

**SEX OFFENDER MANAGEMENT BOARD  
MINUTES**

**Friday, June 19, 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  
Bill Martinez  
Kandy Moore  
Paul Prendergast  
Chris Rowe  
Doug Stephens  
Marianne Tims  
Emily Warren

**Staff**

Chris Lobanov-Rostovsky  
Cathy Rodriguez  
Nancy Bullis  
Charla Phagan  
Amy Dethlefsen

**Visitors**

Bowman Smelko  
Kim Dionysus  
Jennifer Kok  
Suzanne MacKinnon  
Karen Vigil  
Randall Cherry  
Greig Veeder  
Diana Allen  
Allison Boyd  
Carolyn Turner  
Laurie Kepros  
Laura Sanchez  
Jan Hunsaker  
Dianna Lawyer Brook  
Carla Spence  
Bennie Walton  
Jason Walker  
Arthur Bundy  
Susan Walker  
Yvonne Parietti  
Steve Parker  
Kim English  
Linda Harrison  
Kathie Izor  
Terry Bennett  
Ted Romero  
Allison Britton  
Maureen O'Brien  
Kelly Radke

**Committee Meeting:**

**Sexually Violent Predator Risk Assessment Instrument**

There was a review of the new Sexually Violent Predator (SVP) Risk Assessment Scale. The committee has the goal of making four decisions to present to the Board later today.

The Board wanted to know how current SVPs would score with the new instrument. As a result, a sample of current parolees from Jefferson County was assessed based on both risk assessment scales to make a comparison. The first 12 offenders were labeled SVP by the

courts and the other 12 were identified as not being SVP based on the current SVP Risk Assessment Tool. Of the offenders established as SVP, 4 out of the 12 would be SVP with the new instrument if the cut off was a score of 7. Of the offenders established as not SVP, 5 out of 12 could be identified as SVP if the cut off was a score of 7. A discussion about how many SVPs would not be identified by the new scale took place. Kim English made the point that there will be errors with each instrument, and that the two instruments are screening for different things (violent crimes versus sex crimes) and offenders will score differently on each scale.

Another question posed by the Board: How many SVPs are there in Colorado?

Chris Lobanov-Rostovsky reviewed research on the number of SVPs on the Colorado Bureau of Investigation (CBI) website (SVPs in the community), and the number of SVPs in the Department of Corrections (DOC). The research shows that of the SVPs that are released in to the community and returned to custody due to criminal or non-compliance activity, the average time in the community is 4 months.

#### **Discussion Points about the SVP instrument:**

- Use caution when labeling offenders as SVP because it makes it very difficult for them to find housing. In favor of a higher cut off point.
- Backfire affect- non-SVPs are more manageable; SVPs are placed in a more dangerous position (because of a lack of positive support) in the community, thus decreasing public safety.
- With the higher cut point number, the SOMB will have to explain (possibly to media & public) why there are so few SVPs.
- Definition requested for #5 of part 3 (prior adult convictions).
- It was noted that the No Cure Policy is dangerous because of the absoluteness.
- The cut point and the prior arrest are two different scales.
- The prior arrest is a policy piece that the Board would decide the details such as: felony versus misdemeanor; adult versus juvenile as well as the number of priors to target.
- With a higher cut point, the instrument is capturing a dangerous population. With the prior arrest scale the instrument would capture another known dangerous population. The combination seems to target the population to capture.
- Bench Perspective: The current SVP assessment tool is not trusted by the Bench. The best predictor of behavior is past behavior; thus the criteria of prior arrest should be included. It was suggested using only one prior arrest.
- It was suggested that it made more sense for the supervising officer to complete the entire SVP assessment; less people filling it out would mean less errors.
- It was noted that most of the time the supervising officer is not comfortable in filling out the relationship part of the instrument.

### **The Board Convenes to vote on decisions made by the SVP Committee**

**Cut Point-** Decision

**Prior Sex Crimes Scale-** Decision

*A motion was made to make the cut point 8 with the development of a second scale concerning options of prior arrests. Motion passed with 1 opposed and 2 abstentions.*

- **Elimination of the 6-item scale for a non-participator, in favor of the new part 3 and SORS scale** - Decision  
*A motion was made to eliminate 3-C for the new scale when implemented.  
Motion passed with 1 opposed and no abstentions.*
- **Who completes what part of the SVP instrument?**- Decision
- **Implementation of the new instrument**- Decision  
*A motion was made to recommend that the new tool be completed and effective by January 2010.  
Motion passed with 1 opposed and 1 abstention.*

## **Board Meeting Begins:** **Introductions**

### **Future Agenda Items**

- Variance in August
- Termination of parental rights over polygraph case and the effect on the Standards & Guidelines
- Impact of legislation on sexting for juveniles
- Female Sex Offender research: differences in polygraph questions and treatment issues
- Two Lifetime Probation cases will be up for review in the near future. Arapahoe County has put together a report and would like input from the Board, as there is not a current format for this situation. Jefferson County will be using the format produced by Arapahoe County as well.

### **Announcements**

- Mileage reimbursement requests from Board members need to be turned in today, due to fiscal year end.
- Conference attendance expected to be around 300; Board member registration is free.
- Board meeting for July will be in Breckenridge as part of the conference, not July 17<sup>th</sup>. RSVP's still required.
- Staff has been working with Carlotta Knox from Department Of Regulatory Agencies (DORA), who oversees all the mental health boards, to train these Boards on SOMB Standards & Guidelines and processes.
- A Sex Offender Surcharge meeting regarding allocations needs to be scheduled. Chris Lobanov-Rostovsky will contact key personnel to schedule said meeting.
- Raytheon presentation delivered to Chris Lobanov-Rostovsky and Kristy Alles-Serrant on a process to monitor offenders' computers. This is not an endorsement, just an announcement that this process is available. Flyers available.
- Call for volunteers to participate in the nomination process for the SOMB awards to honor outstanding professionals in the sex offender management field. These awards will be presented at the conference. Volunteers: Chris Rowe, Merve Davies, Paul Prendergast, and Missy Gursky

### **Changes within the Board:**

- Nomination of Merve Davies for Vice Chair by Paul Prendergast.  
Call for other nominations. None presented.  
Motion to approve the nomination of Merve Davies as Vice Chair by Tom Kennedy.  
Motion Seconded by Kelly Hotter. Motion approved unanimously.
- Application Review Committee (ARC) chair will now be Missy Gursky.
- A Housing Committee was created and will be chaired by Chris Lobanov-Rostovsky. The goal of this committee will be to discuss housing issues and produce a White Paper with recommendations in regards to housing for sex offenders.

### **Approval of May Minutes**

Call for additions and/or corrections to the minutes. None presented. Motion to approve May minutes. Motion seconded. Minutes approved with no opposition and 4 abstentions: Mary Baydarian, Tom Kennedy, Bill Martinez & Bill Hildenbrand.

### **Termination of Parental Rights Case Review:**

During the proceeding of a Termination of Parental Rights case, expert witnesses testified and gave opinions based in part on polygraph results. The decision was reversed based on the foundation that polygraphs are inadmissible.

### **Discussion Points:**

- Can the polygraph be a part of the Standards & Guidelines?
- A possible implication is that all revocations with polygraphs are potentially reversible.
- There is concern that all evaluations and Parental Risk Assessments (PRAs) will be rejected.
- Language is very broad.
- Expert witnesses who rely on a polygraph are deemed incompetent to testify.
- This will have a huge impact on Human Services.
- It was suggested that the Board request of the Attorney General's Office (AG) whether it would be appropriate to file an Amicus Brief on behalf of the Board or for and advisement on the impact for the SOMB.

Paul Prendergast- Chair of the Board relinquished his duties as Chair to Merve Davies- Vice Chair in order to make a motion.

Paul Prendergast, made a motion to request from the AG to prepare an Amicus Brief on behalf of the SOMB which asserts the Board's concerns of the broadness of the language and how it will effect treatment providers, evaluations, and treatment as well as Human Services.

### *Discussion Points:*

- The language may not be as broad as we are seeming to read into it.
- Evaluations and PRAs usually do not call for testimony.
- This court decision shines a negative light on the polygraph instead of using it as an informative process.

- It was noted that there was not any other information that was relied upon in this case, only the polygraph. Cases must be based on a foundation of information, not only the polygraph. This case also only had one polygraph to go on.
- There is an ongoing need for community education about the polygraph.

The motion was amended: Stating that the Division of Criminal Justice (DCJ) Director, Jeanne Smith, would discuss with the AG's office the case and whether it would be appropriate to prepare an Amicus Brief or some other action by the AG to be reported to the SOMB staff, as well as asking for recommended immediate actions required for the Standards & Guidelines.

The amended motion was seconded.

The amended motion passed with 1 opposed and 1 abstention- Tom Kennedy.

Jeanne Smith noted that because Human Services may be a party to this case, the AG could already be representing Human Services in this case. If that is the situation, the AG may have constraints put upon his ability to intervene on behalf of the SOMB.

**PRA Tool Discussion lead by Jeanne Smith, Director of the Department of Criminal Justice (DCJ) with the purpose of reviewing the statute, the Board's authority and consequences of adopting a new SVP assessment tool.**

The statute anticipates revisions to the SVP assessment tool due to the fact that research is ever changing. The statute does not contemplate any subsequent retesting of an offender who has already been assessed. As a matter of fact, the statute only allows for assessment by the court at sentencing and by the Department of Corrections (DOC). The Board is not asked for opinions about the timing of the use of the tool; the job of the Board is to adopt or not adopt the tool.

*Discussion Points:*

- What happens to those designated SVP? Can they challenge the designation in court? What is the jurisdiction of the court? If the case is still active and has criminal case status, there is jurisdiction. Post conviction motions will happen, but are not really a legal problem.
- What happens to people in the middle in terms of which tool to use? Gray area should not exist, as a specific date for adoption of the new tool will be declared.
- How can we change the population designated as SVP?
- The current instrument is targeting violent acts, while the new instrument targets those who are likely to commit another sexual offense. The current tool does not wrongly classify offenders, as they are also dangerous.

**Break for lunch.**

**Update on the Criminal Juvenile Justice Commission Agenda by Jeanne Smith:**

The Commission has been focusing on the topic of re-entry into the community and what was being done to prepare offenders for re-entry. The Commission made 66

recommendations, which ranged from implementations by agencies, legislative initiatives, and other initiatives which were not viable due to a lack of funding. At this point the Commission is ready to take on another agenda item. There was a large contingency wanting to take on juvenile justice, however the legislature dictated that the next topic should be sentencing reform. There will be two subcommittees: one committee will focus on the expectations of the criminal justice system when an offender comes into the system, and the decision between prison versus community corrections versus probation. The second committee will refine issues subject to legislative recommendations such as: drug statutes, habitual DUIs and mandatory minimum sentencing. A report on the direction of the subcommittees will be due in November, at which time Jeanne will update the Board.

### **Juvenile and Adult Advisory Board Funding Discussions**

Minutes from these discussions are available in the handout packets.

### **Residency Restriction Paper:**

This paper is meant to be position paper for the Board. The paper will be posted on the Sex Offender Management Board (SOMB) website and used in trainings.

Motion to accept paper as Board position paper with the addition of the bibliography.

Motion seconded. Approved with no opposition or abstentions.

### **Adult Advisory Board Agenda: Restrictions on sex offender spousal relationships-**

This stems from a case in which a treatment provider was restricting an offender from spousal relations due to an admission during a polygraph that the offender was having inappropriate fantasies while with his wife. At the time the offender was seen as not making progress in therapy. The treatment provider (and probation officer) prescribed an intervention restricting spousal relations. Advice from counsel was sought, which went as far as the Attorney General office. It was decided that such an intervention was unconstitutional and Probation was directed not to restrict spousal relations.

### **Discussion Points:**

- There needs to be a distinction between sanctions and interventions.
- There are two issues to address, 1) right to seek counsel and 2) the constitutionality of a state action prohibiting spousal relationships.
- Need to distinguish the difference between having relations with a spouse and having an inappropriate fantasy while with the spouse.
- Addressing the inappropriate fantasy is appropriate, as the fantasies can lead to other offending behaviors.
- Focus should be to get the offender to participate in treatment and getting over the idea that he is a victim of circumstances.
- The point was brought up about safety of the wife. Was she in danger? Is there information that should be given to the wife to increase her safety?
- A request was made to see if there was any research available to show the effectiveness of interventions on sexual relations and limitation of masturbation. None was available.
- Things to look at when considering this type of intervention: nature of interaction as

well as what is going on in the fantasy, and reinforcement of limitations for deviant behaviors by limiting sexuality.

*If Probation is prohibited from interventions of spousal relations, how does it affect the Standards & Guidelines? What are therapists to do if they view the intervention as an effective and necessary tool?*

- There are not Standards and Guidelines about spousal relations.
- A point was made that the Board should not have authority to tell a therapist what treatment to use, as there are many types of treatment but no “best” treatment.
- It was noted that offenders often have fantasies about other persons beside their spouse.
- The use of Shared Living Arrangements (SLAs) is an effective way of interrupting spousal relations.
- The foundation of this dilemma is legality, not whether the treatment is best practices.
- Other people involved (spouse, children) in the situation may have their constitutional rights infringed upon as well.
- This topic will be discussed in a workshop at the SOMB conference in July.
- If the treatment provider is approved by the SOMB, the provider will fall under the state umbrella of liability and consequences.

### **Adult Advisory Board Agenda: Lifetime Supervision Criteria:**

This item was deferred due to a lack of time.

**Meeting Adjourned**