into the community. If victims are amenable, the specialist can provide an opportunity for victims to be informed of and to provide input into the offender's treatment. The funding for this grant-funded position expires September 30, 2012.

CCJJ-PASS: 19-0-0 (100% - 0%)

FY12-SO12. Conduct regular and ongoing training on Lifetime Supervision and sex offender management as a part of the required Parole Board member training.

The necessity for this training should be added to the list of topics in the annual training schedule in the Colorado State Board of Parole Policy Manual [CRS 17-2-201 (1) (e) requires specific hours of parole board member training and (3) (c) requires a Parole Board Policy Manual].

CCJJ-PASS: 17-1-1 (95% - 5%)

FY12-SO13. The State Board of Parole and treatment staff of the DOC Sex Offender Treatment and Monitoring Program should develop a regular system of feedback when sex offenders who meet SOMB criteria are denied parole.

Without creating liberty benchmarks, the intent is to increase the communication between parole board members and treatment staff.

CCJJ-FAIL: 3-1-16 (20% - 80%)

FY12-SO14. Recommend there be multiple-member review of all parole release applications to the State Board of Parole (full board or 3-person review) when a sex offender meets all SOMB treatment criteria.

This practice would avoid placing a single individual Parole Board member in a position to be solely accountable for sex offender release application decisions whether the decision is to release or to defer. This policy should be included in the Colorado State Board of Parole Policy Manual [CRS 17-2-201 (3) (c)].

CCJJ-PASS: 11-3-4 (78% - 22%)

FY12-SO15. The Commission supports a statewide public policy and an education strategy led by the Sex Offender Management Board to promote the use of child safety zones in lieu of residency restrictions and zoning ordinances regarding sex offender housing.

DISCUSSION: Colorado municipalities and counties continue to implement sex offender housing restrictions and zoning ordinances which reduce options for housing that promotes public safety. These actions tend to result in a domino effect causing adjacent municipalities and counties to also implement restrictions to discourage the “re-settlement” of displaced offenders. These restrictions result in negative consequences that impede better public safety options for managing sex offenders on probation and parole. Child safety zones define protected areas that sex offenders are prohibited from entering except in limited and safe circumstances. These zones are a more effective public safety option that is typically included among the conditions required of sex offenders who are under parole or probation supervision. The size and design of child safety zones should be carefully defined to prevent the zone from becoming a de facto residency restriction. The Commission will monitor the educational efforts and will consider legislative solutions on this matter at some point in the future after the 2012 legislative session.

This recommendation is consistent with a resolution by the Sex Offender Management Board, passed September 19, 2011, that states:

“The Board does not support sex offender residency restrictions or zoning restrictions that are counter-productive to the effective supervision of sex offenders.”

Child Safety Zone

Protected areas that sex offenders would be prohibited from entering except in limited and safe circumstances. Such areas might include schools and childcare facilities.

[Statement on Sex Offender Residency Restrictions in Iowa,
Iowa County Attorneys Association (December 11, 2006).]

CCJJ-PASS: 14-7-0 (100% - 0%)

FY12-SO #16.

Modify CRS 16-22-108 (1) (d) (I) to allow quarterly re-registration to occur within 5 business days before or after the offender's required re-registration date.

DISCUSSION: For *quarterly* sex offender registrants, statute currently requires re-registration to occur exactly on a required date or on the first business day following a weekend or holiday. This change will allow an offender who registers quarterly to re-register within 5 business days before or after their required re-registration date. For *annual* registrants, this "5-day" modification was already enacted by HB11-1278. This recommendation will allow consistency across re-registration procedures for all sex offenders and for law enforcement.

Proposed modification:

[The language will be refined by the drafter.]

16-22-108. Registration - procedure - frequency - place - change of address - fee.

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

STATUTE SHOULD MAKE CLEAR...

Regardless of the actual date of registration during the period 5 days before or 5 days after the required registration date, the 90-day period for re-registration is always calculated:

- A. From the offender's OFFICIAL date of re-registration, or
- B. Upon applicability, from the offender's BIRTHDATE (following the transition to the offender's birthdate as the OFFICIAL re-registration date).

In other words, re-registering on any day, 5 days before or after the "required date" or birthdate, is the equivalent of registering on the "required date" or birthdate. An earlier or later actual date of re-registration (by no more than the 5 days before or after) does not shift any required future date of re-registration.

FY 2011 RECOMMENDATIONS

PASS or other notations indicate the outcome from the December 10, 2010 and February 11, 2011 meetings of the Colorado Commission on Criminal and Juvenile Justice. The Sex Offense/Offender Task Force seated two working groups. The recommendations are organized according to the work group from which they originated: the Registration Working Group (#1-16) and the Refinement Working Group (#17-19).

PASS - FY11-SO #1. Create a simultaneous termination hearing/de-registration process for those juvenile offenders currently eligible for de-registration under CRS 16-22-113 (e).

Reason: Many offenders who are eligible to de-register fail to do so or are uninformed of the option.

Proposed fix: Amend the relevant statutes as necessary in CRS Titles 16 and 19. This would not change the substance of current law in CRS 16-22-113, only the procedures. This does not alter which juvenile offenders would be eligible for de-registration. This will create a simultaneous hearing/process to terminate jurisdiction/supervision and registration. Proper notice can be given to all parties and the court will have treatment records for juvenile. This should apply to juvenile probation and juvenile parole. Victim notice would still be accomplished.

PASS - FY11-SO #2. Create a simultaneous termination hearing/de-registration process for adult offenders with a deferred judgment who are currently eligible for de-registration under CRS 16-22-113 (d).

Reason: Many offenders who are eligible to de-register fail to do so or are uninformed of the option.

Proposed fix: Amend the relevant statutes as necessary in CRS Titles 16 and 18. This would not change the substance of current law in CRS 16-22-113, only the procedures. This does not alter which adult offenders would be eligible for de-registration. This will create a simultaneous hearing/process to terminate jurisdiction/supervision and registration. Proper notice can be given to all parties. This would not change the substance of current law, only the procedures. Victim notice would still be accomplished.

PASS - FY11-SO #3. Modify CRS 16-22-108 (7) to establish a consistent fee structure for sex offender registration.

Reason: This is a state-wide issue raised by law enforcement requiring attention due to the reported problems created by the inconsistencies in registration procedures and the wide disparity in registration fees. The registration fee was not intended to pay for the administration of registries. It is more important that sex offenders are registered than strict adherence to the collection of the registration fee.

Proposed fix: This recommendation would include the following statutory elements:

- Change CRS 16-22-108 to allow for a fee up to \$25.00 for each initial annual or quarterly re-registration.
- No allowable fee for updates to address, employment, email, etc or registration cancellations.
- It would allow for collection of fees civilly and would include specific language that allows a jurisdiction to waive the registration fee, if the offender is indigent.
- This would require law enforcement to accept sex offender registrations, even if the offender does not have the money to pay the fee.

PASS - FY11-SO #4. Create a simultaneous registration/cancellation of registration process in CRS 16-22-108 for registrations within Colorado.

Reason: This is a state-wide issue raised by law enforcement. The lag time between a cancellation and a new registration would be eliminated along with unnecessary failure to register charges. This would reduce the burden on offenders who are often required to return to a previous location to cancel a registration before being allowed to register in a new jurisdiction.

Proposed fix: Law enforcement agencies would simultaneously submit a notice of registration cancellation to a previous jurisdiction when registering an offender. This would be more efficient for offenders and law enforcement. This would only apply to registries within the state of Colorado. An electronic registration system would allow for streamlined implementation of this improved process. For example, the Sex Offender Tracking and Registration (STAR) system developed in Douglas County and being implemented in Denver County is a secure, web-based system to manage sex offender registration, allowing for multi-jurisdictional access.

PASS - FY11-SO #5. Add and clarify language in CRS 16-22-106 (3) (a) regarding the registration of offenders sentenced to or held in jail.

Reason: The added language requires re-registration of offenders held in jail pending court disposition for more than 5 days. This re-registration and notification to law enforcement will prevent unnecessary investigation into offenders presumed to have failed to register. The clarified language for offenders sentenced to jail would specify that the re-registration requirement applies to offenders sentenced to jail for *any offense* and not just sex offenses and would include a notification to the previous registration jurisdiction.

Proposed fix: Amend CRS 16-22-106 (3) (a) (I) as follows:

IF A PERSON WHO IS REQUIRED TO REGISTER PURSUANT TO 16-22-103 IS HELD IN A COUNTY JAIL PENDING COURT DISPOSITION FOR ANY OFFENSE FOR MORE THAN FIVE (5) WORKING DAYS, THE SHERIFF OF THE COUNTY IN WHICH THE COUNTY JAIL IS LOCATED, OR HIS OR HER DESIGNEE, SHALL TRANSMIT TO LOCAL LAW ENFORCEMENT OF THE JURISDICTION IN WHICH THE PERSON WAS LAST REGISTERED AND THE CBI CONFIRMATION OF THE PERSON'S REGISTRATION ON A STANDARDIZED FORM PROVIDED BY THE CBI, USING THE ADDRESS OR ADDRESSES AT WHICH THE PERSON WILL RESIDE WHILE IN CUSTODY OF THE COUNTY JAIL, AND INCLUDING THE PERSON'S DATE OF BIRTH, A CURRENT PHOTOGRAPH OF THE PERSON, AND THE PERSON'S FINGERPRINTS.

(II) If a person who is required to register pursuant to 16-22-103 is sentenced to a county jail FOR ANY OFFENSE, the sheriff of the county in which the county jail is located, or his or her designee, as soon as possible following sentencing, shall transmit TO LOCAL LAW ENFORCEMENT OF THE JURISDICTION IN WHICH THE PERSON WAS LAST REGISTERED AND the CBI confirmation of the person's registration on a standardized form provided by the CBI, using the address or addresses at which the person will reside while in custody of the county jail, and including the person's date of birth, a current photograph of the person, and the person's fingerprints.

(III) The provisions of this paragraph (II) shall apply to persons sentenced on or after January 1, 2005.

PASS* - FY11-SO #6. Define “transient” in statute and require registration of offenders who are homeless or have no permanent residence.

* The Sex Offense/Offender Task Force withdrew the original recommendation at the December 10, 2010 CCJJ meeting without a vote. This revision was approved by CCJJ at the February 11, 2011 CCJJ meeting.

Reason: This is a state-wide issue raised by law enforcement. The current method to register and track transient offenders is inadequate.

Proposed fix: This recommendation includes the following statutory elements for drafting:

- Define “transient” in statute.
- Require law enforcement to register transient offenders.

Note: The Sex Offense/Offender Task Force and its working groups will continue to collaborate with law enforcement on the elements of the recommendation that were removed. These elements include the intent to develop a self-verification procedure for homeless offenders that is not overly punitive to offenders or burdensome to law enforcement.

PASS - FY11-SO #7. Modify CRS 16-22-108 (1) (b) to allow annual re-registration to occur within 5 business days of the offender’s birthday.

Reason: The change would eliminate a burden to time registration exactly on or around an offender’s birth date. The statute currently requires re-registration to occur on an offender’s birthday or on the first business day following a weekend or holiday birthday. The change will allow an offender to register within 5 business days before or after the offender’s birthday.

Proposed fix: Amend CRS 16-22-108 (1) (b) as follows:

Except as otherwise provided in paragraph (d) of this subsection (1), each person who is required to register pursuant to section 16-22-103 shall reregister ~~on~~ WITHIN FIVE BUSINESS DAYS OF the person's first birthday following initial registration and annually ~~on~~ WITHIN FIVE BUSINESS DAYS OF the person's birthday thereafter. ~~If a person's birthday falls on a Saturday, Sunday, or holiday, the person shall reregister on the first business day following his or her birthday.~~ Such person shall reregister pursuant to this paragraph (b) with the local law enforcement agency of each jurisdiction in which the person resides ~~on~~ WITHIN FIVE BUSINESS DAYS OF his or her birthday, in the manner provided in paragraph (a) of this subsection (1).

PASS - FY11-SO #8. Modify CRS 16-22-108 (3) to add “within 5 business days” as the time required to re-register due to the changes in life circumstances listed in the statute.

Reason: The statute currently includes no time reference for the requirement to re-register. The change will provide a clear expectation for this registration requirement to occur within 5 business days before or after the change in offender circumstances detailed in the subsection.

Proposed fix: Amend 16-22-108 (3) as follows: Any person who is required to register pursuant to section 16-22-103 shall be required to register WITHIN 5 BUSINESS DAYS each time such person:

PASS - FY11-SO #9. Add to the place of trial venues in CRS 18-1-202 (12) the county where an offender completed his/her last registration.

Reason: This is a state-wide issue raised by law enforcement. The change provides another option for law enforcement to deal with offenders who fail to register.

Proposed fix: Amend CRS 18-1-202 (12) as follows:

If a person commits the offense of failure to register as a sex offender as provided in section 18-3-412.5, the offense is committed and the offender may be tried in the county in which the offender was released from incarceration for commission of the offense requiring registration or in the county in which the offender resides or in the county in which the offender is apprehended OR THE COUNTY WHERE AN OFFENDER COMPLETED HIS/HER LAST REGISTRATION.

PASS - FY11-SO #10. Eliminate the language requiring mandatory Intensive Supervision (ISP) as a condition of probation or parole for failure to register in CRS 18-3-412 (2) (b) and 18-1.3-1007 (1.5).

Reason: The change provides judicial discretion to determine whether Intensive Supervision: Probation/Parole (ISP) is appropriate.

Proposed fix: Amend CRS 18-3-412 (2) (b) as follows:

Any person convicted of felony failure to register as a sex offender shall be sentenced pursuant to the provisions of section 18-1.3-401. If such person is sentenced to probation, the court ~~shall~~ MAY require, as a condition of probation, that the person participate until further order of the court in an intensive supervision probation program established pursuant to section 18-1.3-1007. If such person is sentenced to incarceration and subsequently released on parole, the parole board ~~shall~~ MAY require, as a condition of parole, that the person participate in an intensive supervision parole program established pursuant to section 18-1.3-1005.

And: Amend CRS 18-1.3-1007 (1.5) as follows:

In addition to the persons specified in subsection (1) of this section, the court ~~shall~~ MAY require any person convicted of felony failure to register as a sex offender, as described in section 18-3-412.5, and sentenced to probation to participate, as a condition of probation and until further order of the court, in the intensive supervision probation program established pursuant to this section.

PASS - FY11-SO #11. Add affirmative defense for failure to register from Adam Walsh.

Reason: Although, in practice, charges may infrequently be filed under these circumstances, an affirmative defense for failure to register should be established in statute to accommodate uncontrollable circumstances. The Adam Walsh Act provides a model for this affirmative defense.

Proposed fix: Introduce into statute, regarding 16-22-103 CRS and 18-3-412.5 CRS, for example...

AFFIRMATIVE DEFENSE. In a prosecution for a violation of failure to register, it is an affirmative defense that (1) uncontrollable circumstances prevented the individual from complying; (2) the individual did not contribute to the creation of such circumstances in reckless disregard of the requirement to comply; and (3) the individual complied as soon as such circumstances ceased to exist. [See Adam Walsh Act, Title 1, Sec. 141, § 2250 (b)]

PASS - FY11-SO #12. Request State Public Defender's Office to create informational documents for offenders on registration/re-registration and de-registration.

Reason: Many offenders are uninformed regarding requirements to register and eligibility to de-register. There are instructions on the state judicial web site but more substantive documentation and timely distribution of information with advice would be advantageous.

Proposed fix: Request the Colorado State Public Defender's Office to prepare a registration and re-registration information fact sheet and a de-registration fact sheet that public defenders, local law enforcement and other law enforcement agencies can use to advise eligible persons on the registration, re-registration and de-registration processes. The SPDO should collaborate with relevant agencies and stakeholders. Provide the documents to CCJJ and the Sex Offender/Offense Task Force or any successor subcommittee for review.

PASS* - FY11-SO #13. Add language to CRS 16-13-902 (and relevant sections in Title 18) on SVP equivalency criteria in a manner that ensures the assessment procedure is constitutional.

* The original vote on this recommendation at the December 10, 2010 CCJJ meeting did not pass. The Sex Offense/Offender Task Force presented this revision that was approved at the February 11, 2011 CCJJ meeting.

Reason: Currently missing from statute is the language to establish the process and who is responsible to evaluate sex offenders entering from other states who may meet the definition of sexually violent predator. This has led to inconsistencies across jurisdictions when dealing with offenders from particular states.

Proposed fix:

a) The procedure to classify out-of state offenders moving to and registering in Colorado should not place a different assessment standard on these offenders than is used for in-state offenders. (The procedure is currently under review and, if necessary, modifications will be made to the suggested statutory fix that ensures constitutionality.)

b) Amend CRS 16-13-902 (5) as follows:

"Sexually violent predator" means a sex offender who is identified as a sexually violent predator pursuant to section 18-3-414.5, C.R.S., or who is found to be a sexually violent predator or its equivalent in any other state or jurisdiction, including but not limited to a military or federal jurisdiction. FOR PURPOSES OF THIS SUBSECTION (5), "EQUIVALENT", WITH RESPECT TO AN OFFENDER FOUND TO BE A SEXUALLY VIOLENT PREDATOR OR ITS EQUIVALENT, MEANS A SEX OFFENDER CONVICTED IN ANOTHER STATE OR JURISDICTION, INCLUDING BUT NOT LIMITED TO A MILITARY, TRIBAL, TERRITORIAL, OR FEDERAL JURISDICTION, WHO HAS BEEN ASSESSED OR LABELED AT THE HIGHEST REGISTRATION AND NOTIFICATION **LEVELS** IN THE JURISDICTION WHERE THE CONVICTION WAS ENTERED AND WHO SATISFIES THE AGE, DATE OF OFFENSE, AND CONVICTION REQUIREMENTS FOR SEXUALLY VIOLENT PREDATOR STATUS PURSUANT TO COLORADO LAW. A SEX OFFENDER CONVICTED IN ANOTHER JURISDICTION WHO IS DESIGNATED AS A SEXUALLY VIOLENT PREDATOR BY THE DEPARTMENT OF PUBLIC SAFETY FOR PURPOSES OF COLORADO LAW SHALL BE NOTIFIED OF HIS OR HER DESIGNATION AND SHALL HAVE THE RIGHT TO APPEAL THE DESIGNATION IN DISTRICT COURT.

PASS - FY11-SO #14. Add Second degree kidnapping, CRS 18-3-302 (3) (a), as a sex offense when the underlying offense is the offense of sexual assault.

Reason: It was assumed that offenders convicted of the second degree kidnapping where a sex assault was involved would simultaneously be convicted of the sex offense. This has not occurred. Some violent offenders convicted of second degree kidnapping have not been convicted of the associated sex crime and are therefore not required to register.

Proposed fix: Add second degree kidnapping, CRS 18-3-302 (3) (a), as a sex offense when the underlying offense is the offense of sexual assault to the offenses requiring registration, CRS 16-22-102(9).

PASS - FY11-SO #15. Add tribal and territorial offenders in the list of those required to register, CRS 16-22-103 (1) (b), pursuant to Adam Walsh Act requirements.

Reason: To enhance compliance with Adam Walsh requirements and improve consistency in Colorado statute.

Proposed fix: Amend CRS 16-22-103 (1) (b) as follows:

Any person who was convicted on or after July 1, 1991, in another state or jurisdiction, including but not limited to a military, TRIBAL, TERRITORIAL or federal jurisdiction, of an offense that, if committed in Colorado, would constitute an unlawful sexual offense, as defined in section 18-3-411 (1), C.R.S., enticement of a child, as described in section 18-3-305, C.R.S., or internet luring of a child, as described in section 18-3-306, C.R.S.; and *[Ed: statute continues to separate paragraph]*

SUPPORTED* - FY11-SO #16. Create an improved risk assessment classification of registered sex offenders and a public notification system that is more functional to law enforcement and more informative to the community.

Reason: The current registry does not provide gradation of risk beyond those categorized as SVP and everyone else. An improved risk designation would be helpful to law enforcement and would inform the public which offenders may be a public risk. The degree of risk would determine the method by which public notification could occur. Not all registrations necessarily warrant a public meeting, which could be reserved for those offenders who may present the greatest risk to the public.

Proposed fix: As per 16-11.7-103 (4) (c.5), the Sex Offender Management Board (SOMB) working in collaboration with representatives of the Division of Criminal Justice, Judicial and the Probation Division, the Division of Parole, the Department of Corrections, and law enforcement should revise the risk assessment screening system to assign sex offenders to categories based on risk and devise a set of notification options commensurate with the level of risk. This initial screening based on static risk factors should not preclude subsequent assessments of risk during the monitoring and treatment of sex offenders in justice agencies such as the department of corrections, probation, parole, or community corrections. This work has been assigned by the SOMB to one of its subcommittees, the Community Notification Technical Assistance Team

* No vote. CCJJ members support continued work in this area.

PASS - FY11-SO #17. Repeal the current mandatory prison sentence provisions for commission of Unlawful Sexual Contact by Force, Threat, or Intimidation, 18-3-404 (3).

Reason: Unlawful *Sexual Contact* by Force, Threat, or Intimidation is a mandatory prison F4, while *Sexual Assault* by Force, Threat, or Intimidation (which involves sexual penetration or intrusion, not merely sexual contact) is a probation eligible F3. The less egregious conduct of contact should not carry a necessarily greater penalty.

Proposed fix: Amend 18-3-404(3) as follows:

- (3) If a defendant is convicted of ~~the class 4 felony of unlawful sexual contact pursuant to paragraph (b) or subsection (2)~~ SUBSECTION (1.5) of this section, the court shall sentence the defendant in accordance with the provisions of section 18-1.3-406; ~~except that this subsection (3) shall not apply if the actor engages in the conduct described in paragraph (g) of subsection (1) of this section.~~

PASS - FY11-SO #18. Extend the amount of time available on a deferred judgment and sentence for a sex offense requiring treatment, and clarify when the period of the deferred begins.

Reason: For the majority of sex offenders, treatment will take longer than 4 years. However, the statute currently only permits a maximum of 4 years for a deferred judgment. Also, because a sex offense requires an evaluation before treatment can begin, there is often a two-month lag between the entry of the plea for the deferred and the beginning of that treatment. The period of the deferred needs to begin at the time supervision and treatment can begin.

Proposed fix: Amend the Deferred Judgment statute, C.R.S. 18-1.3-102, to provide that for offenses listed in C.R.S. 16-11.7-102(3) (i.e., those requiring sex offender treatment), the court is permitted, with the consent of the parties, to extend the length of the Deferred Judgment period for an additional two years for good cause. In addition, amend the same statute to make clear that the period of the deferred for any plea begins the date the plea is entered if no presentence investigation report or offense specific evaluation is ordered; but if a presentence investigation or offense specific evaluation is ordered, the case is to be set over for another date so those reports can be completed. At that subsequent court date, the period of the deferred will begin.

PASS - FY11-SO #19. Fix the currently unconstitutional provision in C.R.S. 18-1.3-1004(4).

Reason: This section of the statute purports to permit the sentencing court to convert an otherwise determinate sentence to an indeterminate sentence for certain crimes related to child prostitution and child pornography (often called commercial or economic sex crimes). This can be done if the Court finds, based on an SVP analysis, that the defendant is likely to commit sexual assault or sexual assault on a child in the future. There are two problems with this provision. First, it is unconstitutional, as it permits increasing the maximum penalty to which a defendant is exposed based on a fact-finding by the Court, rather than a jury. Second, even if such a Court finding were sufficient, the SVP analysis is by definition inapplicable to these cases, because the first question in the SVP analysis is whether the defendant was convicted on a sexual assault or sexual assault on a child. In these cases, the defendant was not.

Proposed fix: Two possible solutions were discussed, and the task force agreed to bring them both forward.

TASK FORCE OPPOSED - 19 (a): Repeal subsection (4) of 18-1.3-1004.

TASK FORCE APPROVED - 19 (b): Amend subsection (4) to permit its use provided the defendant agrees to have the judge make such a finding; and require the development of a different analytical tool to be used that makes sense in this area. The prosecutors involved in the discussion have used this provision as a plea bargain, where an otherwise indeterminate charge is plead to one of these crimes, with an agreement that the Court would have the power to make the statutory finding. This gives a useful tool to resolve cases that may otherwise have to go to trial.