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MEMORANDUM

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TO: Interested Persons
FROM: Jessika Shipley, Senior Analyst, 303-866-3528
SUBJECT: Jessica's and Amber's Laws in Colorado

This memorandum explains the status of Jessica's and Amber's Laws in Colorado. It provides a short explanation of Jessica's Law and a side-by-side comparison with the provisions in Colorado law governing the sentencing and registration of sex offenders. The memorandum also explains the federal Amber Hagerman Child Protection Act and how it has been implemented in Colorado.

Jessica's Law

Model act. Jessica's Law is the informal name of the Jessica Lunsford Act, a 2005 Florida law addressing the punishment and supervision of sex offenders who target children. Jessica Lunsford was a nine-year-old girl who was raped and murdered in February 2005 by an individual with a prior conviction for a sex offense. The Florida law has been used as a model act for several other states, although not every state with a version of Jessica's Law has enacted all of the provisions of the Florida law.

The Florida act made seven major changes to the laws governing the registration of sex offenders. It:

- increased the penalty for lewd and lascivious molestation of a child (under the age of 12) to life imprisonment or a split sentence of a mandatory minimum 25-year prison term, followed by lifetime supervision with electronic (satellite) monitoring;¹
- increased the period of time from 20 to 30 years before an individual can petition the court to remove a sexual predator designation;
- allows prosecutors to seek the death penalty in cases where the victim of a sex offense is murdered;

¹Lewd and lascivious molestation of a child is defined as intentionally touching in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them, of a person less than 16 years of age, or forcing or enticing a person under 16 years of age to so touch the perpetrator (Section 800.04 (5), Fla. Stat. Ann.). In Florida, sexual battery or rape of a child less than 12 years of age is a capital felony, punishable only by death or life imprisonment with no chance of parole.

- elevated failure to register as a sex offender or harboring a sex offender from a class 4 felony to a class 3 felony;
- requires all convicted sex offenders who are ordered to have an electronic (satellite) monitor during probation to be monitored electronically for the entire period of probation;
- increased the sex offender reporting and registration requirements;² and
- requires county probation officials to search the sex offender registry any time they are assigned a new offender.

Federal law. A version of Jessica's law, also called the Jessica Lunsford Act, was introduced in the U.S. House of Representatives in 2005, but never came to a vote. The bill addressed the registration and monitoring of convicted sex offenders, but did not impose mandatory minimum sentences.

Comparison of Jessica's Law and Colorado Law

Table 1 provides a side-by-side comparison of the provisions added to Florida law by the Jessica Lunsford Act in 2005 and current Colorado law with regard to sex offenses committed against children. The table compares such things as mandatory minimum sentences, the removal of a sexual predator designation, authority to seek the death penalty, sex offender registration requirements, and electronic monitoring of sex offenders in the community. Attachment A provides a short explanation of the indeterminate sentencing scheme for sex offenders under Colorado law and Attachment B discusses sex offender registration in Colorado.

²An individual who is designated a sexual predator under Florida law is required to report in person twice a year, in the month of his or her birthday and again during the six months following the birth month.

Table 1
Comparison of the Provisions of Jessica's Law and Colorado Law on Sex Offenders

Subject	Jessica's Law	Colorado
Mandatory minimum sentences for serious sex offenses on a victim who is under the age of 12	An individual convicted of lewd and lascivious molestation of a child, who is not sentenced to life, must be sentenced to at least 25 years imprisonment, followed by probation or community supervision for the remainder of the individual's natural life.	Most sex offenders in Colorado are subject to the Colorado Sex Offender Lifetime Supervision Act of 1998. Additionally, most sex offenses against children are subject to enhanced sentencing provisions. See Attachment A for an explanation of indeterminate sentencing of sex offenders.
Petitions to remove a sexual predator designation	An individual must wait 30 years after being designated as a sexual predator prior to petitioning the court to remove the designation.	Designation as a sexually violent predator is made during the probation or parole process using a risk assessment tool and by a determination of the court. It may be appealed, but the designation may not be removed.
Death penalty	Prosecutors may seek the death penalty in cases where the child victim of a sexual predator dies during (or as an immediate result of) lewd and lascivious molestation.	Prosecutors may seek the death penalty in cases where an individual commits sexual assault on a child and the victim dies during (or as an immediate result of) the sexual assault.
Failure to register as a sex offender	Third degree felony, punishable by a term of imprisonment not to exceed 5 years.	A first offense is a class 6 felony (punishable by 1 year to 18 months in prison, a fine of \$1,000 to \$100,000, or both) and a second offense is a class 5 felony (punishable by 1 to 3 years in prison, a fine of \$1,000 to \$100,000, or both). Depending on the circumstances of the case, an individual may petition to be removed from the sex offender registry.
Harboring a sex offender	Third degree felony, punishable by a term of imprisonment not to exceed 5 years.	It is a class 5 felony to harbor an individual who has committed, been convicted of, or is charged with a crime, or is suspected or wanted for a crime that is a class 3, 4, or 5 felony (all felony sex offenses fall into one of these three categories). ³
Electronic monitoring	All sexual predators are required to be monitored electronically, via global positioning satellite (GPS), for the entire period of probation.	Electronic monitoring, including GPS, is used as a sentence by the courts in lieu of jail. It is also used as a condition of bond for pre-trial supervision, as well as for monitoring some residential and non-residential parolees out in the community. All offenders who are subject to Intensive Supervision Program Parole (ISP-P) are monitored electronically. ⁴

³A class 5 felony is punishable by one to three years in prison, a fine of \$1,000 to \$100,000, or both.

⁴The ISP-P was established by statute for high risk-high needs offenders who present increased risk to the community. These offenders would not generally be considered as good candidates for parole by the board and would not receive favorable consideration for release (discretionary) because of the risk posed were it not for the increased supervision, surveillance, and contact by community parole officers this program offers.

Table 1 (Cont.)
Comparison of the Provisions of Jessica's Law and Colorado Law on Sex Offenders

Subject	Jessica's Law	Colorado
Sex offender registration and reporting requirements	Sexual predators are required to report in person to re-register twice a year.	Sexually violent predators and individuals subject to lifetime supervision must register quarterly (every 90 days). All other sex offenders re-register annually. (See Attachment B for details of the Sex Offender Registration Act of 2002.)
County probation officials	County probation officials are required to search the state sex offender registry any time they are assigned a new offender.	In Colorado, probation cases are assigned according to judicial district, rather than by counties. Probation officers are not statutorily required to check the sex offender registry, although some may do so as a matter of local policy. Probation officers do receive presentence reports, which include a criminal history, on every offender.

Amber's Law

Amber Hagerman Child Protection Act. Amber's Law, also known as the Amber Hagerman Child Protection Act, is a federal law enacted in 1996. It is named after a nine-year-old Texas girl who was kidnapped and murdered in 1996. The act provided for the creation of a national sex offender registry and requires offenders with two or more convictions for sex offenses against children to be sentenced to life without parole. It also led to the creation of the America's Missing: Broadcasting Emergency Response (AMBER) Alert system, which is a national child abduction alert system.

AMBER Alert in Colorado. The AMBER Alert Program was implemented in Colorado in 2002. The law defines an abducted child as one who is 17 years old or younger and is in immediate danger of serious bodily harm or death, and establishes a procedure for local law enforcement agencies and the Colorado Bureau of Investigation (CBI) to follow when a suspected abduction occurs.⁵ The process includes the following steps:

- verifying the accuracy of the abduction report;
- issuing an alert via the state emergency alert system; and
- cancelling the alert when the child has been found or the notification period expires, whichever occurs first.

The AMBER Alert Program has been used a total of 59 times since its inception in 2002, with 79 children being recovered. The program is funded through a combination of General Fund dollars and gifts, grants, and donations. The exact amount spent on the program is unknown due to this mixed funding mechanism. Additionally, various units and offices in the CBI provide resources and staffing support as needed.

⁵Section 24-33.5-415.7, C.R.S.

Indeterminate Sentencing for Sex Offenders in Colorado

According to the *Colorado Sex Offender Lifetime Supervision Act of 1998*, defendants who are convicted of most sex offenses, including sexual assault and almost all offenses involving children and family relations, are to be sentenced to the custody of the Colorado Department of Corrections for an indeterminate term of at least the minimum of the presumptive range for the level of offense committed and a maximum of the offender's natural life. The sentencing scheme for all applicable offenses is outlined in Table 2.

Table 2.
Sentencing Scheme for Sex Offenders under the
Colorado Sex Offender Lifetime Supervision Act of 1998

Class of Crime	Normal Presumptive Range	Crime of Violence	Maximum Sentence under Lifetime Supervision	Mandatory Parole
Class 2	8 to 24 years	16 to 48 years	<p>The court is required to sentence a sex offender to prison for an indeterminate term of at least the minimum sentence in the presumptive range and a maximum of the sex offender's natural life.</p> <p>If convicted for a sex offense that constitutes a <i>crime of violence</i>, the court is required to sentence the sex offender to prison for an indeterminate term of at least the midpoint in the presumptive range for the level of offense and a maximum of the sex offender's natural life.</p> <p>If the sex offender committed a sex offense that makes him or her eligible for sentencing as an <i>habitual sex offender against children</i>,** the court is required to sentence the sex offender to prison for an indeterminate term of at least three times the maximum in the presumptive range for the level of offense and a maximum of the sex offender's natural life.</p>	5 years
Class 3	4 to 12 years	8 to 24 years		5 years
Class 3 (extraordinary risk of harm*)	4 to 16 years	10 to 32 years		5 years
Class 4	2 to 6 years	4 to 12 years		3 years
Class 4 (extraordinary risk of harm*)	2 to 8 years	5 to 16 years		3 years
Class 5	1 to 3 years	2 to 6 years		2 years
Class 5 (extraordinary risk of harm*)	1 to 4 years	2.5 to 8 years		2 years
Class 6	1 year to 18 months	15 months to 3 years		1 year
Class 6 (extraordinary risk of harm*)	1 to 2 years	18 months to 4 years	1 year	

*Felony crimes that present an extraordinary risk of harm to society include, but are not limited to, any Section 18-1.3-406 crime of violence which includes sex offenses. Extraordinary risk of harm sentencing does not apply to Class 1 or Class 2 felonies. In all cases, the minimum sentence for Class 1 felonies is life imprisonment and the maximum sentence is the death penalty.

**Any person convicted in Colorado of an unlawful sexual offense against a child who has been previously been convicted of an unlawful sexual offense against a child, in this state or under the laws of any other state or under federal law, must be adjudicated by the court as an habitual sex offender against children.

Registration and Sex Offenders in the Community

The Sex Offender Registration Act (Sections 16-22-101, et. seq., C.R.S.) was enacted in 2002. Definitions of the four sex offense classifications used in the act are listed in the corresponding statutes: (1) enticement of a child;⁶ (2) unlawful sexual offense;⁷ (3) unlawful sexual behavior;⁸ and (4) sexually violent predator.⁹

Who must register? Colorado law requires the registration of any person who is a temporary or permanent resident of Colorado and who:

- was *convicted* on or after July 1, 1991, of an unlawful sexual offense or enticement of a child in the state of Colorado, or an equivalent offense in another state or jurisdiction;
- was *released* on or after July 1, 1991, from the Colorado Department of Corrections (DOC) or any other state's corrections department, having served a sentence for an unlawful sexual offense or enticement of a child, or an equivalent offense in another state or jurisdiction;
- was *convicted* on or after July 1, 1994, in Colorado of unlawful sexual behavior or of another offense, the underlying factual basis of which involved unlawful sexual behavior;
- is *released* from the custody of the DOC on or after July 1, 1994, after serving a sentence for unlawful sexual behavior or for another offense, the underlying factual basis of which involved unlawful sexual behavior;
- is *convicted* of an offense in any other state or jurisdiction for which the person is required to register in the state or jurisdiction of conviction, or for which such person would be required to register if convicted in Colorado;
- receives a disposition or is adjudicated a juvenile delinquent for committing any act that may constitute unlawful sexual behavior; or
- receives a deferred juvenile adjudication for committing any act that may constitute unlawful sexual behavior.

For the purpose of sex offender registration, any person from another state who occupies a dwelling in Colorado, including a hotel or motel, for more than 14 days in any 30-day period is considered a temporary resident. Sex offenders who live in another state, but work or go to school in Colorado are considered temporary residents. The term "other jurisdictions" includes, but is not

⁶ Section 18-3-305 (2), C.R.S.

⁷ Section 18-3-411 (1), C.R.S.

⁸ Section 16-22-102 (9), C.R.S.

⁹ Section 18-3-414.5 (1), C.R.S.

Attachment B

limited to, federal and military jurisdictions. Sex offenders who are convicted and sentenced in Colorado, but move to another state upon their release must register in that state.

A court can exempt a sex offender from the registration requirements if: (1) the person meets certain guidelines (e.g., the person was under the age of 18 at the time of the commission of the act); and (2) the court determines that the requirement would be unfairly punitive and that exempting the sex offender from the registration requirement would not pose a significant risk to the community. Prior to making a decision to exempt a sex offender from the registration requirement, the court must give the prosecuting attorney and the victim a chance to be heard at a hearing.

Who notifies sex offenders of the requirement to register? DOC personnel, county jail personnel, and probation and parole officers must notify sex offenders upon conviction or release from custody of their duty to register with local law enforcement in each and any jurisdiction in which they reside in the United States. In addition, Department of Human Services, Division of Youth Corrections personnel must notify juvenile sex offenders under their jurisdiction of the duty to register.

Where and when do sex offenders register? Sex offenders must register with either the local chief of police or county sheriff in each and any jurisdiction in which they reside, whether in Colorado, another state, or in multiple locations. The CBI maintains the statewide sex offender registry in Colorado.

Registration must occur within five business days of one of the following: (1) release into the community under criminal justice supervision (e.g., probation, parole, community corrections); (2) notice of the requirement to register, if not incarcerated but sentenced directly to community supervision; or (3) establishment of temporary, permanent, or secondary residence(s) in the state. In addition to these requirements, sex offenders who are subject to lifetime registration must re-register 90 days after their release into the community, and every 90 days thereafter. Sex offenders who are released from prison in Colorado or another state with no further supervision must register the next business day following their release. Sex offenders are required to cancel their registration in a jurisdiction if they move and are no longer a permanent or temporary resident of that jurisdiction.

What information must sex offenders provide upon registration? When registering, a sex offender must provide the following on a standardized form prepared by CBI:

- name, including any and all legal names or aliases;
- date of birth;
- address;
- place of employment;
- all e-mail addresses;
- any instant messaging and/or chat room identities;
- a current photograph; and
- a full set of fingerprints.

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Sex offenders who are temporary residents of Colorado must also provide their address in their state of permanent residence and their place of employment in Colorado. Sex offenders who are employed at, are enrolled in, or volunteer for an institution of higher education must provide the name and address of the institution, and all addresses and locations at which the person may be physically located at the institution. Any sex offender whose place of residence is a trailer or motor home is required to register the address at which the trailer or motor home will be lawfully located. Motor vehicles may not be listed a place of residence.

How often and under what conditions are sex offenders required to re-register? Sex offenders must re-register annually on their birthday. In addition, sex offenders must re-register any time they change addresses, establish additional residences, or legally change their name. Sex offenders who are employed at, are enrolled in, or volunteer for an institution of higher education must re-register when they begin studying or working at an institution as an employee, student, or volunteer, and upon any change in work status or location at the institution. Also, if a trailer or motor home is moved to another location, it is the sex offender's responsibility to update his or her registration information.

Certain sex offenders must register quarterly (every 90 days) for the remainder of their lives, including any person who is:

- a sexually violent predator;
- convicted in Colorado as an adult of any of the following: (1) felony sexual assault, or first degree felony sexual assault or second degree felony sexual assault, as they existed prior to July 1, 2000; (2) sexual assault on a child; (3) sexual assault on a child by one in a position of trust; (4) sexual assault on a client by a psychotherapist; (5) incest; or (6) aggravated incest;
- convicted in another state or jurisdiction of an offense for which a person in that state or jurisdiction must register quarterly; and
- convicted of an offense in another state or jurisdiction that would require the person to register if the conviction occurred in Colorado.

Can a sex offender ever be removed from the registry? Sexually violent predators and sex offenders who are subject to lifetime registration cannot be removed from the registry. Other sex offenders can petition the court to discontinue their registration or the posting of their information on the Internet, as long as they have not subsequently received a disposition for, been adjudicated a juvenile delinquent for, or been otherwise convicted of any sexual offense. Depending on the offense for which they were convicted or factors surrounding the disposition of their case, sex offenders are eligible to request removal from the registry anywhere from the time they successfully complete their sentence to 20 years after their final release from the jurisdiction of the court.

What are the penalties for failing to register as a sex offender? Failure to register as a sex offender is a class 5 felony, a class 6 felony, or a class 1 misdemeanor, depending on the frequency and the circumstances of the failure to register.

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Is the public notified when sex offenders are released into the community? Community notification is only mandated for sexually violent predators. The law contains a legislative declaration from the General Assembly stating its desire to mandate community notification only in cases involving the highest degree of risk to the community, and its belief that such notification should only occur under carefully controlled circumstances.

The Sex Offender Management Board (SOMB), which is administered by the Colorado Department of Public Safety, Division of Criminal Justice, establishes criteria, protocols, and procedures under which a sexually violent predator is subject to community notification. The board also develops the procedures for community notification, which local law enforcement agencies must follow. The procedures require that notification be as specific as possible to the population within the community that is at risk. Because there is wide variation in the size, population, law enforcement resources, and technological capabilities of local jurisdictions across the state, the board develops several procedures and permits local jurisdictions to select the most appropriate one. Thus, the procedures that are used at the local level vary in accordance with the size, population, and resources of each jurisdiction.

Local law enforcement agencies are required to conduct local notification when a sexually violent predator is released into their jurisdiction. If there is a change to the sexually violent predator's status that might put another area of the community at risk, such as the sex offender's establishment of a new residence or place of employment, an additional notification may be necessary.

Local law enforcement agencies can also make a list of registered sex offenders in their jurisdiction available to the public for a fee.

What information about sex offenders can be released to the public? Colorado law contains a legislative declaration from the General Assembly stating that the public must have access to information concerning sex offenders so that they can protect themselves and their children. However, the legislative declaration also states that in making the information available to the public, it is not the intent of the General Assembly that the information be used to inflict retribution or additional punishment on any convicted sex offender.

Anyone in Colorado may request information about sex offenders, regardless of where they live. When requested, local law enforcement agencies may, but are not required to, release the following information about a sex offender, at a minimum:

- name, address or addresses, and aliases of the person;
- the person's date of birth;
- a photograph of the person, if requested and readily available; and
- the conviction resulting in the person's duty to register.

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If a local law enforcement agency denies the request for this information by a person who lives outside its jurisdiction, the agency may forward the request to CBI, which must provide the information to the person who has requested it. Information about victims is not permitted to be released.

Is information about sex offenders available on the Internet? CBI is required to post on the Internet a list of sex offenders who are:

- sexually violent predators under the laws of Colorado or another state;
- persons who are required to register and have been convicted of two or more of the following offenses: (1) felony unlawful sexual behavior; or (2) a crime of violence; and
- persons who are required to register because of a felony conviction as an adult, but have failed to register.

In addition, the CBI may post on the Internet a list of felony sex offenders. The lists of sex offenders posted by CBI are to include the sex offender's name, physical description, and address. Physical description includes the person's sex, height, weight, any identifying characteristics, and photograph. The CBI website can be accessed at: **www.sor.state.co.us**.

Local law enforcement agencies may post on the Internet registration information about sex offenders on their registration list, if the sex offender is:

- an adult convicted of a felony sex offense;
- an adult convicted of a second or subsequent offense of any of the following: (1) sexual assault; (2) unlawful sexual contact; (3) sexual assault on a client; (4) sexual exploitation of a child by possession of sexually exploitive material; (5) indecent exposure; or (6) sexual conduct in a penal institution;
- a juvenile adjudicated for two or more offenses involving unlawful sexual behavior or for a crime of violence; or
- a juvenile who is required to register following adjudication for an offense that would have been a felony, if committed by an adult, and has failed to register.

Any law enforcement agency that posts sex offender registration information on a public website must also post educational information concerning protection from sex offenders or provide a link to the educational information included on the CBI web site. Educational material posted on the Internet is to be developed by local law enforcement agencies, in cooperation with the SOMB and sexual assault victims' advocacy groups. Arapahoe, Boulder, El Paso, Jefferson, Larimer, and Weld Counties, among others, currently post information about sex offenders online.