SEXUALLY VIOLENT PREDATORS

ANNUAL REPORT

A REPORT SUBMITTED TO THE
HOUSE AND SENATE JUDICIARY COMMITTEES
DUE JANUARY 15, 2014, PURSUANT TO C.R.S. 18-3-414.5(4)

COLORADO DEPARTMENT OF CORRECTIONS
COLORADO STATE COURT ADMINISTRATOR'S OFFICE

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INTRODUCTION

The State Judicial Department and the Department of Corrections jointly submit this seventh annual report on sexually violent predators (SVPs). The report is prepared in accordance with the provisions implemented in House Bill 07-1172. Pursuant to section 18-3-414.5(4), C.R.S.:

> On or before January 15, 2008, and on or before January 15 each year thereafter, the Judicial Department and the Department of Corrections shall jointly submit to the judiciary committees of the Senate and House of Representatives, or any successor committees, to the Division of Criminal Justice in the Department of Public Safety, and to the Governor a report specifying the following information:
>
> a) the number of offenders evaluated pursuant to this section in the preceding twelve months;
>
> b) the number of sexually violent predators identified pursuant to this section in the preceding twelve months;
>
> c) the total number of sexually violent predators in the custody of the Department of Corrections at the time of the report, specifying those incarcerated, those housed in community corrections, and those on parole, including the level of supervision for each sexually violent predator on parole;
>
> d) the length of the sentence imposed on each sexually violent predator in the custody of the Department of Corrections at the time of the report;
>
> e) the number of sexually violent predators discharged from parole during the preceding twelve months;
>
> f) the total number of sexually violent predators on probation at the time of the report and the level of supervision of each sexually violent predator on probation; and
>
> g) the number of sexually violent predators discharged from probation during the previous twelve months.

BACKGROUND OF SEXUALLY VIOLENT PREDATOR (SVP) LAWS

In 1997, the Colorado General Assembly passed Senate Bill 97-84, which enacted the Sexually Violent Predator (SVP) law. The statute applied to the following five enumerated offenses for persons convicted on or after January 1, 1999:

- Sexual Assault in the First Degree
- Sexual Assault in the Second Degree
- Felony Sexual Assault in the Third Degree
- Sexual Assault on a Child
- Sexual Assault on a Child by One in the Position of Trust

At that time, the district attorney or the probation department had discretion to request that the court make a finding that the defendant was an SVP. An SVP designation resulted in the defendant being subjected to lifetime quarterly registration.

In 1998, the General Assembly clarified that the SVP provisions applied only to persons 18 years of age or older on the date of offense or less than 18 years of age and tried as an adult. In addition, the definition of conviction was expanded to include a plea of guilty or a plea of nolo contendere.

In 1999, changes were made to reflect that the offense date must be on or after July 1, 1997, with a conviction date on or after July 1, 1999. The statute was changed to require that the court order an SVP risk assessment for an offender convicted of one of the five enumerated offenses at the time of the presentence investigation report, to make findings of fact and to enter an order concerning whether the defendant was an SVP. Also, in 1999 the statute was amended to reflect that the Parole Board would make specific findings regarding an SVP when considering parole release for an offender convicted of one of the five enumerated offenses and based on results of an SVP assessment conducted by the Department of Corrections. Finally, in 1999 the General Assembly added part 9 of Article 13 of Title 16, C.R.S., to require community notification as a consequence of an SVP finding.

In 2000, the statute was amended to reflect changes in the labeling of sexual assault statutes, including the renaming of “Third Degree Sexual Assault” to “Unlawful Sexual Contact.”

In 2001, the statute was changed to transfer responsibility of the SVP assessment to the probation department at the time of the presentence report. The court was no longer required to make an order requiring the SVP assessment, only to rule whether the defendant was an SVP. Posting of sexually violent predators on the Colorado Bureau of Investigations website was also included.

In 2006, the SVP statute was expanded to include attempts, solicitations, or conspiracies to commit one of the five enumerated offenses. “Convicted” was amended to include a defendant having received a deferred judgment and sentence. The time for conducting the SVP assessment was changed from “at the time of presentence investigation report is conducted” to “when a defendant is convicted.” The

statute, as amended, allows a previous SVP assessment within the prior six months to be used or waives the requirement if the defendant has previously been designated an SVP. The parole section of the statute was expanded to require the SVP assessment not only when considering release on parole, but also discharge. The legislation specifically cross-referenced the community notification statute.

In 2007, the statute was expanded to require the submission of the SVP report by Judicial and the Department of Corrections to the judiciary committees of the Senate and House of Representatives, or any successor committees, to the Division of Criminal Justice in the Department of Public Safety, and to the governor.

In 2008, HB 08-1247 required the Department of Corrections to notify the court if it receives a mittimus that does not indicate whether or not the court identified a defendant as an SVP. This legislation enables the Department of Corrections to return the defendant to the custody of the sheriff for transport to the court for the determination.

SEXUAL PREDATOR RISK ASSESSMENT SCREENING INSTRUMENT

The Sexual Predator Risk Assessment Screening Instrument was developed in 1998 by the Office of Research and Statistics in the Division of Criminal Justice. The most recent version, dated June 2010 is provided as Attachment A.

Sexually Violent Predator (SVP) is an offender who meets the following criteria:

1. Eighteen years of age or older as of the date the offense is committed or who is less than eighteen years of age as of the date the offense is committed but is tried as an adult pursuant to section 19-2-517 or 19-2-518, C.R.S.

2. Convicted on or after July 1, 1999, of one of the following offenses or of an attempt, solicitation, or conspiracy to commit one of the following offenses committed on or after July 1, 1997.

    A. Sexual assault, in violation of section 18-3-402, C.R.S., or sexual assault in the first degree, in violation of section 18-3-402, C.R.S., as it existed prior to July 1, 2000;

    B. Sexual assault in the second degree, in violation of section 18-3-403, C.R.S., as it existed prior to July 1, 2000;

    C. Unlawful sexual contact, in violation of section 18-3-404(1.5) or (2), C.R.S., or sexual assault in the third degree, in violation of section 18-3-404(1.5) or (2), C.R.S., as it existed prior to July 1, 2000;

    D. Sexual assault on a child, in violation of section 18-3-405, C.R.S.; or

    E. Sexual assault on a child by one in a position of trust, in violation of section 18-3-405.3, C.R.S.

3. Whose victim was a stranger to the offender or a person with whom the offender established or promoted a relationship primarily for the purpose of sexual victimization; and

4. Based upon the results of the most current revision of the Sexually Violent Predator Risk Assessment Screening Instrument, which includes an assessment for the presence of a mental abnormality, developed by the Division of Criminal Justice in consultation with and approved by the Sex Offender Management Board established pursuant to section 16-11.7-102 (1), C.R.S., is likely to subsequently commit one or more of the offenses specified above under the circumstances specified above.

DATA REPORTING

The required information is reported below by the Department of Corrections and the Division of Probation Services within the State Judicial Department. The preceding 12-month period is defined as calendar year 2013 (January 1, 2013, through December 31, 2013), unless otherwise denoted, and the population figures are reported as of December 31, 2013, representing the population at the time of the report.

DEPARTMENT OF CORRECTIONS RESPONSE

In recent years the Department of Corrections implemented information systems to identify offenders who have not previously been evaluated under the SVP provisions and capture the scoring instrument electronically. These enhancements facilitated the reporting of the information presented in the table on the next page.

Report Requirement Item	Required Data	Department of Corrections Response
(a)	Number of offenders evaluated in calendar year 2013	53
(b)	Number of sexually violent offenders identified in calendar year 2013	3
(c)	Total number of sexually violent predators as of December 31, 2013:	
	Prison	474
	Community Corrections Transition	1
	Total Incarcerated Population	475
	Supervised on Parole (Level of Supervision):	
	Intensive Supervision Parole	21
	Regular Parole	8
	Out of State Parolee	4
	In Custody:	
	U. S. Bureau of Prisons	1
	INS Deportation/Detainer Out of State	6
	Absconders	2
	Total Parole Population	42
(d)	Average Length of Sentence:	
	Incarcerated Population prison sentence (471 offenders*)	32.1 years
	Prison sentence average of the current 42 parolees	4.9 years
	Parole sentence average of the current 42 parolees	3.1 years
(e)	Calendar Year 2013 Discharges:	
	from parole	13
	from prison	20

*Excludes four offenders with a life with no parole sentence.

The Division of Adult Parole, Community Corrections and YOS is responsible for supervising SVP offenders in all division programs (i.e., residential community corrections, intensive supervision program for inmates, regular parole, and intensive supervision program for parolees). Regardless of the program, SVPs are the most intensely supervised offenders and are managed according to the standards established by the Sex Offender Management Board, pursuant to C.R.S. 16-11.7-101 through 106. The statutes were amended in 2011. Using a designed level system, SVP offenders can progress to a lower level of supervision, based on risk and compliance and the approval of the entire community supervision team. They are no longer classified as "maximum" throughout their supervision period; it is now on a case-by-case basis. Community re-entry specialists are assigned to this population to provide stabilization strategies (housing, employment, education, transportation, clothing, tools, etc.). Community parole officers are required to conduct home visits, employment verifications, and staffing with approved treatment providers. Curfews are managed with electronic monitoring to include GPS, home detention, and the electronic paging system. Residential program placement, following acceptance by local community boards, may also be a condition of parole.

PROBATION RESPONSE

Using E-Clipse, the State Judicial Department's case management information system, staff at the Division of Probation Services selected data associated with offenders convicted of one of the following sexually violent predator (SVP) qualifying offenses (including attempts, solicitations, or conspiracies, as well as deferred judgment and sentences) for calendar year (CY) 2013 for review in preparation of this report.

- Felony sexual assault, in violation of section 18-3-402, C.R.S., or sexual assault in the first degree, in violation of section 18-3-402, C.R.S., as it existed prior to July 1, 2000; Misdemeanor sexual assault, in violation of 18-3-402(1)(e). ("At the time of the commission of the act, the victim is at least fifteen years of age but less than seventeen years of age and the actor is at least ten years older than the victim and is not the spouse of the victim.")

- Felony sexual assault in the second degree, in violation of section 18-3-403; C.R.S. as it existed prior to July 1, 2000;

- Felony unlawful sexual contact, in violation of section 18-3-404(1.5) or (2), C.R.S., or felony sexual assault in the third degree, in violation of section 18-3-404(1.5) or (2), C.R.S. as it existed prior to July 1, 2000;

- Felony sexual assault on a child, in violation of section 18-3-405; or

- Sexual assault on a child by one in a position of trust, in violation of section 18-3-405.3.

Pursuant to 18-3-414.5, when an offender is convicted of one of the offenses specified above, the probation department, in coordination with the evaluator completing the mental health sex offense specific evaluation, completes the sexually violent predator risk assessment, unless the evaluation and assessment were completed within the six months prior to the conviction or the defendant was previously designated an SVP. Based on the results of the assessment, the court makes specific findings of fact and enters an order concerning whether the offender is an SVP. If the offender is found to be an SVP, the offender is required to register quarterly and is subject to community notification. The offender's conviction, SVP designation as well as demographic information are posted on the Colorado Bureau of Investigation web site. If the offender is sentenced to DOC and DOC receives a mittimus reflecting that the court did not make a specific finding of fact or enter an order regarding whether the offender is an SVP, DOC immediately notifies the court and, if necessary, returns the offender to the custody of the sheriff for delivery to the court, and the court then makes a finding or enters an order regarding whether the offender is an SVP.

Report Requirement Item	Required Data	State Judicial Response
(a)	Number of offenders evaluated in CY 2013[1]	414
(b)	Number of sexually violent predators identified in CY 2013 Sentenced to DOC Sentenced to Probation	 49 21
	Total	70
(f)	Total number of sexually violent predators with a sentence to probation as of December 31, 2013 [2] **Level of Supervision:** Sex Offender Intensive Supervision Probation (SOISP) Level of Supervision Administrative SOISP Level (Currently serving a DOC or Jail concurrent sentence) Regular Probation Administrative Level (Out of State) Regular Probation Administrative Non-SOISP Supervision Level Non-SOISP ADMN Community Corrections ADMIN	 11 18 2 4 5 21 1
	Total	62
(g)	Number of sexually violent predators discharged from probation during the previous 12 months Revoked for Technical Violations Revoked for New Felony Successful Termination Deported Died Absconded–Warrant Outstanding Community Corrections Closure	 2 0 0 0 0 1 1
	Total	4

[1] Number of offenders referred for evaluation includes those cases that are referred to the Probation Department for a presentence investigation report (PSIR). Offenders who refuse a PSI interview, or are not otherwise available, are not included.

[2] Probationers in the State of Colorado are assessed to determine their level of risk and need. The assessment results are used to determine program placement, intensity of supervision and to develop a case plan with anticipated contacts, goals and outcomes.

Between January 1, 2013 through December 31, 2013, 414 adults convicted of one of the five (5) qualifying sexually violent predator crimes received an SVP evaluation/assessment. Of those offenders assessed, the court made a finding of SVP for 70 offenders. Of these, as of December 31, 2013, a cumulative total of 21 adult sex offenders were identified as an SVP and received a probation sentence while 49 offenders were sentenced to DOC.

There were 4 offenders identified as SVP discharged from probation in CY 2013. Of these, 2 offenders were revoked for technical probation violations. The technical violations consisted of unauthorized sexual contact with a 17 year old, unsuccessful discharge from treatment and substance use while on probation.

Any adult convicted of a felony sex offense and receives a sentence to probation is required to be supervised by the sex offender intensive supervision program (SOISP). SOISP is designed to provide the highest level of supervision that is provided to probationers. Probation Officers employ a model of containment and management that adheres to the Risk, Need, Responsivity model. Probation Officers employ supervision strategies to assist probationers with their response and engagement in treatment. There is no implication that all sex offenders will respond to treatment or will be successful in treatment. The goal of intensive supervision for sex offenders is to minimize the risk to the public to the greatest extent possible while utilizing strengths based techniques to enhance the probationer's intrinsic motivation to succeed. Depending on the probationer, elements of containment may include severely restricted activities, daily contact with a probationer, curfew checks, home visitation, GPS tracking, employment visitation and monitoring, drug and alcohol screening, and/or sex offense specific treatment to include the use of polygraph testing. SOISP consists of three phases, each with specific criteria that must be met prior to a reduction in the level of supervision. After lengthy treatment and supervision, the court may enter a modification of sentence order allowing the probationer to be supervised as a sex offender on a non-SOISP (regular probation) caseload. The probationer may, however, be subject to continued restricted activities and conditions of supervision.

Administrative probation cases are active cases; however, they do not receive direct services at the current time. Examples of an administrative case may include a probationer who is in the Department of Corrections, jail or work release as a condition of probation.

SUMMARY

The Department of Corrections and State Judicial continue to collaborate to ensure proper exchange of information and identification of offenders falling under the statutory provisions for sexually violent predators. Each agency continues to improve their internal information systems to facilitate more accurate tracking and monitoring of the SVP process.

APPENDIX A

Colorado Sexually Violent Predator Assessment Screening Instrument (SVPASI)