

The Colorado Sex Offender Management Board voted to keep the No Known Cure language for adult sex offenders in the SOMB Enabling Statute 16-11.7-103(4)(a) on August 21, 2009

Page 7 of the Sex Offender Management Board Minutes
Friday, August 21, 2009

“Motion to leave the language as is. The motion was seconded. Open to discussion.

A Board member said it was premature to take a vote.

Another member echoed the need to get more research.
It was questioned “Does the statute apply to juveniles?”
The statute does not differentiate between adult and juvenile.

Motion to table the vote. Motion was seconded. Motion failed.

Motion to keep the language of No Known Cure for the adult population only, and produce a position paper outlining the definition. A second position paper should be written for juveniles.
Motion was seconded.

Vote taken: 14 in favor, 2 opposed, 4 abstentions”

**SEX OFFENDER MANAGEMENT BOARD
MINUTES**

Friday, August 21, 2009

Board Members

Meg Allen
Mary Baydarian
Carl Blake
Merve Davies
Cheryl Davis
Jeff Geist
Missy Gursky
Peggy Heil
Bill Hildenbrand
Kellie Hotter
Marcie Howell
Jeff Jenks
Tom Kennedy
Tom Leversee
Rick Levenson
Daniel Makelky
Kandy Moore
Paul Prendergast
Chris Rowe
Doug Stephens
Emily Warren

Absent Board Members

Marianne Tims
Dave Long
Bill Martinez

Vacant Board Position

Department of Education Representative

Staff

Chris Lobanov-Rostovsky
Kristy Alles-Serrant
Cathy Rodriguez
Nancy Bullis
Charla Phagan
Debbie Stjernholm

Visitors

Bowman Smelko
Mike Yergler
Jennifer Kok
Suzanne MacKinnon
Karen Vigil
Scott Hefty
Greig Veeder
Diana Allen
Allison Boyd
Erica Klingberg
Laurie Kepros
David Emerson
Robert Warren
Juan Chauarria
Carla Spence
Charles Szatkowski
Dustin Powell
John-Michael Keys
Susan Walker
Yvonne Parietti
Steven Parker
Gerald Moore
Jeanne Smith
Steve Brake
Terry Bennett
Ted Romero
Allison Brittsan
Kelly Radke
Greg Brown
Rick May
Joe Thistlewood
Walter Simon
Mitch Sherman
Hannah Evans
Phil Tedeschi
Gail Ryan
Liz Veeder

Visitors

Shawna Geiger
Diane Wolta
Michelle Francis

Board Meeting Begins: **Introductions**

Future Agenda Items

- Psychiatrist to talk about medications for sex offenders.

Announcements

- SOMB grant- Staff applied for a grant from the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking (SMART) Office. The Sex Offender Management Unit was awarded a two year grant of \$200,000 to hire staff for the rural initiative provider program (adult & juvenile providers), which will work with rural jurisdictions to meet their sex offender management needs. This staff member will work closely with state judicial. This position is posted. A grant advisory group will be formed for guidance.
- Cheryl Davis and Cathy Rodriguez are doing another rural initiative supervisor training on November 6, 2009 at noon. The flyer will be posted on the SOMB website.
- State Judicial got a grant for online training of judges and other key stakeholders such as GALs, public defenders and district attorneys.
- At the last meeting it was asked if there was a need to do a public hearing for the Sexually Violent Predator (SVP) instrument. Per the SOMB Attorney General representative, there is no need for the Board to hold a public hearing. It is not even necessary to hold a public hearing for Standards revisions. The Attorney General representative suggested as an alternative that the Board post the revisions on its website and solicit feedback at a regularly scheduled board meeting.
- The staff is planning a training follow-up to the Good Lives Model in the Spring 2010. The staff has made contact with Dominique Simons to do the follow-up training. To provide her with feedback and objectives, email your suggestions to Kristy Alles-Serrant or Chris Lobanov-Rostovsky. This training will cover the application of and ways to put into practice the Good Lives Model.
- Kristy announced that Debbie Stjernholm will be taking her place while on maternity leave. Debbie can do trainings and will also handle the applications. Kristy will be back from maternity leave in January 2010.
- A meeting was held with the Denver Police Department about sex offender housing issues. Crossroads shelter is no longer accepting sex offenders. Denver is one of the only metro areas that allow shared living arrangements (SLAs). A subcommittee was formed to work on SLA issues and respond to the concerns raised in the meeting. Board member Doug Stephens (Denver Police) stated that Denver does support the SLA program, but each jurisdiction should shoulder the responsibility for their own sex offenders. He wondered if the Board should be more proactive in educating the public as well as being proactive in helping metro areas review their decisions on

residency restrictions. State Judicial is starting a courtesy review process. When sentencing orders come in, a special report is written to the court which explains why modifications might be needed. The reports are not limited to SLAs situations, but will also include community corrections as well.

- Another jurisdiction is considering passing a residency restriction law. The community leaders are willing to meet with SOMB representatives. It was suggested that the SOMB bring a law enforcement representative. The registration enforcement agent in Englewood was mentioned as a possibility as well as Board member Doug Stephens.
- The American Polygraph Association received approval for their standards, which mirror the Colorado SOMB standards. Jeff Jenks has copies available.

Approval of June/July Minutes

Call for additions and/or corrections to the June minutes. None presented. Motion to approve the June Minutes. Motion seconded. Minutes approved with no opposition and 3 abstentions:

Call for additions and/or corrections to the July minutes. None presented. Motion to approve the July Minutes. Motion seconded. Minutes approved with no opposition and 9 abstentions.

Appeal Review:

Cathy Rodriguez reviewed the Appeal Notebooks with the Board members and reviewed the appeal process that will take place at next month's Board meeting.

Allocation of funding for Sex Offender Surcharge:

The affected state agencies (Department of Corrections, Division of Criminal Justice, Department of Human Services, and State Judicial) held a meeting. The group agreed upon recommendation to keep the spending allocation the same as last year. If revenues go up it is important to have the necessary spending authority to spend the funds. The agencies agreed to under-spend from last year's allocation to not deplete the fund, but approve the budget at the same level. The money is used for expenses such as indigent evaluations, trainings for staff, and staff support for the Board.

A motion to approve the allocation of funding for the Sex Offender Surcharge. The motion was seconded. The motion was approved unanimously.

Variance for Standards from RSA-

A handout from RSA and a letter from Probation to support the variance were given to Board members.

Background for variance request:

A Developmentally Delayed (DD) client was referred to RSA. He is on a wait list for Denver Options. The court ordered him to remain in the home where two minors also reside. He has never lived alone, and has always under the care of his parents. The variance is

requesting to by-pass 5.7 criteria. The offender was found to be non-deceptive on a sex history polygraph related to not having sexually abused his siblings in the home. His victim was an adult female. It is proposed to manage this offender with more in-home therapy and frequent home visits.

There was a motion to approve the variance request. The motion was seconded. The motion was approved unanimously.

Break

Jeanne Smith- Discussion about the No Known Cure Statutory Mandate:

The Sex Offender statutes are currently under review through the Department of Regulatory Agencies (DORA). DORA compiles a report with recommendations to send to the legislature. It was suggested to DORA by interested stakeholders, that the language in the statute containing "No Known Cure" should be reviewed. A handout was provided showing the current language of the statute as well as a proposed possible new language for the statute.

"No Known Cure" implies that long term monitoring and supervision is required. Recidivism is a significant problem with this population. It was suggested that by mentioning the word "cure", there is a connection to the medical model approach. Is it possible to have other language that may be able to support the long term monitoring and supervision requirement?

Proposed language: The staff attempted to construct language that maintained support for what probation and the Department of Corrections (DOC) are doing in the treatment and monitoring of sex offenders.

Open discussion:

Colorado Cure believes there is a huge difference between sex offenders. It was stated that there are many factors contributing to offenders offending, such as using drugs and alcohol. A suggestion was made that decisions about treatment modes should be based on individual sex offender and their individual situation. It is the belief of Colorado Cure that not all offenders pose the same amount of danger.

The new language confuses the goals. The purpose is not to make perpetrator's life easier, but to protect victims and future victims.

A therapist noted without "No Known Cure", there will be undue pressure to say that the perpetrator may not re-offend. Example given: A Dr. will tell a diabetic client the disease needs to be managed life long. Offenders will not believe they will need life-long treatment. It was suggested there is a need to distinguish between adults & juveniles. The current language is concurrent with all national and international associations. This language is supported by research. Long-term management is necessary.

The new language implies that there are multiple strategies that can be used to cure

an offender, when there are not any specific or multiple strategies that can cure sex offending. The focus will be taken off of community safety, to focus on the needs of offenders.

The new language is not clear and there is not enough emphasis on victim safety. There are a lot of models that cannot be cured, but treated.

By taking away "No Known Cure", the message being sent to the community that you can put sex offenders in programs for a period of time, then release them into the community and the community is safe. To date there is no consistent data that there is an effective cure.

The longer a sex offender is tracked the higher the re-offense rates.

The recidivism data only focuses on those caught, and there are many more that have not been caught.

Public safety is being diminished if the language is changed.

It is a good idea to revisit, but it doesn't mean the SOMB has to change the current statute without substantial research to support the changes.

There is strong support to leave the language in the statute as is. Colorado is viewed as a leader in sex offender management and the state could lose credibility if the language is changed.

The new language does not cover needs of the victims and the need to prevent further victimization.

It has become difficult to treat sex offenders in the current climate. It is difficult to reintroduce offenders into communities. What policies contribute to the development of health and stability of the offenders?

Drugs & alcohol are the main reason 90% offenders are in prison. Many are not going back for sexual offenses. Offenders are not getting treatment for drugs and alcohol.

Crossroads shelter is just not taking sex offenders; it is closing completely.

Question: Is the current language really helping the goal of public safety? It was suggested to keep the language as is while increasing public education.

Board Discussion:

The Board seems to be more about treatment and not much heard about law enforcement. The guiding principles are good. The language change is unnecessary.

It is true that drug and alcohol offenders do not have treatment in prison, but sex offenders do and are less likely to offend with continued monitoring and support.

The Board needs to be informed in order to vote.

Research clearly shows cognitive behavioral treatment is effective but, reporting is so low that we don't really have good data. Keeping the language is valuable, but there is a concern about lock them up & throw away key mentality.

It was suggested that a position paper be written to explain the definition of "No Known Cure" and the value of treatment.

The offender stand-point was offered as seen at polygraph exit interviews. The offenders are asked personal questions, and are told there is no right or wrong answer; this is just for feedback purposes. When asked, "What is your likelihood to reoffend?" answers like, "None because I was given tools to stay away from high risk situations" or "I don't want to go through this again, so I am not going to reoffend". To date, not one offender has ever said they felt they are cured. Be aware of those who say they are.

Victim advocate standpoint- It is almost impossible to comfort victims by telling them it is not their fault. It is comforting to victims to know that they could not have changed things because there is no known cure for sex offenders. A change in the language would allow for a false sense of security for victims and their parents.

"No Known Cure" is not bad, but the Board wants to hear all points. At this time, a good alternative has not been presented.

It was noted that there is also "No Known Cure" for victims either. It was reiterated that the Board needs to keep public safety as the main goal.

Current research is based on people who were convicted and under containment. What are the unintended consequences?

Many cases are incest. Treatment has a high rate of success with this population. Treatment is based on evidence-based practices. The juvenile group is highly treatable through mid-20's. It is accurate to say "No Known Cure" applies in a number of areas.

The new language is subject to enormous misinterpretation. The current language is very clear. Behavior management is forever. No incentive to the community to encourage stability and safety for offenders to help insure safety. The Board should be more proactive to get information to the community. The Board position seems to stay in this room. There are a lot of uninformed professionals.

This is not coming from the defense bar community as a whole. "No Known Cure" is good language for criminal defense attorneys. Rick Levenson wanted the Board to know that the Colorado Criminal Defense Bar (CCDB) believes that the standards and guidelines are inconsistent with the "No Known Cure" policy. The problem arises at the end of prison time; an offender can come off of probation management and think "I am cured". The Defense Bar is asking for consistency. The Standards and Guidelines have an ending point in 5.0. It is proposed that if the language is changed, enabling statutes and standards and guidelines be consistent with each other.

Motion to leave the language as is. The motion was seconded. Open to discussion.

A Board member said it was premature to take a vote.

Another member echoed the need to get more research.
It was questioned "Does the statute apply to juveniles?".
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Motion to table the vote. Motion was seconded. Motion failed.

Motion to keep the language of No Known Cure for the adult population only, and produce a position paper outlining the definition. A second position paper should be written for juveniles.

Motion was seconded.

Vote taken: 14 in favor, 2 opposed, 4 abstentions

Break for lunch.

**Honoring Gail Ryan, and Allison Brittsan
Honoring Phil Tedeschi**

Research Corner: Sex Offender Management During Natural Disasters

Mike Baker- A handout of the power-point was available.

Juvenile Advisory Board Agenda: Sexting- Scott Hefty

There is concern that although the intent of this legislation is to protect victims, the unintended consequences are actually pulling victims into the judicial system. The foundation of the unintended consequences is in the definition of child pornography.

Pilot Program in Jefferson County

These cases usually come in pairs: male/female. In cases where there is no transference of pictures beyond the initial parties, the District Attorney (DA) will hold onto the case and send the involved parties through a curriculum (which involves instruction on healthy refusal skills, boundaries and a piece for parents) with treatment providers and 32 hours of community service. If the curriculum and community service are completed the case will not go before the courts and no petition is generated. The Jefferson County DA is trying to keep these cases out of the courts.

In cases where there is transference (8 filings in Jeffco to date) there will be a petition filed and more assessments will be called for.

Discussion:

- Who is paying for this? Self-paid as there is no funding.
- It was suggested that this program is very fundable through grants. Meg Allen (Board member) offered help from Colorado Coalition Against Sexual Assault (CCASA).
- Rural districts are not as up to par. It is hoped that something could be developed to offer all districts in order to operate at the same level.
- Do we have research data regarding juveniles who send photos suggesting that kids who send photos are more likely to sexually offend? This phenomenon is still too new.
- The program is getting support from the Jeffco Schools, by allowing representatives to speak to the children at school about sexting.
- The State of Vermont is already moving to make a change in legislation, as well as developing educational materials for children.
- Safe To Tell tries to break the code of silence in schools. A Disposition report is done for all tips.
- The Keys foundation **ILoveYouGuys.org** has produced two very good public service announcements (PSA) about sexting. The Board was able to view the PSAs.
- It was noted that other interventions besides law enforcement need to happen.
- This may require legislative change. It was suggested that the Board look to teen organizations to get teens talking to teens.
- Boys & girls clubs are pretty responsive. Scott Hefty has offered a flyer produced by the Jefferson County DA's office.
- With impending AWA legislation, juveniles would not be able to stay off the registry.
- Many counties are using juvenile diversion programs also.
- How are schools handling sex harassment issues?

Review of Guatney Case:

The case centered on a motion to revoke probation based on a sex offender's refusal to submit to polygraph testing on fifth-amendment grounds. It was found that the ruling is only binding on the trial court. The ruling has no control on the SOMB Standards and Guidelines. Judge Kennedy informed the Board that Trial Courts have no binding authority. In any case, an Adult variance process was established to handle such cases.

Break

Discussion on in the Interest of M.M., Jr. and A.M. Children, Court Case-

This is the case with parental termination of rights had been decided based on the use of a polygraph. There is concern about the use of a polygraph in conjunction with the Parental Risk Assessment (PRA). The Attorney General representatives for impacted agencies will monitor the case. State Judicial has sent an agency letter to tell officers not to mention polygraphs in court.

Adult Advisory Board Agenda: Female Sex Offender Polygraph Questions- Peggy Heil

The Department of Corrections (DOC) realized traditional polygraph questions for males are not appropriate for female offenders. The procurement for victimization is missed with the typical polygraph questions. Female offenders are more likely to co-offend. The females are taking a role in contributing to males sexually offending. It was suggested that there is a need to ask females about their role in helping or assisting in a sexual assault. These questions can clarify a female offender's involvement in forced situations. Can these questions discern coerced situations? Will pimping will be missed? Does this take into account trafficking? These questions would have to be in a separate section only for women.

Female offenders mask sex offender behavior through child care duties. It was also noted that females usually sexually abuse out of anger.

The Department of Corrections (DOC) is asking for direction from the Board as to how to handle the introduction of these new polygraph questions. It was noted that all SOMB certified polygraphers should be made aware of these questions. Jeff Jenks (Board member representing polygraph examiners) suggested that the new questions be included in the Standards and Guidelines.

Can the polygraph questions be handled as a discussion point in the standards? There may not be an immediate need to add the questions to the Standards and Guidelines at this time, but female offenders are becoming more prevalent and the need may be greater in the near future. It was suggested to add the polygraph questions as an Appendix. Jeff Jenks will take this request to the polygraph committee in order to produce polygraph questions for female sex offenders.

Peggy Heil has offered her hand to be available to polygraphers during this process. It was decided that the Board will not sanction polygraphers for not asking new questions of female offenders at this time.

Adult Advisory Board Agenda: Lifetime Supervision Criteria Overview :

What is the criteria for a minimum to life sentenced offender (who has served the minimum term in prison) to meet treatment criteria in order to be paroled? It was noted that the criteria to get a recommendation is not as rigorous for shorter minimum sentences.

The dilemma for DOC is the limited resources to meet treatment demand. The DOC program recently reprioritized so lifetime offenders get more priority for treatment. Can

offenders continue to work on some areas of treatment (independently) while not participating in a group? If so, then it is hard to say they are actively participating in treatment and complying. DOC needs direction from the Board on the issue of an offender doing independent work for treatment.

Discussion:

A consideration is the possibility of an offender terminating group therapy to purposely work on their own.

How long is the wait for treatment or the time between treatment levels? Per Peggy Heil, the wait time is approximately a year.

DOC needs to draft ideas for ways to use the resources to meet the current demand.

If an offender is on a waitlist for phase 2, he meets the criteria for phase 1.

Have support people identified, such as private therapists and interns.

Continue to work on issues.

How many offenders are getting ready to complete their sentence?

DOC has looked at every way possible; there are just not enough resources. Treatment is not available due to funding issues.

Should offenders be released when they have not had treatment? Can an offender do time in DOC, then get treatment on parole? There are legal issues surrounding this solution.

Is there a possibility of expanding the definition of "actively participating in treatment"? Working independently does not mean that the treatment is self-directed. If there is structure and the inmate is taking initiative and turning in assignments in; it is different from an offender who is trying to get out of treatment.

Do you have statistics? 36% (96) of phase 2 inmates have traditional sentences. This problem is spilling into other systems. Criteria is only for lifetime.

Talked about having private practice therapists for DOC clients who do not have therapist. The problem is getting enough practitioners to do groups. The private practice therapists have to be SOMB approved.

DOC has done this in the past, giving the private therapists the SOTMP guidelines. It makes sense to relook at the equivalency of what was done. What were barriers to it working last time?

Rich vs. poor issue. Could be a legal problem if inmates who have money for a private therapist are able to get treatment before inmates who do not have money for a private therapist.

In the past the process for getting Board certification was a problem. Hopefully the rural initiative program can help with this obstacle. Provisional provider program is another

possibility, but the therapists have to be paid.

DOC should talk to universities about getting interns to work some of the group sessions.

Has DOC applied for grants? Yes. There are not too many grants that will pay for standard treatment. Peggy noted that foundation money is hard to get.

The Board felt it is a slippery slope to do independent study work, and DOC should continue to figure ways to work with the current resources.

It is the opinion of the Board that Peggy Heil should take back the feedback from the Board to discuss with staff and then return to the Board with further ideas.

Motion to look for alternative solutions. Motion seconded. Motion passed unanimously.

Motion to adjourn by Tom Kennedy. Motion seconded by Jeff Giest.
Motion was approved unanimously.

Meeting Adjourned