



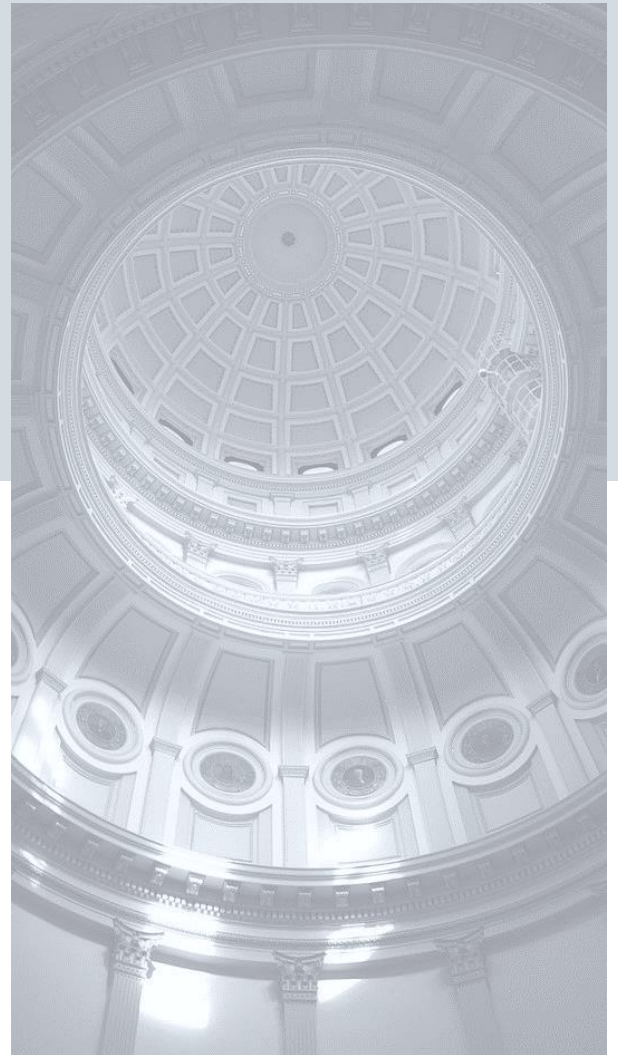
COLORADO

**Department of
Regulatory Agencies**

Colorado Office of Policy, Research &
Regulatory Reform

2019 Sunset Review

Sex Offender Management Board



October 15, 2019



COLORADO

**Department of
Regulatory Agencies**

Executive Director's Office

October 15, 2019

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 Colorado General Assembly established the sunset review process in 1976 as a way to analyze and evaluate regulatory programs and determine the least restrictive regulation consistent with the public interest. Since that time, Colorado's sunset process has gained national recognition and is routinely highlighted as a best practice as governments seek to streamline regulation and increase efficiencies.

Section 24-34-104(5)(a), Colorado Revised Statutes (C.R.S.), directs the Department of Regulatory Agencies to:

- Conduct an analysis of the performance of each division, board or agency or each function scheduled for termination; and
- 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 Colorado Office of Policy, Research and Regulatory Reform (COPRRR), located within my office, is responsible for fulfilling these statutory mandates. Accordingly, COPRRR has completed the evaluation of the Sex Offender Management Board. I am pleased to submit this written report, which will be the basis for COPRRR's oral testimony before the 2020 legislative committee of reference.

The report discusses the question of whether there is a need for the regulation provided under Section 103, of Article 11.7 of Title 16, C.R.S. The report also discusses the effectiveness of the Sex Offender Management Board and the Department of Public Safety's Division of Criminal Justice staff in carrying out the intent of the statutes and makes recommendations for statutory changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

A handwritten signature in cursive script that reads 'Patty Salazar'.

Patty Salazar
Executive Director





COLORADO

Department of Regulatory Agencies

Colorado Office of Policy, Research &
Regulatory Reform

2019 Sunset Review

Sex Offender Management Board

SUMMARY

What is regulated?

The Sex Offender Management Board (SOMB), in the Department of Public Safety (DPS) develops standards and guidelines that are applied in the state's judicial and correctional systems to oversee adults who have been convicted or juveniles who have been adjudicated of sexual offenses. 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* (collectively S&Gs). In addition to developing the S&Gs, the SOMB qualifies and lists all treatment providers, evaluators, and polygraph examiners who treat sex offenders including developmentally disabled (DD) and intellectually disabled (ID) offenders.

Why is it regulated?

The SOMB endeavors to reduce the possibility that an individual who has committed a sex crime will reoffend.

Who is regulated?

During fiscal year 17-18, the SOMB listed 299 adult treatment providers (62 listed to treat DD/ID individuals); 230 juvenile treatment providers (39 listed to treat DD/ID individuals); 95 adult evaluators (18 listed to treat DD/ID individuals); 68 juvenile evaluators (12 listed to treat DD/ID individuals); 28 adult polygraph examiners (13 listed to treat DD individuals); and 22 juvenile polygraph examiners (8 listed to treat DD individuals).

What does it cost?

The program has multiple revenue streams. A sex offender surcharge, charged to each person convicted or adjudicated of a sex offense, finances a cash fund. The remainder of program operations use General Fund dollars allocated to DPS. During fiscal year 17-18, DPS expended \$557,313 and allotted 5.3 full-time equivalent employees to program administration.

What activity is there?

The SOMB, through DPS, provided 354 training sessions attended by nearly 12,777 individuals, produced several publications, and revised portions of the S&Gs, among other activities, during the period examined for this sunset review.

KEY RECOMMENDATIONS

Continue the SOMB for seven years, until 2027.

The SOMB is a 25-member deliberative body. Among its primary duties, the SOMB is required to develop evidence-based standards and guidelines for the evaluation, identification, treatment, management, and monitoring of individuals who have committed sexual offenses. The General Assembly directs that the SOMB use the risk-need-responsivity (RNR) model as the basis for the S&Gs and treatment. The goal of the RNR model is to treat each individual based on his or her personal attributes. The SOMB engages in important discussions and multiple forums that allow opportunities for people, of all walks of life, to provide input. Therefore, the SOMB is necessary to protect the Colorado public's health, safety, and welfare.

METHODOLOGY

As part of this review, Colorado Office of Policy, Research, and Regulatory Reform staff attended SOMB meetings; conducted a literature search; conducted a survey of listed treatment providers; interviewed representatives from multiple state government agencies, representatives of the Judicial Branch, members of local law enforcement, an official with an international professional association, stakeholders from advocacy organizations, and several individual stakeholders; and reviewed program records, court cases, Colorado statutes and rules, and the laws and programs of other states.

CONTACTS MADE DURING THIS REVIEW

Advocates for Change
Association for the Treatment of Sexual Abusers
Coalition for Sexual Offense Restoration
Colorado Coalition Against Sexual Assault
Colorado Department of Corrections
Colorado District Attorney's Council
Judicial Branch, Courts and Probation Services
Colorado Organization for Victim Assistance
County Sheriffs of Colorado

Division of Youth Services
Division of Criminal Justice
Division of Professions and Occupations
Office of the Colorado Attorney General
Office of the Colorado State Public Defender
Rocky Mountain Victim Law Center
Sex Offender Management Board members
SOMB Independent Parliamentary Assessor

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
Colorado Office of Policy, Research and Regulatory Reform
1560 Broadway, Suite 1550, Denver, CO 80202
www.dora.colorado.gov/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 Colorado Office of Policy, Research and Regulatory Reform (COPRRR) within 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:

- I. 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;
- II. 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;
- III. 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;
- IV. Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- V. 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;
- VI. The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- VII. 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;
- VIII. 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(6)(b), C.R.S.

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- IX. Whether the agency through its licensing or certification process imposes any sanctions or disqualifications on applicants based on past criminal history and, if so, whether the sanctions or disqualifications serve public safety or commercial or consumer protection interests. To assist in considering this factor, the analysis prepared pursuant to subsection (5)(a) of this section must include data on the number of licenses or certifications that the agency denied based on the applicant's criminal history, the number of conditional licenses or certifications issued based upon the applicant's criminal history, and the number of licenses or certifications revoked or suspended based on an individual's criminal conduct. For each set of data, the analysis must include the criminal offenses that led to the sanction or disqualification; and
- X. Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

Sunset reports are organized so that a reader may consider these criteria while reading. While not all criteria are applicable to all sunset reviews, the various sections of a sunset report generally call attention to the relevant criteria. For example,

- In order to address the first criterion and determine whether a particular regulatory program is necessary to protect the public, it is necessary to understand the details of the profession or industry at issue. The Profile section of a sunset report typically describes the profession or industry at issue and addresses the current environment, which may include economic data, to aid in this analysis.
- To ascertain a second aspect of the first sunset criterion--whether conditions that led to initial regulation have changed--the History of Regulation section of a sunset report explores any relevant changes that have occurred over time in the regulatory environment. The remainder of the Legal Framework section addresses the third sunset criterion by summarizing the organic statute and rules of the program, as well as relevant federal, state and local laws to aid in the exploration of whether the program's operations are impeded or enhanced by existing statutes or rules.
- The Program Description section of a sunset report addresses several of the sunset criteria, including those inquiring whether the agency operates in the public interest and whether its operations are impeded or enhanced by existing statutes, rules, procedures and practices; whether the agency performs efficiently and effectively and whether the board, if applicable, represents the public interest.
- The Analysis and Recommendations section of a sunset report, while generally applying multiple criteria, is specifically designed in response to the tenth criterion, which asks whether administrative or statutory changes are necessary to improve agency operations to enhance the public interest.

These are but a few examples of how the various sections of a sunset report provide the information and, where appropriate, analysis required by the sunset criteria. Just as not all criteria are applicable to every sunset review, not all criteria are specifically highlighted as they are applied throughout a sunset review.

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, representatives of the regulated profession and other stakeholders. Anyone can submit input on any upcoming sunrise or sunset review on COPRRR's website at: www.dora.colorado.gov/opr.

The functions of the Sex Offender Management Board (SOMB) and the Department of Public Safety's Division of Criminal Justice (DCJ) as enumerated in Section 103, of Article 11.7, of Title 16, Colorado Revised Statutes (C.R.S.), shall terminate on September 1, 2020, unless continued by the General Assembly. During the year prior to this date, it is the duty of COPRRR to conduct an analysis and evaluation of the SOMB pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed regulation should be continued and to evaluate the performance of the SOMB and the DCJ. During this review, the SOMB must demonstrate that the program serves the public interest. COPRRR's findings and recommendations are submitted via this report to the Office of Legislative Legal Services.

Methodology

As part of this review, COPRRR staff attended SOMB meetings; conducted a literature search; conducted a survey of listed treatment providers; interviewed representatives from multiple state government agencies, representatives of the Judicial Branch, members of local law enforcement, an official with an international professional association, stakeholders from advocacy organizations, and several individual

stakeholders; and reviewed program records, court cases, Colorado statutes and rules, and the laws and programs of other states.

In April 2019, COPRRR sent a survey link, via email, to each of the 684 listed treatment providers. Of these, an estimated 640 were successfully delivered and 146 individuals responded. This represents a response rate of 23 percent.

Profile of the SOMB

In a sunset review, COPRRR is guided by the sunset criteria located in section 24-34-104(6)(b), C.R.S. The first criterion asks 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.

In order to understand the need for regulation, it is first necessary to understand what the SOMB does, how it works, who it serves, the underlying philosophy, and the circumstances under which it operates.

The SOMB makes public policy with regard to individuals found guilty of committing a sex crime, in a clinical, objective manner to protect Colorado's public. Nevertheless, the subject matter invites constant scrutiny and controversy from other policy makers.

The legislative declaration of the statutes creating the Standardized Treatment Program for Sex Offenders (Act) reads, in part:

[I]t is necessary to create a program that establishes 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. The General Assembly does not intend to imply that all offenders can or will positively respond to treatment.²

In that vein, the SOMB is the body established to reduce the possibility that an individual who has committed a sex crime will victimize someone else. The SOMB has developed systems, standards, and guidelines for the management and treatment of individuals who commit misdemeanor or felony sex offenses in Colorado.

According to the Act, treatment is, "...therapy, monitoring, and supervision of any sex offender which conforms to the standards created by the [SOMB]..."³ The SOMB standards and guidelines are, with little exception, the principles and policies

² § 16-11.7-101(2), C.R.S.

³ § 16-11.7-102(4), C.R.S.

employed by multiple governmental agencies, the courts, nonprofits, and professionals who work with offenders.

The SOMB, through 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* (collectively S&Gs), developed policies that affect,

- The judicial branch via court decisions and probation practices;
- Department of Corrections (DOC) decisions and practices concerning the treatment of individuals both incarcerated and on parole;
- Department of Human Services, Division of Youth Services (DYS) policies concerning the treatment of juveniles who have committed sexual offenses;
- County, municipal, and citizen processes and plans for offenders to live in their communities; and
- Other sex offender-related processes.

The S&Gs represent an attempt at standardizing individualized treatment. They are policies that are applied individually but normalized across a wide spectrum of ages, personalities, and pathologies. Considering that laws, research, and public opinion are dynamic, the SOMB and the S&Gs attempt to make sound public policy in an ever-changing environment by standardizing processes and protocols. Through several subcommittees, the S&Gs are continually scrutinized and revised to keep them up to date.

The current treatment philosophy mandated by the Act and embodied in the SOMB is the risk-need-responsivity (RNR) model. The RNR model is applied internationally during the assessment and treatment of sex offenders. Developed in the 1980s, the RNR model is based on three principles:⁴

- The *risk principle* asserts that criminal behavior can be reliably predicted and that treatment should focus on higher risk offenders;
 - Match the level of service to the offender's risk to re-offend.
- The *need principle* highlights the importance of criminogenic needs in the design and delivery of treatment; and
 - Assess criminal traits, problems and issues and target them in treatment.
- The *responsivity principle* describes how the treatment should be provided.
 - Tailor the intervention to the learning style, motivation, abilities and strengths of the offender.

⁴ Public Safety Canada. Risk-need-responsivity model for offender assessment and rehabilitation 2007-06. Retrieved January 17, 2019, from <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/rsk-nd-rspnsvty/index-en.aspx>

The RNR model provides the basis for treatment of those individuals convicted⁵ of a sex offense and is the foundation of the S&Gs.

When a person is convicted of a sex crime, an SOMB-listed evaluator conducts an offense-specific evaluation. The evaluation assesses the risk for re-offense and recommends appropriate protocols for treatment and supervision. The court considers the evaluation when imposing a sentence.

If an adult offender is sentenced to prison, he or she will undergo treatment while under the supervision of the DOC. If an adult is sentenced to probation, parole, or community corrections, the supervising agency⁶ assigns a supervising officer who forms a community supervision team (CST). If a juvenile is adjudicated, the DYS forms a multidisciplinary team (MDT). The CST and MDT are teams established specifically for an individual offender, whose members collaborate on the offender's treatment. The Act requires the supervising agency to provide two options for treatment providers to an offender. Once determined, the treatment provider cannot be changed by the offender without the approval of the CST or MDT, or the court.⁷

The CSTs and MDTs are designed to work collaboratively so that individuals in treatment are capable of living in Colorado communities while lowering the chances that they re-offend. The core CST typically consists of a supervising officer, a treatment provider, an evaluator, a polygraph examiner, and a victim advocate. An MDT typically will also have family involved in the treatment. The objective of the supervision team is to cater therapy, supervision, and monitoring to the person in treatment. The goal of the collaborative efforts is to engage offenders in treatment in order to decrease risk, enhance protective factors, and increase their intrinsic motivation for positive behavioral change.⁸ Field operationalization of the S&Gs and the RNR model occurs through the CSTs and MDTs.

This system is not without controversy. There are some who posit that the supervision team approach is a relic from the containment model and “no known cure” mindset. The “containment model” is the nomenclature used to describe the previous system used to control those convicted of sex offenses. A major reason the containment model evolved as a mode of handling those convicted of a sex offense is the tenet that incarcerating lower risk sex offenders is a drain on taxpayer dollars. While less controlling and more therapeutic, the RNR model has, in theory, replaced the containment model, but the dominant structure of the containment model is still in place: the supervision team.

⁵ “Convicted,” in the case of this sunset report, generally means both adults convicted of sex offenses and juveniles adjudicated for sexual offenses.

⁶ The judicial district, in the case of probation, or the DOC, in cases of parole or community corrections, are the agencies that supervise the offender.

⁷ § 16-11.7-105(2), C.R.S.

⁸ § 5.005, Sex Offender Management Board: *Standards and Guidelines for the Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders*.

Still others maintain the supervision teams are the best therapeutic means for this population to positively exist among the general population. COPRRR conducted a survey of listed therapists for this sunset review. Seventy-two percent of the respondents felt the supervision team structure allows for treatment according to best therapeutic practices and of those, 49 percent strongly agreed. The thought is that if the team is allowed to be innovative and determine management based on the evaluation and treatment of the individual, the system will be more successful.

The disagreement in opinion toward supervision teams partially illustrates the difficulty some people and institutions have when working with sex offenders. For many people punishment, rather than treatment, is a safe fallback position, while others accept that treatment and collaboration works.

There are also those who are critical of the SOMB itself. The 25-member SOMB is comprised of members from a broad section of the state's population and governmental organizations. It has representatives from the courts and probation, prisons and parole, county administrations, state governmental agencies, prosecuting and defense attorneys, victim advocates, polygraph examiners, and mental health therapists. With so many differing interests, it is not always easy to reach a consensus on issues. Entertaining so many perspectives leads to criticisms that the SOMB does not always employ evidence and research to make decisions. There are also those who see the SOMB as effective.

Another controversy is the prominent use of polygraph in adult treatment. Each CST has a polygraph examiner. Some people contend that the polygraph presents a false premise for enforcement while others assert it adds a measure of accountability to the treatment process.

According to research conducted by the Colorado Legislative Council Staff, polygraph use has been researched extensively. However, not many peer-reviewed studies measure its usefulness in sex offender treatment and recidivism. The study further found:⁹

The majority of states reviewed do not mandate polygraphs, but instead allow clinicians or the supervising officer to request one if they feel it would be useful in better managing the sex offender. Although Tennessee explicitly discontinued polygraph tests as a supervision tool in 2012 due to legal concerns, they are allowed for treatment purposes. Georgia, Maine, and Minnesota also let treatment providers determine if they want to use a polygraph and, if so, under what circumstances. Nevada, West Virginia, and Wisconsin allow a supervising parole or probation officer to request a polygraph test.

⁹ Legislative Council Staff. *Memorandum November 6, 2018. Overview of Post-Conviction Sex Offender Polygraph Testing*. Retrieved April 25, 2019, from https://leg.colorado.gov/sites/default/files/polygraphs_and_sex_offenders_10032018_0.pdf

While the Act does not mandate the use of polygraph, it directs the SOMB to develop an application and review process for polygraph examiners to be listed.¹⁰ It continues to be a major component of treatment.

Fueled in part by events in the news, there are some people who insist that many offenders are wrongfully accused. Others counter that all sex offenders are incapable of change. However, the philosophy underlying the existence of the SOMB is that the majority of people in the system have committed serious crimes but with some degree of treatment, they are able to live in society.

These are but a few examples of the contrasting thoughts and opinions stakeholders have concerning sex offenders and sex offender treatment. There are also more moderate opinions that lie between the edges. However, considering all the conflicting opinions and attitudes, the controversies drive constant scrutiny. In the last decade, since 2009, the SOMB has undergone two external evaluations, an internal evaluation, three sunset reviews, is currently undergoing a performance audit, and it makes annual reports to the General Assembly.

¹⁰ § 16-11.7-106(2)(a), C.R.S.

Legal Framework

History of Regulation

In a sunset review, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) is guided by the sunset criteria located in section 24-34-104(6)(b), Colorado Revised Statutes (C.R.S.). The first sunset criterion questions 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.

One way that COPRRR addresses this is by examining why the program was established and how it has evolved over time.

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 individuals convicted of committing sex offenses. The *Standards and Guidelines for the Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders* (Adult S&Gs) was first published in 1996 and has been modified in an ongoing basis. The SOMB first developed the *Standards and Guidelines for the Evaluation, Assessment, Treatment and Supervision of Juveniles Who Have Committed Sexual Offenses* (Juvenile S&Gs, collectively, S&Gs) in 2002. Like the Adult S&Gs, the Juvenile S&Gs are subject to constant revision.

What began as a 12-member board, now consists of 25 members who represent interests from various governmental and nongovernmental entities. As new duties were assigned to the SOMB, new seats were added. For example, because the SOMB disseminates information in schools, a seat was allotted to a representative from the Department of Education.

In recent history, as with the S&Gs, the SOMB itself has been under constant examination. This sunset review is the third in the last 10 years. This 2019 review follows reviews conducted in 2009 and 2015. The bill reauthorizing the SOMB following the 2009 review was vetoed by the Governor because of the addition of a last-minute amendment. The veto triggered the windup and sunset of the SOMB. However, the SOMB was reauthorized in the 2011 legislative session. The recommendations from the 2015 review included a data collecting measure to gauge policy efficacy, which the General Assembly funded in 2018, and a measure to streamline intragovernmental communication.

Legal Summary

The second and third sunset criteria question

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; and

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.

A summary of the current statutes and rules is necessary to understand whether regulation is set at the appropriate level and whether the current laws are impeding or enhancing the agency's ability to operate in the public interest.

The powers and duties of the SOMB are outlined in the statutes creating the Standardized Treatment Program for Sex Offenders (Act), which is Article 11.7 of Title 16, Colorado Revised Statutes (C.R.S.). The main purpose of the SOMB is to determine 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.¹¹

The Act qualifies a sex offense as:¹²

- 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;
- 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;

¹¹ § 16-11.7-101, C.R.S.

¹² § 16-11.7-102(3), C.R.S.

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- 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.

After conviction of one of the itemized offenses, a person is subject to the provisions of the Act.

The fifth sunset criterion questions 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.

One way that COPRRR addresses this is by examining the composition of the SOMB.

The 25-member SOMB consists of individuals who represent multiple interests, including:¹³

- A member who represents the Colorado Department of Corrections (DOC), 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 member who represents the Judicial Department,
 - A member who is a District Court Judge, and
 - A member who is either a Juvenile Court Judge or Magistrate;
- Three members appointed by the Executive Director of the Colorado Department of Human Services:
 - A member who has recognizable expertise in child welfare and case management,
 - A member who represents the Division of Youth Services (DYS), and

¹³ § 16-11.7-103(1), C.R.S.

-
- A member 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 member who represents the Division of Criminal Justice;
 - A member 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 human or 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.

The SOMB promulgates policies encompassing all phases of sex offender treatment. It must develop standards for identifying a sex offender and evaluating the risk he or she might present to the community; collaborate with the Judicial Department, DOC and the State Board of Parole 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.¹⁴

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.¹⁵

In addition to policy-making, the SOMB qualifies the individuals responsible for offender treatment in the community and in the DOC.

¹⁴ § 16-11.7-103(4), C.R.S.

¹⁵ § 16-11.7-103(4)(l), C.R.S.

The Act defines treatment as, “...therapy, monitoring, and supervision of any sex offender which conforms to the standards created by the [SOMB]...”¹⁶ The Act also states that any juvenile or adult sex offender considered for probation must be evaluated for treatment and risk to the community.¹⁷ A conviction carrying a sentence of probation, community corrections, or incarceration with the DOC, commitment to the Colorado Department of Human Services, placement on parole, or out-of-home placement requires an evaluation and treatment by an approved provider. However, the supervising agency with jurisdiction over the offender may alter that treatment through subsequent recommendations.¹⁸

Unless there are specific circumstances which can limit treatment provider options, the supervising agency must provide two options to an offender. When a treatment provider has been selected it cannot be changed by the offender without the approval of the Community Supervision Team (CST) for adult offenders, the Multidisciplinary Team (MDT) for juvenile offenders, or the court.¹⁹ The CST and MDT are teams established specifically for an individual offender, whose members collaborate on the offender’s treatment.

All evaluations, as well as any treatment or polygraph services, must be provided by individuals who conform to the S&Gs and who are listed with the SOMB.²⁰ 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.²¹
- A verification of qualifications and credentials.²²
- 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.²³

The SOMB also determines a renewal process for all listed providers²⁴ and has the authority to determine the criteria for an individual to be re-listed once he or she has been delisted.²⁵

¹⁶ § 16-11.7-102(4), C.R.S.

¹⁷ § 16-11.7-104(1), C.R.S.

¹⁸ § 16-11.7-105(1), C.R.S.

¹⁹ § 16-11.7-105(2), C.R.S.

²⁰ § 16-11.7-106(1), C.R.S.

²¹ § 16-11.7-106(2)(a)(I), C.R.S.

²² § 16-11.7-106(2)(a)(II), C.R.S.

²³ § 16-11.7-106(2)(a)(III), C.R.S.

²⁴ § 16-11.7-106(5), C.R.S.

²⁵ § 16-11.7-106(4), C.R.S.

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 credential as a psychologist, social worker, marriage and family therapist, professional counselor, addiction counselor, or a registered psychotherapist; or be a candidate for a license.²⁶ Because of the dual qualification, there are provisions for interagency notification. Complaints and grievances must be sent to DORA for investigation by a provider's credentialing board and DORA must notify the SOMB of the receipt of any complaint or grievance against a listed provider so the SOMB may investigate. Notwithstanding any action by DORA, the SOMB has the authority to delist a listed provider for a violation of the S&Gs.²⁷

Much of the policy-oriented work is accomplished by the development of the S&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.

The Adult S&Gs address:²⁸

- Guidelines for Pre-Sentence Investigations;
- Standards for Sex Offense-Specific Evaluations;
- Standards of Practice for Treatment Providers;
- Qualifications of Treatment Providers, Evaluators, and Polygraph Examiners Working with Sex Offenders;
- Standards and Guidelines for Community Supervision Teams Working with Adult Sex Offenders;
- Contact with Victims, Children and At-Risk Adults;
- Standards of Practice for Post-Conviction Sex Offender Polygraph Testing;
- Continuity of Care and Information Sharing;
- Victim Impact and a Victim Centered Approach;
- Standards for Plethysmography; and
- Recommendations for Management and Information Sharing on Alleged Sex Offenders Prior to Conviction.

The Juvenile S&Gs address:²⁹

- Presentence Investigations of Juveniles Who Have Committed Sexual Offenses;
- Evaluation and Ongoing Assessment of Juveniles Who Have Committed Sexual Offenses;
- Standards of Practice for Treatment Providers;

²⁶ §§ 4.100(B), 4.200(B), 4.300(B), 4.310(A), 4.600(A), 4.610(A), and 4.700(B), Sex Offender Management Board: *Standards and Guidelines for the Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders*, and Sex Offender Management Board: *Guidelines for the Evaluation, Assessment, Treatment and Supervision of Juveniles Who Have Committed Sexual Offenses*.

²⁷ § 16-11.7-106(7), C.R.S.

²⁸ Table of Contents. P.2, Sex Offender Management Board: *Standards and Guidelines for the Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders*.

²⁹ Table of Contents. P.2, Sex Offender Management Board: *Guidelines for the Evaluation, Assessment, Treatment and Supervision of Juveniles Who Have Committed Sexual Offenses*.

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- Qualifications of Treatment Providers, Evaluators, and Polygraph Examiners Working with Juveniles Who Have Committed Sexual Offenses;
 - Establishment of a Multidisciplinary Team for the Management and Supervision of Juveniles Who Have Committed Sexual Offenses;
 - Polygraph Examination of Juveniles Who Have Committed Sexual Offenses;
 - Continuity of Care and Information Sharing;
 - Victim Impact and a Victim Centered Approach;
 - Victims and Potential Victims: Clarification, Contact and Reunification;
 - Additional Conditions of Community Supervision; and
 - Supervision Protocol.

In addition to these topics, each volume contains extensive appendices and discussion notes that explain how to interpret and implement the S&Gs.

Program Description and Administration

In a sunset review, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) is guided by sunset criteria located in section 24-34-104(6)(b), Colorado Revised Statutes (C.R.S.). The third, fourth and fifth sunset criteria question:

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; and

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.

In part, COPRRR utilizes this section of the report to evaluate the agency according to these criteria.

The Sex Offender Management Board (SOMB) is a 25-member Board with representatives from the Judicial Branch; Departments of Corrections, Education, Human Services, and Public Safety; local governments; the treatment community; prosecuting and defense attorneys; and victim advocates. Members serve four-year terms and must reflect urban and rural areas. The SOMB develops standards and guidelines (S&Gs) to treat both adults and juveniles who have committed sexual offenses and are subject to the Colorado criminal justice system. The Department of Public Safety (DPS), Division of Criminal Justice (DCJ) provides staff to the SOMB.

The SOMB meets monthly to deliberate on many issues relating to sex offenders. It brings a wide range of perspectives from several facets of Colorado's government and advocacy communities including stakeholders from the courts, prisons, the defense bar, mental health fields, several governmental agencies, as well as advocates for both victims and offenders.

The program has multiple revenue streams. A sex offender surcharge, charged to each person convicted of a sex offense, finances a cash fund. The surcharge varies by category of crime committed by the offender. The remainder of program operations use General Fund dollars allocated to the DPS.

Table 1 itemizes the revenue, expenditures, and the full-time equivalent (FTE) employees used to maintain SOMB activities during the period under sunset review.

Table 1
SOMB Program Fiscal Information

Fiscal Year	Sex Offender Surcharge	General Fund	Total Program Expenditure	FTE
13-14	\$104,236	\$391,065	\$495,301	4.6
14-15	\$157,591	\$393,874	\$551,465	4.6
15-16	\$157,591	\$400,726	\$558,317	4.7
16-17	\$142,023	\$396,088	\$538,111	5.0
17-18	\$159,410	\$397,903	\$557,313	5.3

Table 1 shows that the program expenditures and staffing were stable with only slight increases. Staff performs several support activities. Activities include staffing committees, performing research, training and coordinating educational activities (which includes explaining the S&Gs to providers), and any other administrative tasks which arise. The staff positions are currently allotted as follows:

- Program Manager - 1.0 FTE, this position serves as the leading authority in the DCJ regarding sex offender research, laws, policy development, statewide collaboration, standards, and treatment.
- Program Coordinator - 1.0 FTE, this position provides high-level operations management of the SOMB.
- Administrator IV - 1.0 FTE, this position serves as the Adult Standards Coordinator and the Community Notification Coordinator concerning presence of sexually violent predators in the community.
- Administrator IV - 0.95 FTE, this position serves as the Juvenile Standards Coordinator.
- Statistical Analyst II - 0.8 FTE, this position is responsible for data collection and analysis for the purpose of recommending necessary policy changes, standards changes, and training.
- Statistical Analyst II - 1.0 FTE, this position is responsible for data collection, analysis, technical assistance, and development of a Phase II data collection process for tracking clients over time and across providers.
- Program Assistant - 0.5 FTE, this position provides administrative support.
- Program Assistant - 0.2 FTE, this position provides administrative support.

The above positions equal 6.45 FTE because additional personnel were allotted in the fiscal year 18-19 budget for data collection.

Committees³⁰

One way in which the SOMB completes its charges and obtains outside perspective is through its subcommittees. In 2019, it had three standing subcommittees:

- Best Practices Committee - Consists of at least 80 percent treatment providers and attempts to ensure that the S&Gs remain current;
- Application Review Committee (ARC) - Reviews listing applications and complaints regarding treatment providers, evaluators and polygraph examiners; and
- Executive Committee - Keeps the focus on the mission of the SOMB and formulates the agenda for SOMB meetings. The Executive Committee also has three subcommittees:
 - Adult 5.0 Standards Revision Committee - Reviews and revises Section 5.0 of the Adult S&Gs. This sub-subcommittee also has a subcommittee, the Child Contact Screening Workgroup;
 - Juvenile Standards Revision Committee - Reviews and revises the Juvenile S&Gs; and
 - Victim Advocacy Committee - Safeguards that the SOMB remains victim-centered and that the S&Gs cover victims' issues.

In addition to these three standing committees, there are several specialized, mission-specific, committees that contend with important issues as they come to the fore. In 2019, there were five specialized committees, including:

- Sex Trafficking Workgroup - Identifies male sex traffickers and contends with their risks, needs, and responsivity factors.
- Community Notification Technical Assistance Team - Aids local law enforcement agencies regarding implementation of sexually violent predator statutes.
- Family Engagement and Support Committee - Educates families of adult offenders about legal processes and recognizes the effect a conviction has on the family.
- Sex Offender Registration Legislative Workgroup - Considers the efficacy of the sex offender registration and community notification system.
- Training Committee - Works in collaboration with the Office of Domestic Violence Offender Management and develops training topics and objectives.

The SOMB uses this subcommittee system to provide expertise and recommendations concerning specific subjects on which the SOMB must act.

³⁰ Division of Criminal Justice. *Sex Offender Management Board: Annual Legislative Report*. January 2019. Appendix A.

S&G Development

The primary statutory duty assigned to the SOMB is the development of the S&Gs. The S&Gs outline the values and principles that guide sex offender treatment.

While the S&Gs have been in place for several years, they undergo constant scrutiny and revision to keep current in an ever-changing field. The process by which the revisions take place is often criticized as being non-scientific and unnecessarily lengthy in terms of time.

Regardless of those opinions, during the five-year period covered by this sunset review there have been multiple changes made to the S&Gs and associated policies. Including revisions to:

- Section 1.000 Presentence Investigations (Adult S&G only)
- Section 5.000 Multidisciplinary Teams (Juvenile S&G only)
- Informed Supervision (Juvenile S&G only)
- Section 3.000 Standards of Practice for Treatment Providers (Juvenile S&G only)
- Section 2.000 Standards of Practice for Evaluators (Juvenile S&G only)
- Appendix B Contact, Clarification, and Reunification
- Managing Sex Offenders in Denial (Adult S&G only)
- Appendix C Young Adult Modification Protocol
- Appendix D Use of Sexually Stimulating Materials Protocol
- Section 4.000 Competency Based Treatment Provider Approval Model
- Reference Guide for School Personnel concerning Juveniles who have Committed Sexually Abusive and Offending Behavior (Juvenile S&G only)
- Juvenile Sex History Disclosure Packet (Juvenile S&G only)
- Guiding Principles (Adult S&G only)
- Section 7.000 Continuity of Care
- Replaced Sexually Violent Predator Risk Assessment Instrument
- Replaced Low Risk Protocol (Adult S&G only)
- Section 6.000 Use of Polygraph in Treatment and Supervision (Juvenile S&G only)
- White Paper on Juvenile Registration
- Child Contact Screening Process (Adult S&G only)
- White Paper on Adult Male Sex Trafficking Offenders
- Appendix R Adult Sex History Disclosure Packet (Adult S&G only)
- Risk-Related Sexual Interests and Behavior Patterns
- Section 3.170 Mixing High and Low Risk Offenders in Treatment Groups (Adult S&G only)
- Incorporating Victim Voice into Treatment
- Section 5.700 Contact with Victims, Children, and At-Risk Adults (Adult S&G only)
- Victim Clarification, Contact, and Reunification (Adult S&G only)

Listings

The eighth sunset criterion questions whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action.

In part, COPRRR utilizes this section of the report to evaluate the program according to this criterion.

The SOMB is directed by statute to “list” the individuals responsible for offender treatment, as well as evaluators, and polygraph examiners. The list is forwarded to the office of the State Court Administrator, the DPS, the Department of Human Services, and the DOC. Offenders under the jurisdiction of one of these agencies may access a listed provider.³¹

There are two tiers of listing for treatment providers, evaluators, and polygraph examiners: associate level and full operating level. All applicants begin at the associate level.

Treatment Provider Listing

ASSOCIATE LEVEL TREATMENT PROVIDER

Once a candidate has met the basic requirements for listing, he or she is listed at the associate level and serves an apprentice-like period under a supervisor. Among the qualifications to provide sex offender treatment at this level are:³²

- A baccalaureate degree or above in a behavioral science with training or professional experience in counseling or therapy;
- A candidate or professional mental health credential from the Department of Regulatory Agencies (DORA) as a Registered Psychotherapist, Licensed Professional Counselor or Candidate, Licensed Marriage and Family Therapist or Candidate, Licensed Psychologist or Candidate, or Licensed Clinical Social Worker;
- No conviction, deferred judgment, or plea of guilty or *nolo contendere*, involving a municipal ordinance, misdemeanor, or felony related to the ability of the individual to practice;
- Successful criminal background investigation; and
- Compliance with SOMB S&Gs and policies.

The initial listing is good for one year and must include a supervision agreement signed by an SOMB-approved clinical supervisor. To renew the associate level listing

³¹ § 16-11.7-106(2)(b), C.R.S.

³² §§ 4.1, Sex Offender Management Board: *Standards and Guidelines for the Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders*, and Sex Offender Management Board: *Guidelines for the Evaluation, Assessment, Treatment and Supervision of Juveniles Who Have Committed Sexual Offenses*.

for three years after the initial year, an applicant must have documented specific clinical contact and supervision hours, taken S&G and other SOMB-directed training, and demonstrate competency, among other qualifications.³³ Continued listing at this level requires S&G booster training at least every three years, ongoing competency, and compliance with standards of practice.³⁴

During calendar year 2017, there were 139 adult associate level treatment providers listed, 23 of whom were also qualified to treat developmentally (DD) or intellectually disabled (ID) clients. That same year there were 117 listed juvenile associate level treatment providers, 19 were also qualified to treat DD or ID clients.³⁵ This is the most recent year for which the DCJ provided COPRRR these data.

FULL OPERATING LEVEL TREATMENT PROVIDER

While employed at the associate level an individual may qualify for and become listed at the full operating level. This allows a provider to work independently. An associate level provider wishing to become listed at the full operating level must:³⁶

- Have been listed in good standing as an associate provider;
- Attain the underlying licensure credential as a Psychiatrist, Licensed Psychologist, Licensed Clinical Social Worker, Licensed Professional Counselor, Licensed Marriage and Family Therapist, Clinical Psychiatric Nurse Specialist or Licensed Addiction Counselor, and be in good standing; or maintained an associate listing, in good standing, for 10 years;
- Complete any required clinical contact and supervision hours;
- Complete S&G introductory or booster training within five years;
- Adhere to professional standards of practice; and
- Submit to a current background check.

The listing is valid for three years. Continued listing requires booster and professional training as well as continued compliance with all professional standards and policies.³⁷

During calendar year 2017, there were 170 full operating level adult treatment providers, 37 of whom were also qualified to treat DD or ID clients. Also in 2017,

³³ §§ 4.2, Sex Offender Management Board: *Standards and Guidelines for the Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders*, and Sex Offender Management Board: *Guidelines for the Evaluation, Assessment, Treatment and Supervision of Juveniles Who Have Committed Sexual Offenses*.

³⁴ §§ 4.21, Sex Offender Management Board: *Standards and Guidelines for the Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders*, and Sex Offender Management Board: *Guidelines for the Evaluation, Assessment, Treatment and Supervision of Juveniles Who Have Committed Sexual Offenses*.

³⁵ Division of Criminal Justice. *Sex Offender Management Board, Annual Legislative Report*. January 2019. P. 34.

³⁶ §§ 4.3, Sex Offender Management Board: *Standards and Guidelines for the Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders*, and Sex Offender Management Board: *Guidelines for the Evaluation, Assessment, Treatment and Supervision of Juveniles Who Have Committed Sexual Offenses*.

³⁷ §§ 4.31, Sex Offender Management Board: *Standards and Guidelines for the Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders*, and Sex Offender Management Board: *Guidelines for the Evaluation, Assessment, Treatment and Supervision of Juveniles Who Have Committed Sexual Offenses*.

there were 113 full operating level juvenile treatment providers, 20 of whom were also qualified to treat DD or ID clients.³⁸ This is the most recent year for which the DCJ provided COPRRR these data.

The tables below represent the number of practitioners in the enumerated categories. A single individual may be listed in multiple categories, e.g., both adult and juvenile.

Table 2 catalogues the total listed treatment providers (both associate and full operating level) by the type of client he or she is approved and listed to treat.

**Table 2
Total SOMB Listed
Treatment Providers**

Fiscal Year	13-14	14-15	15-16	16-17	17-18
Adult treatment providers	211	204	341	287	299
Adult DD/ID providers	34	29	52	56	62
Juvenile treatment providers	157	172	197	202	230
Juvenile DD/ID providers	22	11	29	35	39

Table 2 indicates that the number of treatment providers has steadily increased regardless of the treatment concentration. Despite the increases, some rural parts of the state have no access to treatment providers.

Evaluator Listing

Evaluators are the individuals that assess the risk that a person convicted of a sexual offense will offend again. Qualification for listing as an associate evaluator is the same as for an associate treatment provider with one major exception; to be an evaluator an applicant must be listed as a treatment provider.³⁹ Beyond this provision, the initial and continued listing for evaluators, both associate and full operating level, is substantially similar to that of treatment providers.

In calendar year 2017, there were:⁴⁰

- 58 listed associate level adult evaluators;
 - 6 qualified to work with DD clients
- 28 listed associate level juvenile evaluators;
 - 3 qualified to work with DD clients
- 64 listed full operating level adult evaluators; and
 - 13 qualified to work with DD clients
- 113 listed full operating level juvenile evaluators.
 - 9 qualified to work with DD clients

³⁸ Division of Criminal Justice. *Sex Offender Management Board, Annual Legislative Report*. January 2019. P. 34.

³⁹ §§ 4.4(A), *Sex Offender Management Board: Standards and Guidelines for the Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders*, and *Sex Offender Management Board: Guidelines for the Evaluation, Assessment, Treatment and Supervision of Juveniles Who Have Committed Sexual Offenses*.

⁴⁰ Division of Criminal Justice. *Sex Offender Management Board, Annual Legislative Report*. January 2019. P. 34.

This is the most recent year for which the DCJ provided COPRRR these data.

Table 3 indicates the total number of evaluators (both associate and full operating level) listed to assess sex offender risk for the fiscal years indicated.

**Table 3
Total SOMB Listed
Evaluators**

Fiscal Year	13-14	14-15	15-16	16-17	17-18
Adult evaluators	85	81	74	123	95
Adult DD/ID evaluators	11	10	15	17	18
Juvenile evaluators	46	65	68	57	68
Juvenile DD/ID evaluators	7	5	14	12	12

Table 3 indicates that while there has been fluctuation, the number of both adult and juvenile evaluators has increased over time.

Clinical Supervisor Listing⁴¹

The clinical supervisor listing was created in 2017 as a safeguard to ensure that those listed to provide direct service to clients are competent. Clinical supervisors are full operating level treatment providers or evaluators who supervise associate level treatment providers and evaluators.

A listed clinical supervisor must rate a clinical supervisor applicant. To become a clinical supervisor an applicant must be rated at the top level. The rating is submitted with an application, which must also include: a letter of recommendation that demonstrates that the applicant stayed current on the literature and research in the field, including research that supports the applicant's philosophy and how the applicant's practice has evolved based on research.

Clinical supervisors must maintain a provider or evaluator listing in the areas he or she supervises and maintain compliance with the S&Gs.

Table 4 indicates the number of approved clinical supervisors for each of the fiscal years indicated.

⁴¹ §§ 4.7, Sex Offender Management Board: *Standards and Guidelines for the Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders*, and Sex Offender Management Board: *Guidelines for the Evaluation, Assessment, Treatment and Supervision of Juveniles Who Have Committed Sexual Offenses*.

**Table 4
SOMB Listed
Clinical Supervisors**

Fiscal Year	16-17	17-18
Adult clinical treatment supervisor	82	88
Adult clinical evaluator supervisor	34	40
Juvenile clinical treatment supervisor	64	64
Juvenile clinical evaluator supervisor	27	25

Somewhat surprisingly, given that it is a new listing, the number of clinical supervisors did not increase dramatically in the first two fiscal years. The numbers held reasonably steady with one category, Juvenile Clinical Evaluator Supervisor, actually experiencing a slight decline.

Polygraph Examiner Listing

The use of polygraph is controversial in this field. While the Act does not mandate the use of polygraph, it directs the SOMB to develop an application and review process for polygraph examiners to be listed.⁴² The Adult S&Gs state that a polygraph examiner is included on the Community Supervision Team⁴³ and both Adult and Juvenile S&Gs contain standards for polygraph examinations.⁴⁴

ASSOCIATE LEVEL POLYGRAPH EXAMINER

To become initially listed as an associate polygraph examiner, a candidate must submit an “Intent to Apply” form. It must include a signed supervision agreement with a full operating level polygraph examiner and fingerprint card.⁴⁵

⁴² § 16-11.7-106, C.R.S.

⁴³ Sex Offender Management Board: *Standards and Guidelines for the Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders*. p.13.

⁴⁴ §§ 6.0, Sex Offender Management Board: *Standards and Guidelines for the Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders*, and Sex Offender Management Board: *Guidelines for the Evaluation, Assessment, Treatment and Supervision of Juveniles Who Have Committed Sexual Offenses*.

⁴⁵ §§ 4.9, Sex Offender Management Board: *Standards and Guidelines for the Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders*, and Sex Offender Management Board: *Guidelines for the Evaluation, Assessment, Treatment and Supervision of Juveniles Who Have Committed Sexual Offenses*.

Among the requirements an associate level polygraph examiner must satisfy are:⁴⁶

- A baccalaureate degree from a four-year college or university and graduated from an American Polygraph Association (APA) accredited school;
 - For adult examiners only, a high school diploma, graduated from an APA accredited school, and maintained an SOMB listing as an associate level polygraph examiner in good standing for at least 10 years;⁴⁷
- 50 polygraph examinations on post-conviction sex offenders while operating under the “Intent to Apply” status;
- Compliance with all S&Gs and SOMB policies;
- A satisfactory criminal history; and
- Three peer-reviewed, quality assured examinations.

The initial associate level listing is valid for one year and subsequent listings must be renewed every three years. Continued placement necessitates completion of the above requirements plus:⁴⁸

- At least 100 examinations completed during the three-year period; and
 - For juvenile examiners, 15 of those examinations must be with post-conviction juveniles who have committed sexual offenses.
- Completion of 40 continuing education hours.

During calendar year 2017, there were three adult and seven juvenile associate level polygraph examiners listed with the SOMB. One of the juvenile examiners was approved to examine DD and ID individuals. This is the most recent year for which the DCJ provided COPRRR these data.

FULL OPERATING LEVEL POLYGRAPH EXAMINER

Listing as a full operating level polygraph examiner for a person who has been an associate requires:⁴⁹

- 200 post-conviction, sex offender polygraph tests on adult sex offenders and 25 post-conviction sex offender polygraph tests on juveniles who have committed sexual offenses, and

⁴⁶ §§ 4.1000, Sex Offender Management Board: *Standards and Guidelines for the Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders*, and Sex Offender Management Board: *Guidelines for the Evaluation, Assessment, Treatment and Supervision of Juveniles Who Have Committed Sexual Offenses*.

⁴⁷ This provision was added when a baccalaureate degree became a prerequisite. It allowed those who had been practicing to continue practicing.

⁴⁸ §§ 4.102, Sex Offender Management Board: *Standards and Guidelines for the Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders*, and Sex Offender Management Board: *Guidelines for the Evaluation, Assessment, Treatment and Supervision of Juveniles Who Have Committed Sexual Offenses*.

⁴⁹ §§, 4.103 and 4.11, Sex Offender Management Board: *Standards and Guidelines for the Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders*, and Sex Offender Management Board: *Guidelines for the Evaluation, Assessment, Treatment and Supervision of Juveniles Who Have Committed Sexual Offenses*.

- A letter from his or her supervisor indicating the readiness to move to full operating level polygraph examiner.
 - The letter must include documentation of professional supervision component completion.

Continued listing at this level requires compliance with all the above provisions and a re-application every three years.⁵⁰

During calendar year 2017, there were 23 adult and 15 juvenile full operating level polygraph examiners listed with the SOMB. Seven of the juvenile examiners and 12 of the adult examiners were approved to examine DD individuals. This is the most recent year for which the DCJ provided COPRRR these data.

Table 5 enumerates the total listed polygraph examiners (both associate and full operating level) by the category in which they are listed for each fiscal year examined for this sunset review.

**Table 5
Total SOMB Listed
Polygraph Examiners**

Fiscal Year	13-14	14-15	15-16	16-17	17-18
Adult Polygraph Examiners	26	26	29	29	28
Adult DD Polygraph Examiners	14	12	13	13	13
Juvenile Polygraph Examiners	19	20	20	20	22
Juvenile DD Polygraph Examiners	8	2	9	8	8

Generally, the number of listed polygraph examiners remained steady except for the Juvenile DD Polygraph Examiners. The numbers inexplicably dropped in fiscal year 14-15.

Complaint and Disciplinary Activity

The seventh sunset criterion requires COPRRR to examine 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.

In part, COPRRR utilizes this section of the report to evaluate the program according to this criterion.

⁵⁰ §§ 4.103 and 4.111, Sex Offender Management Board: *Standards and Guidelines for the Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders*, and Sex Offender Management Board: *Guidelines for the Evaluation, Assessment, Treatment and Supervision of Juveniles Who Have Committed Sexual Offenses*.

Treatment providers and evaluators must be DORA-credentialed providers. Every treatment provider and evaluator must, at all times, conform to the standards of practice mandated as a condition of that credential. Notwithstanding, listing as an SOMB treatment provider, evaluator, or polygraph examiner requires that each listed professional must also conform to the standards of practice detailed in the S&Gs. The SOMB has jurisdiction only over compliance with the S&Gs but must report any issue of which it is aware to the relevant DORA credentialing authority. Likewise, DORA reports any issues to the SOMB that may affect a professional’s listing.

The S&Gs contain the standards of practice for Colorado’s sex offender mental health practice specialty and polygraph administration specialty. Complaints that come into the SOMB concerning listed professionals are sent to the ARC for consideration. The ARC appraises the complaints for violations of the S&Gs and may hold a hearing to determine if a complaint is “founded,” meaning it is a violation of the S&Gs.

When a complaint is “founded,” the ARC may recommend practice oversight, additional training, or delist the provider from the approved list. All ARC complaint findings may be appealed to the full SOMB.

Table 6 catalogs the total complaints filed with the SOMB and the number of actions taken in the fiscal year listed.

**Table 6
Standards of Practice
Complaints and Actions**

Fiscal Year	13-14	14-15	15-16	16-17	17-18	Total
Complaints Reviewed	30	20	20	19	16	105
Complaints Out of Jurisdiction	21	18	18	18	13	88
Complaints Founded	1	2	0	2	3	8
Delistings	1	0	1	0	0	2

The number of complaints considered in each fiscal year does not match the number that are acted upon because an action may not occur in the same fiscal year as the filing of the complaint.

Table 6 indicates that there are few complaints filed against the listed professionals. However, the total number of delisted professionals (2) compared to the total number of founded complaints (8) shows that 25 percent of those in violation of the S&Gs were delisted. This illustrates that violating the S&Gs carries serious consequences for listed professionals.

Educational Functions

The SOMB has a specific mandate to provide educational materials for schools. It also provides training and performs research. The materials educate children, policy makers, treatment providers, and anyone in the community who wants instruction in various related topics.

The subject matter in this field is continually evolving and the staff presents opportunities for the SOMB and other interested parties to attend classes, seminars, and other educational opportunities. Table 7 lists the number of trainings conducted and the total number of attendees at those trainings during the fiscal years examined for this sunset review.

**Table 7
Training Opportunities**

Fiscal Year	Number of Trainings	Number of Attendees
13-14	64	1,450
14-15	83	2,879
15-16	79	1,899
16-17	65	3,293
17-18	63	3,256

Table 7 shows that during the period examined, the number of trainings offered declined slightly, while the number of attendees has jumped significantly.

Collateral Consequences - Criminal Convictions

The ninth sunset criterion requires COPRRR to examine whether the agency under review, through its licensing processes, imposes any sanctions or disqualifications based on past criminal history, and if so, whether the disqualifications serve public safety or commercial or consumer protection interests.

In part, COPRRR utilizes this section of the report to evaluate the program according to this criterion.

The Act asserts that every applicant for any listing must undergo criminal history record checks, conducted by the Colorado Bureau of Investigation and the Federal Bureau of Investigation.⁵¹ It also requires that any person who applies for continued

⁵¹ § 16-11.7-106(2)(a)(I), C.R.S.

listing must, “submit to a current background investigation that goes beyond the scope of the criminal history record check...”⁵²

Staff related that it did not recall the ARC denying a listing on such grounds but it does not keep records of such denials.

⁵² § 16-11.7-106(2)(a)(III), C.R.S.

Analysis and Recommendations

The final sunset criterion questions whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest. The recommendations that follow are offered in consideration of this criterion, in general, and any criteria specifically referenced in those recommendations.

Recommendation 1 - Continue the Sex Offender Management Board for seven years, until 2027.

Article 11.7 of Title 16, Colorado Revised Statutes (C.R.S.), creates the Standardized Treatment Program for Sex Offenders (Act) and the Sex Offender Management Board (SOMB). Among its primary duties, the SOMB is required to develop evidence-based standards and guidelines for the evaluation, identification, treatment, management, and monitoring of individuals who have committed sexual offenses. The General Assembly directs, through the Act, that the SOMB use the risk-need-responsivity (RNR), or similar, model as the basis for the standards and guidelines. 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* (collectively S&Gs) are the product of that mandate.

The S&Gs are regulatory documents which govern treatment providers, evaluators, and polygraph examiners. They also provide guidance to the courts and other governmental entities. The goal is to have the S&Gs developed by subject matter experts, based on research and evidence.

S&G development is a highly democratic process influenced by multiple perspectives. The SOMB is a 25-member deliberative body which is affected by its members' backgrounds and agendas. Resulting polemics can cause board inefficiency. Subcommittee recommendations are often set aside and reargued at the SOMB meetings and at times sent back to subcommittee for further modification. This occurs even though the subcommittee membership typically has the requisite specific subject matter expertise. Expertise is seemingly discounted. Nonetheless, a survey of treatment providers conducted in conjunction with this sunset review showed that 86 percent of the respondents believe that the S&Gs have a solid foundation in the RNR model.

Treatment, according to the Act is, “[T]herapy, monitoring, and supervision of any sex offender which conforms to the standards created by the [SOMB].” Treatment is in many ways a local issue based on culture, courts, local government, and other environmental factors. The environment is constantly shifting which means that it can be difficult to develop and implement the S&Gs. The S&Gs must account for a field that is dynamic and where research is constant. They affect treatment providers and their clients directly, they affect the courts and probation, they affect the

Department of Corrections (DOC) and parole, the Department of Human Services' Division of Youth Services, and the legislature weighs in with input as it sees a need.

How successful the SOMB is at standardizing treatment is a matter of perspective. The goal of the RNR model is to treat each individual based on his or her personal attributes. Consequently, in somewhat of a paradox, the SOMB and the S&Gs standardize uniqueness. Nonetheless, the S&Gs prompted evolution in a positive direction. Without them the system would likely be more punitive. The SOMB engages in very important discussions that would not occur otherwise and the multiple forums that it sponsors allow ample opportunity for people, of all walks of life, to provide input. The SOMB staff also performs primary research and develops annual reports for the General Assembly.

The SOMB works diligently on the subjects under its charge. Much of that work is performed in subcommittees. The subcommittees are tasked with working on single subjects, such as family reunification, or broader subjects, such as developing a handbook for families who have a family member who is an offender. The subcommittee system is necessary because the SOMB consists of 25 members from several different perspectives, which causes inefficiency in decision-making. Many of the perspectives overlap, some are duplicative, while others are juxtaposed. An independent parliamentary examiner, hired to examine SOMB processes, submitted a report during the spring of 2019. Among the conclusions in the report were that the SOMB is too large to be efficient and should be 11 members or 15 members at the most.⁵³ While COPRRR concurs with that assessment, COPRRR lacks the insight to determine which positions the General Assembly believes vital enough to the SOMB's deliberative processes to recommend reducing its membership 45 to 50 percent.

With all of its moving parts, personalities, subjects, interests, and research, the SOMB somehow achieves much of the standardization for which the Act calls. The goal of all of the activities is reducing the occurrence of sex offenses in Colorado communities. While there are no data verifying the efficacy of treatment, the costs associated with sexual victimization in individual wellbeing, community wellbeing, incarceration, and tax dollars spent is likely higher than the costs of treatment and attempting to prevent sexual crimes.

The principal task of a sunset review is to determine if a program is necessary to protect the public health, safety, and welfare. The SOMB and the program created under the Act are necessary to protect the Colorado public's health, safety, and welfare. However, because the field is so dynamic and this sunset review recommends some major changes, the General Assembly should reauthorize the SOMB for only seven years, until 2027. This will give enough time for the changes to be instituted, normalized, and be reflected in program data.

⁵³ Trent Bushner, 2019, *Sex Offender Management Board, 2019 Report, Decision Making Processes, Conflict of Interest*. P.3

Recommendation 2 - Clarify that supervising officers are required to follow SOMB-promulgated standards when working with the sex offender population.

The purpose of the Act is to standardize treatment of those people in the justice system who have been convicted of a sexual offense. This is accomplished by ensuring the people who treat individuals who have committed a sexual offense follow the RNR model and any standards developed by the SOMB.

A main tenet of the RNR model is to treat individuals based on the risk of re-offense that they present to the community. Section 16-11.7-103(4)(a), C.R.S., states that the SOMB must develop a process to determine, “[O]n a case-by-case basis, reliably lower-risk sex offenders whose risk to sexually reoffend may not be further reduced by participation in treatment.” However, there is concern that regardless of the risk determination and therapeutic advice, those in the system are sometimes required to undergo a higher level of treatment and monitoring than may be necessary according to best therapeutic practices, or be in jeopardy of incarceration.

The “Profile” section of this report explained that the supervision teams, Community Supervision Team (CST) for adults and the Multidisciplinary Team (MDT) for juveniles, collaborate to determine the best way to treat individuals through supervision, evaluation and assessment, treatment, and a support system.

The goal of the supervision team’s collaborative efforts is to engage offenders in treatment and supervision in order to decrease risk, enhance protective factors, and increase their intrinsic motivation for positive behavioral change.⁵⁴

The DOC, Department of Human Services (DHS), or a judicial district typically monitor offenders in the community. Depending on what stage a person is in the system, one of these supervising agencies assigns a parole or probation officer as a supervising officer to the offender. Though it is not a statutory directive, the supervising officer typically forms the supervision team. This is in part due to a statutory provision that requires the supervising agency to provide the offender with the contact information of two treatment providers from whom to choose. Additionally, supervising officers are notified when someone is placed on parole or probation.

Several stakeholders conveyed to the Colorado Office of Policy, Research, and Regulatory Reform (COPRRR) staff that there are problems with some supervising officers who do not follow the S&Gs. During a spring 2019 SOMB meeting, a probation officer gave a presentation that compared sex offenders to addicts, claiming addiction treatment should inform sex offender treatment. This is clearly counter to the S&Gs and the RNR model. At an SOMB meeting during the prior sunset review, a panel of therapists claimed, on the record, that some supervising officers demand

⁵⁴ § 5.005, Sex Offender Management Board: *Standards and Guidelines for the Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders*.

that they write recommendations according to the supervising officer's wishes. If they refused, they claimed, they would not receive referrals from those supervising officers and others in the applicable judicial district. This assertion has been made many times over the years and again during the current sunset review.

In reaction to these issues and others, COPRRR reached out to the DOC's Division of Adult Parole (Parole) and the Colorado Judicial Branch's Division of Probation Services (Probation Division) to ascertain the extent to which this actually occurs. The Probation Division does not receive complaints concerning probation officers. The state's probation departments are independent to each of the state's judicial districts and the Probation Division has no authority or data concerning complaints.

Staff at Parole commented that complaints against supervising officers are rare. All complaints, regardless of the category of the offender, are handled through the chain of command. Any complaints concerning sex offender parolees would consider the S&Gs in the investigation.

COPRRR also conducted an email survey of every SOMB-listed treatment provider during the spring of 2019. The response rate was 23 percent, which is a satisfactory sample of a homogenous population such as this to be representative. The survey asked participants to respond to the statement, "Some supervising officers with whom I work attempt to direct how I must report treatment progress, regardless of my professional assessment." Twenty-nine percent of the providers who specialize in adult treatment, 36 percent of the treatment providers who specialize in juvenile treatment, and 31 percent of the treatment providers who work with both adults and juveniles agreed that the supervising officers attempted to influence treatment progress reports. Overall, 36 percent agreed with the statement and 14 percent strongly agreed, while only 23 percent of the respondents were neutral. In other words, more than one-third of the treatment providers feel pressure to act contrary to what they believe is professionally appropriate. Such a high ratio is a concern.

There are no hard data that indicate that supervising officers are acting counter to the S&Gs. However, both anecdotal and survey data indicate that there is enough angst in the treatment provider community to justify concern.

The General Assembly can solve this problem by clarifying its position that all of the core supervision team must follow whichever set of S&Gs is applicable, adult or juvenile. If a therapist, evaluator, or polygraph examiner chooses to ignore the S&Gs or not adapt individual treatment, he or she can be delisted by the SOMB. The same cannot currently be said for a supervising officer.

The General Assembly is quite clear that adult sex offenders and juveniles who have committed sexual offenses are a unique class of offender. It directs that sentencing by the courts and treatment in the community must follow standards promulgated by the SOMB. This special class of offender requires specialized treatment. Only qualified individuals may treat this population and unqualified individuals may not.

The Act defines treatment as, “therapy, *monitoring, and supervision* of any sex offender which conforms to the standards” [emphasis added].⁵⁵ The Act further states that the DOC, the Judicial Department, DCJ, or DHS shall not employ or contract with a person or entity to provide treatment unless the treatment conforms with the standards and guidelines and the individual is listed with the SOMB.⁵⁶ Thus, no person shall monitor or supervise a sex offender unless the monitoring and supervision comply with the S&Gs. However, since supervising officers are not listed or otherwise approved by the SOMB (as are evaluators, treatment providers and polygraph examiners), it is unclear whether the SOMB has any ability to enforce these provisions.

The General Assembly is also clear that the SOMB and the DCJ are the regulators who enforce the S&Gs. It follows that if any individual providing, “therapy, monitoring, and supervision of any sex offender” does not follow the S&Gs, a grievance should be filed with the SOMB. The intent should be clarified that any supervising officer who allegedly violates the standards may be grieved to the SOMB. Just as with listed professionals, if a violation occurs then the violator may lose the ability to work with this statutorily unique population. This clarification would standardize the conduct of the supervision team and treatment.

All supervision team members should be accountable to the same standards and the same implementing authority when working with this statutorily-acknowledged unique population. To be clear, this recommendation only addresses those supervising and monitoring sex offenders. The SOMB does not issue standards concerning any other individual in the criminal justice system.

The seventh sunset criterion, directs the General Assembly to consider, in part, whether complaint, investigation and disciplinary procedures adequately protect the public interest. In this case, having team members held to different standards creates imbalance that could result in undo incarcerations or extended, unnecessary treatment. In such cases, the public interest is not protected.

The first sunset criterion asks if conditions have arisen which would warrant more, less or the same degree of regulation. What has changed is that more than one-third of the treatment providers who responded to the COPRRR survey indicated that they perceive undo pressure to act against their best professional predilections. Current interpretation of the law does not serve the intention and the mission of the Act to standardize treatment. When members of the supervision teams are not obligated to follow the Act and the S&Gs, there is no standardization.

Consequently, the General Assembly should clarify that supervising officers are required to follow SOMB promulgated standards when working with the sex offender population.

⁵⁵ § 16-11.7-102(4), C.R.S.

⁵⁶ § 16-11.7-106(1), C.R.S.

Recommendation 3 - Repeal the limitation on the number of treatment providers given to offenders and provide every available listed treatment provider.

The second sunset criterion asks if current regulation presents the least restrictive environment consistent with protecting the public interest. The sixth statutory criterion contemplates the economic impact of regulation and if operations restrict or stimulate competition.

The Act states that any person convicted of a sexual offense must undergo treatment; the supervising agency of any convicted person living in the community must provide a choice of two appropriate treatment provider agencies; and the offender must pay for the treatment when able.⁵⁷

There are more than 650 listed treatment providers qualified to treat someone convicted of a sexual offense in Colorado. However, the law states that only two treatment provider agencies must be provided as options to any individual offender.⁵⁸ Often, justification for providing only two choices is that a supervising officer will develop working relationships with certain agencies or providers. While it is possible that limiting the number of treatment providers will benefit those treatment providers receiving the referrals, it may also work to the detriment of those treatment providers who do not.

The General Assembly added this provision to the Act as a means of ensuring that there was a choice in treatment and that a person would not be forced into treatment in an intolerable situation. In this case, the paying customer, the person convicted of a sexual offense, has the market for services limited by the statute. There could be legitimate reason to limit the market. For example, if the provider is not qualified to treat the offender, the provider chooses not to treat the subject, the provider is not within a certain geographical region, the cost is too high, or a similar reason. Those issues alone could markedly limit the universe of available listed treatment providers but they are market-based variables. When Colorado law limits the number of providers to 0.3 percent of all of the listed providers, it unduly restricts competition and opens possibilities for the issues written about in Recommendation 2.

Section 16-11.7-105(2), C.R.S., states, “Once selected, the treatment provider agency may not be changed by the offender without the approval of the [CST], the [MDT], or the court.” This provision is important to ensure continuity in treatment and prevent “treatment provider shopping” when treatment becomes uncomfortable or challenging. It should remain in statute.

The solution is to provide the consumer with every available listed treatment provider. Therefore, the General Assembly should repeal the limitation on the number of

⁵⁷ § 16-11.7-105(1), C.R.S.

⁵⁸ § 16-11.7-105(2), C.R.S.

treatment providers given to offenders and provide every available listed treatment provider.

Recommendation 4 - Update the Act and remove inaccurate and outdated terminology.

Beginning with the 1994 Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, the federal government passed a series of laws, amendments, and guidelines that provide the authority to register, monitor, track, and apprehend sex offenders as is necessary. The current federal law that governs registration of sex offenders is the 2006 Adam Walsh Child Protection and Safety Act (Adam Walsh Act).⁵⁹ As the laws have evolved, systems and terminology have evolved as well. Current practice eliminates the term “sexually violent predator.”

Colorado is one of 24 states or territories that have substantially implemented the Sex Offender and Notification Act (SORNA) provisions of the Adam Walsh Act.⁶⁰ The goal of SORNA is to close potential gaps in earlier law and strengthen the nationwide network of sex offender registration and notification programs.⁶¹ In doing so, SORNA requires a tiered system to classify sex offenders based on offense. However, SORNA also allows states to further evaluate the risk that the offender presents in the community and share that information with the public. The SORNA system outlines three tiers of sex offenders and in doing so it abandons the outmoded term “sexually violent predator.”⁶² The term is no longer accurate in the current system and should be deleted from section 16-11.7-103(4)(d), C.R.S., and any SOMB-related materials. In a risk classification system, the term may misrepresent the risk to the public and is therefore confusing to members of the community. It also presents problems to local law enforcement officials that operate their community sex offender registration programs.

The scope of this review does not extend beyond the SOMB. However, the outdated terminology is used in other places in Colorado law. The General Assembly should also consider making similar changes to other statutes to make them uniform, and replace “sexually violent predator” with a risk classification system.

The tenth sunset criterion, requires analysis to determine if statutory changes are necessary to enhance the public interest. Outdated language in law works against the

⁵⁹ Office of Justice Programs, Office of Sex Offender Sentencing, Monitoring Apprehending, Registering, and Tracking. *Legislative History*. Retrieved July 12, 2019, from <http://ojp.gov/smart/legislation.htm>

⁶⁰ Office of Justice Programs, Office of Sex Offender Sentencing, Monitoring Apprehending, Registering, and Tracking. *Jurisdictions that have substantially implemented SORNA*. Retrieved July 12, 2019, from <http://ojp.gov/smart/legislation.htm>

⁶¹ Office of Justice Programs, Office of Sex Offender Sentencing, Monitoring Apprehending, Registering, and Tracking. *SORNA*. Retrieved July 12, 2019, from <http://www.smart.gov/sorna.htm>

⁶² U.S. Department of Justice, Office of the Attorney General. *The National Guidelines for Sex Offender Classification and Notification*. (2007) Retrieved July 12, 2019, from http://www.justice.gov/archive/tribal/docs/fv_tjs/session_3/session3_presentations/Sex_Offender_Guidelines.pdf

public interest. Therefore, the General Assembly should update the Act and remove inaccurate and outdated terminology in the Act.

Recommendation 5 - Direct the SOMB to keep record of any denials and delistings due to criminal history.

Section 16-11.7-106(2)(a), C.R.S., requires that those who desire to be listed by the SOMB, must undergo initial criminal history record checks and additional checks for continued listing. The SOMB staff recalled that no treatment providers, evaluators, or polygraph examiners were denied listing because of criminal history during the time covered for this sunset review. However, that report is based on staff memory rather than records. The SOMB does not keep records of denied placement due to criminal history.

The ninth sunset criterion, requires COPRRR to report to the General Assembly if:

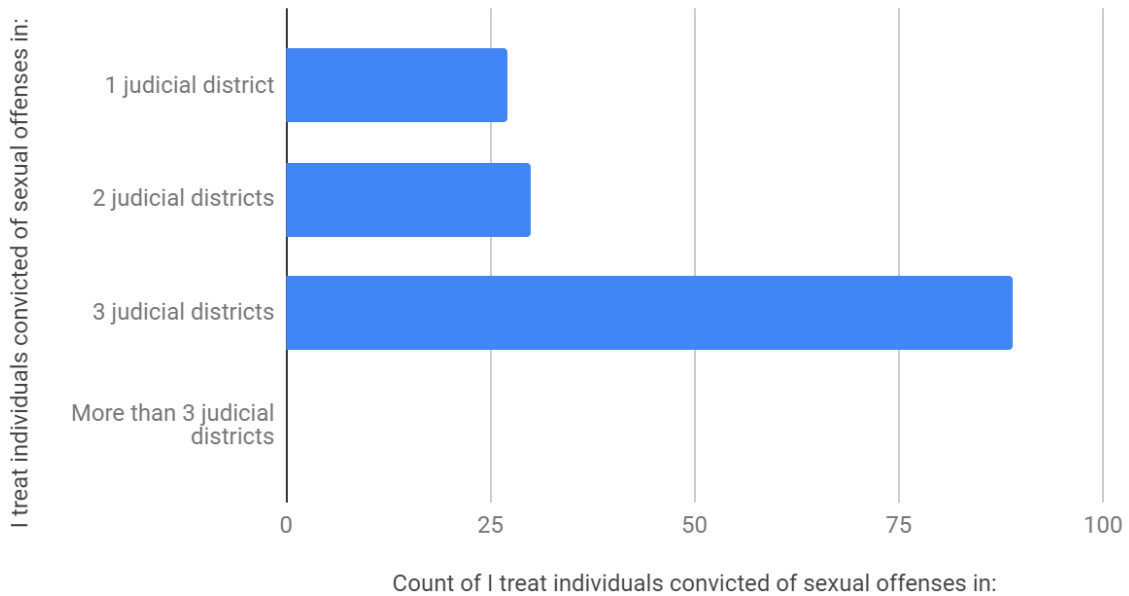
[An] agency through its licensing or certification process imposes any sanctions or disqualifications on applicants based on past criminal history and, if so, whether the sanctions or disqualifications serve public safety or commercial or consumer protection interests. To assist in considering this factor, the analysis prepared pursuant to subsection (5)(a) of this section must include data on the number of licenses or certifications that the agency denied based on the applicant's criminal history, the number of conditional licenses or certifications issued based upon the applicant's criminal history, and the number of licenses or certifications revoked or suspended based on an individual's criminal conduct. For each set of data, the analysis must include the criminal offenses that led to the sanction or disqualification.

As part of the 2015 sunset report of the SOMB, COPRRR made an administrative recommendation that the SOMB keep the records necessary to provide the analysis necessary to fulfill this sunset criterion. The SOMB currently does not maintain such data as a matter of course. Therefore, COPRRR is unable to report on the public safety or protection issues as required in the statute. Consequently, because the data is necessary, the General Assembly should direct the SOMB to keep record of any denials, delistings, or other sanctions due to criminal history.

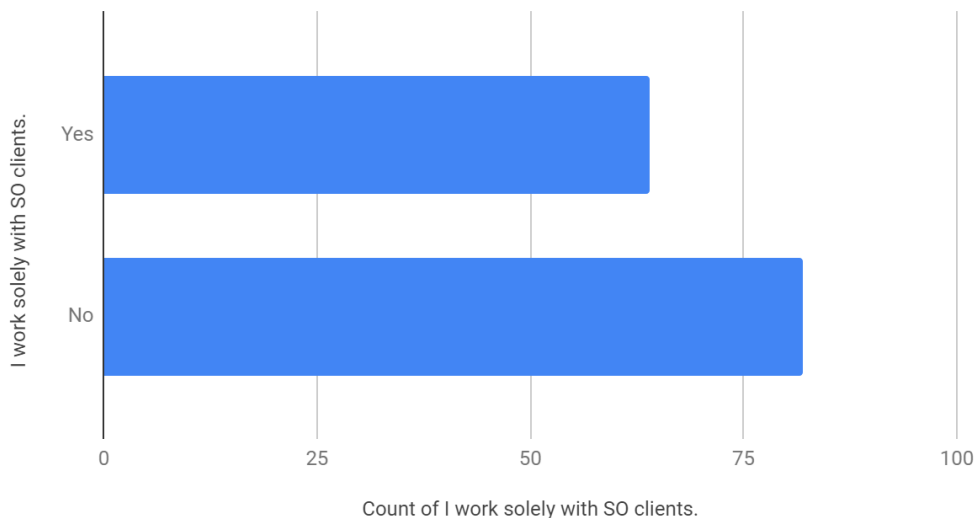
Appendix A - Survey

In April 2019, COPRRR sent a survey link, via email, to each of the 684 listed sexual offender (SO) treatment providers. Of these, an estimated 640 were successfully delivered and 146 individuals responded. This represents a response rate of 23 percent.

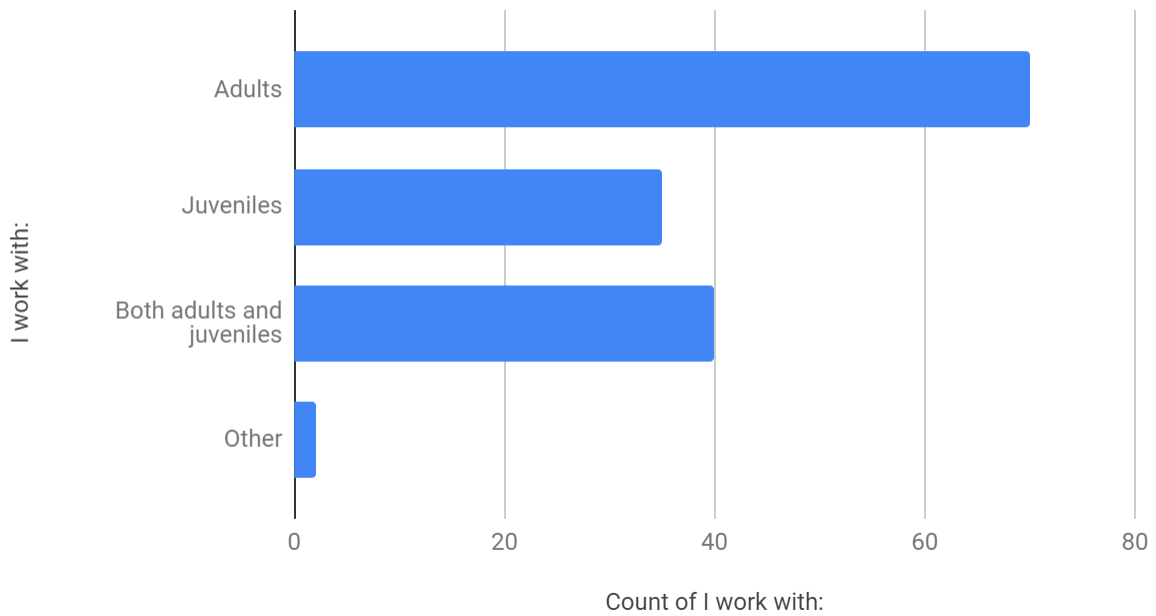
Count of I treat individuals convicted of sexual offenses in:



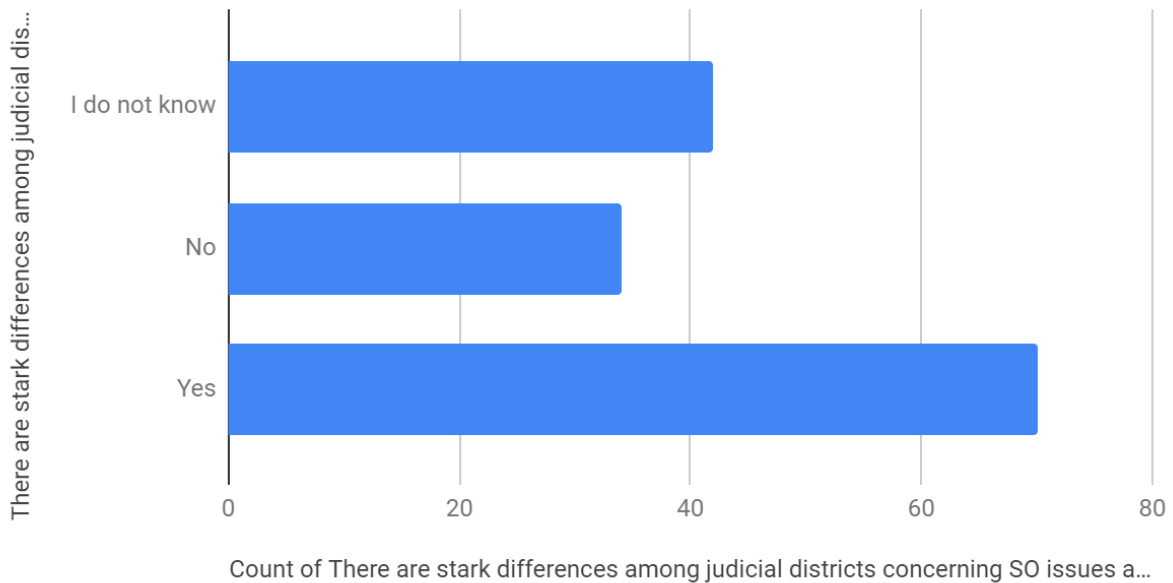
Count of I work solely with SO clients.



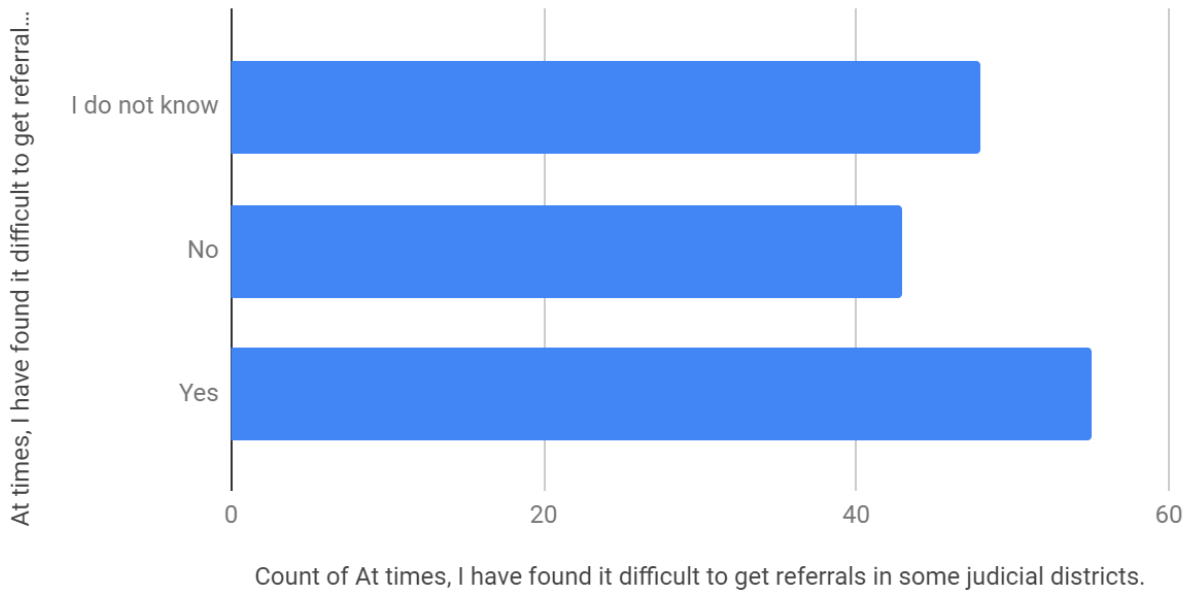
Count of I work with:



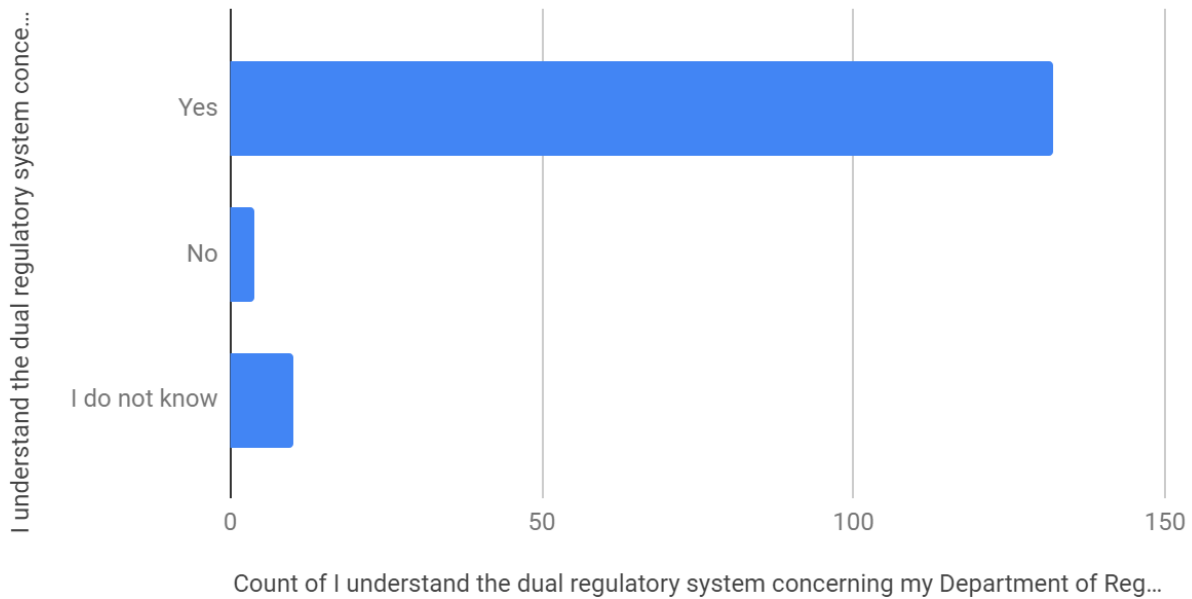
Count of There are stark differences among judicial districts concerning SO issues and treatment.



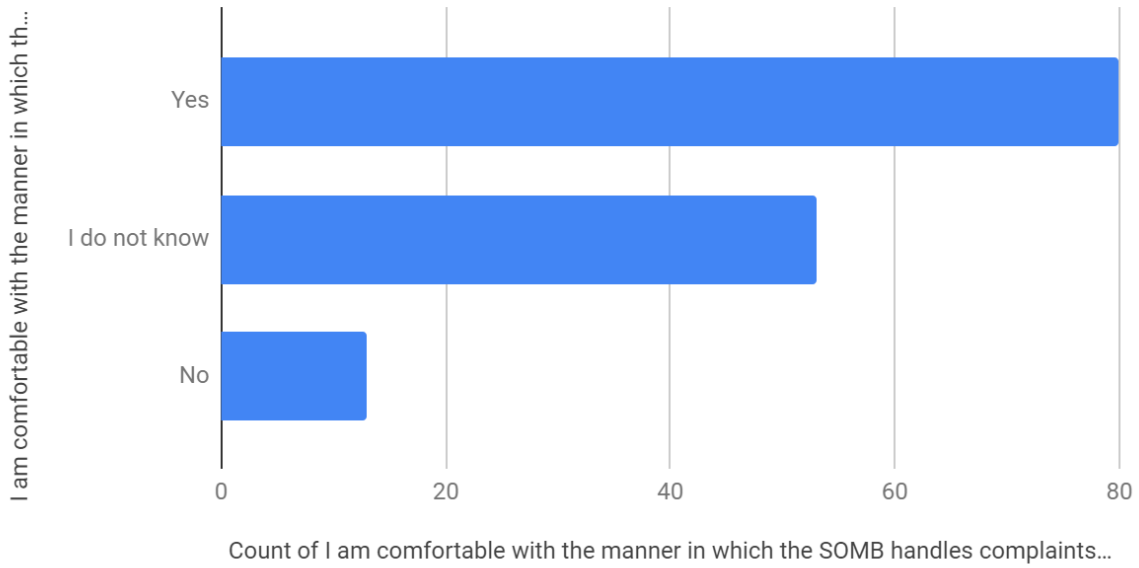
Count of At times, I have found it difficult to get referrals in some judicial districts.



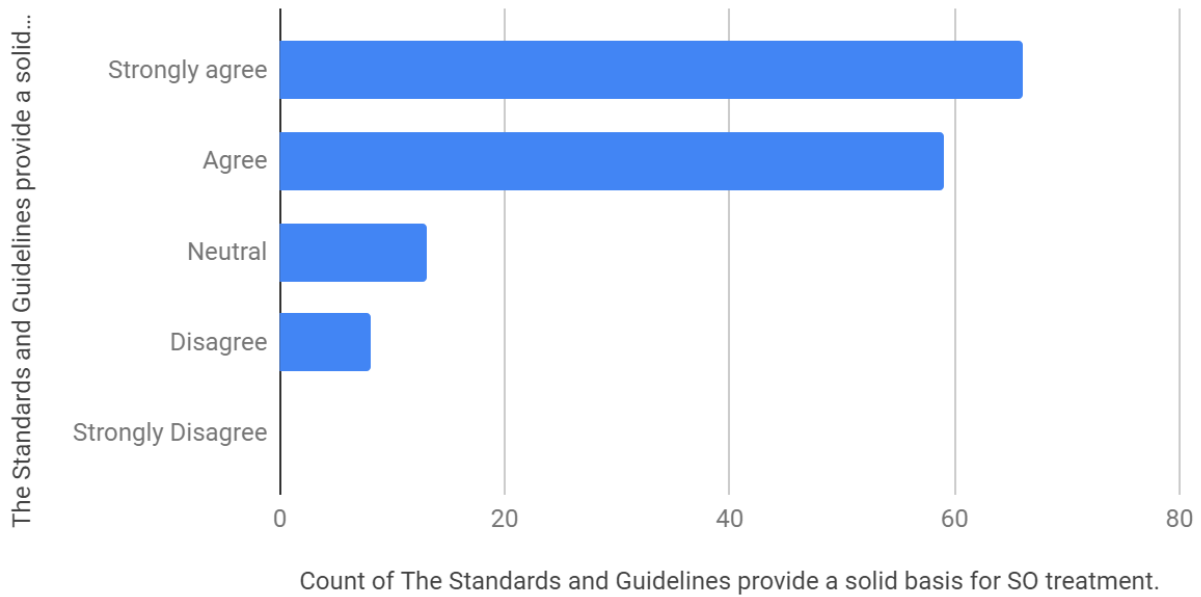
Count of I understand the dual regulatory system concerning my Department of Regulatory Agencies license and my SOMB listing.



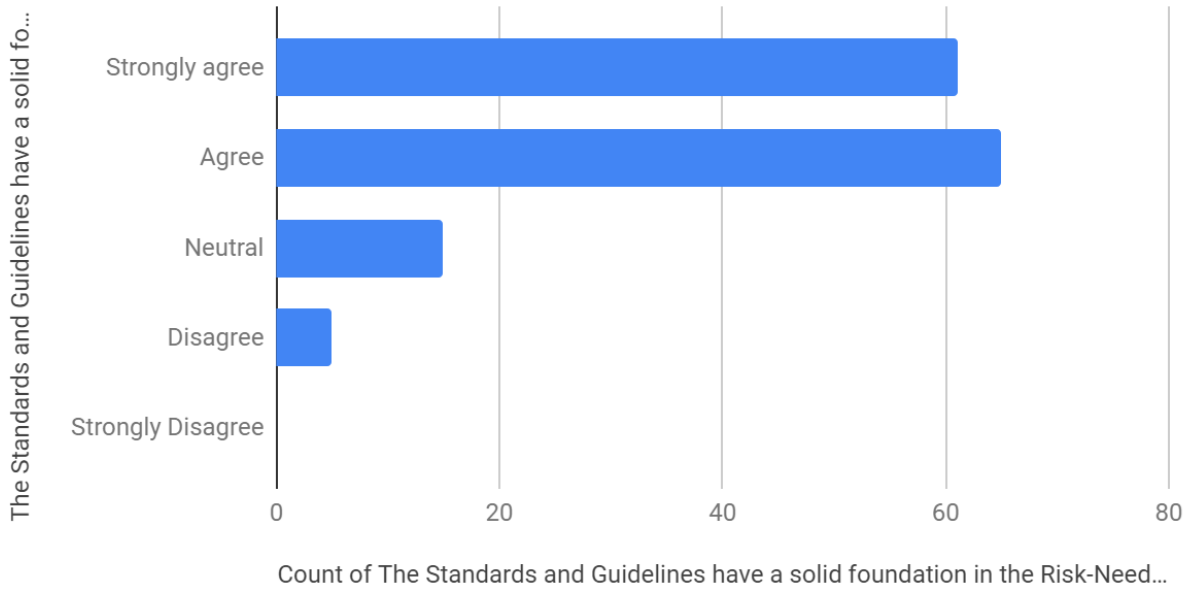
Count of I am comfortable with the manner in which the SOMB handles complaints and discipline.



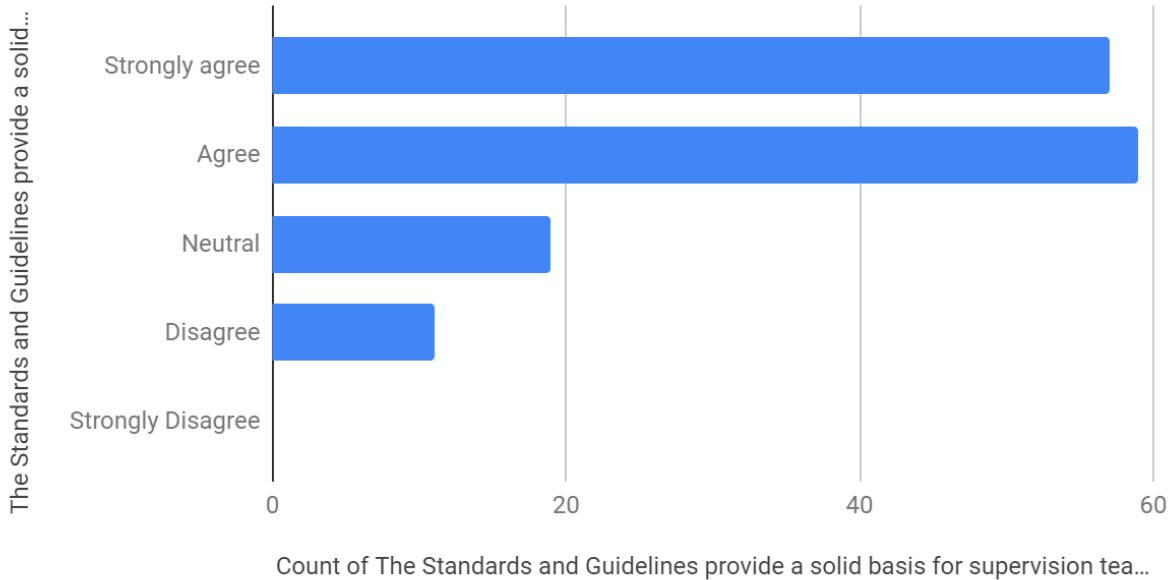
Count of The Standards and Guidelines provide a solid basis for SO treatment.



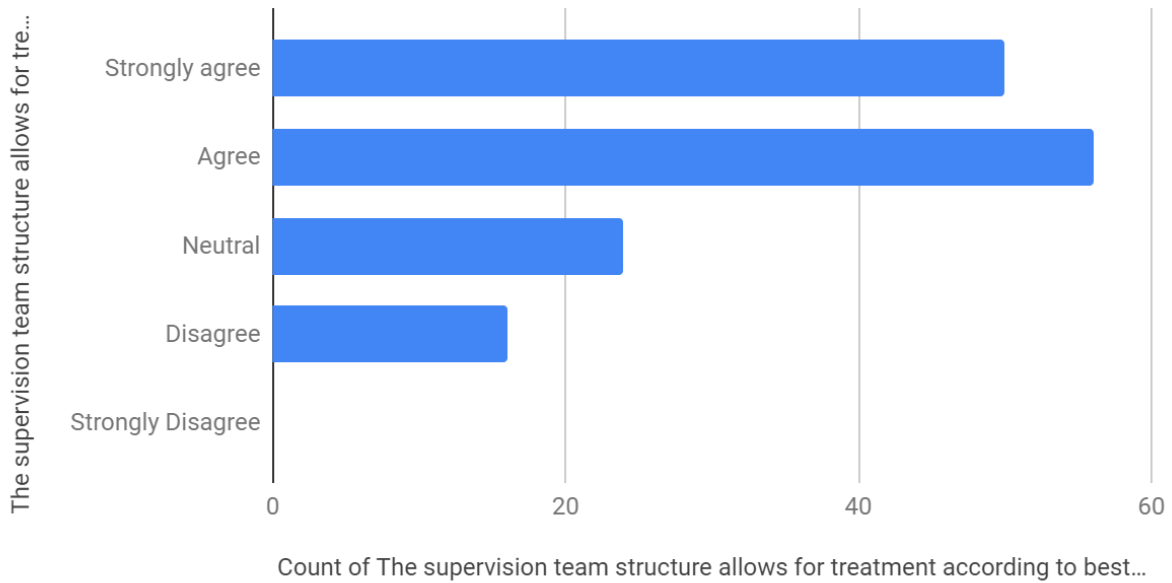
Count of The Standards and Guidelines have a solid foundation in the Risk-Needs-Responsivity model.



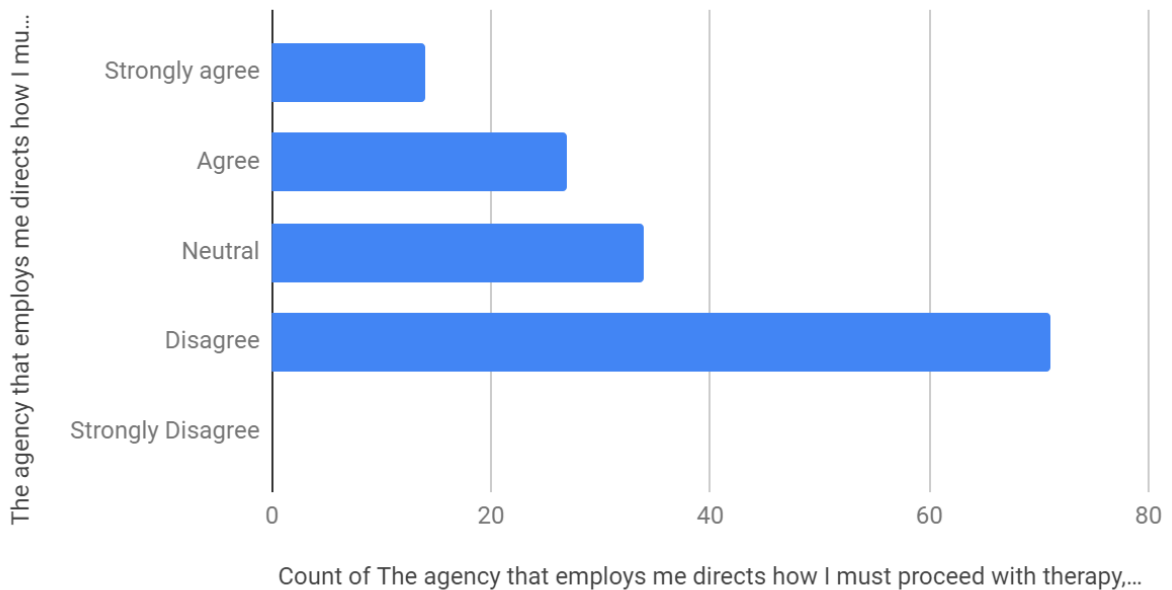
Count of The Standards and Guidelines provide a solid basis for supervision team collaboration in treatment.



Count of The supervision team structure allows for treatment according to best therapeutic practices.



Count of The agency that employs me directs how I must proceed with therapy, regardless of my professional assessment.



Count of Some supervising officers with whom I work attempt to direct how I must report treatment progress, regardless of my professional assessment.

