

**A Report to the Colorado General Assembly on
the Failure of the Colorado Department of
Corrections to Give Effect to the Legislative Intent
of the Colorado Sex Offender Lifetime
Supervision Act of 1998**

Foreword by:
The Honorable
Frank Dubofsky retired,
Colorado Court of
Appeals

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CONTACT INFORMATION:

Copies of this report may be downloaded from www.lifetimeactreport.org or by writing to:

**Et Alia Paralegal Services
P.O. Box 440092
Aurora, CO 80044-0092**

***About the Cover:** The illustration of a man standing at a crossroads was originally used by Peggy Heil, former Sex Offender Treatment and Monitoring Program Administrator, in a summary to the Executive Director of the Colorado Department of Corrections to indicate the options facing a sex offender incarcerated under the Colorado Sex Offender Lifetime Supervision Act of 1998: Down one path, the offender could participate in treatment and meet the requirements for parole; down the other path, according to Ms. Heil, the offender could “refuse” treatment and remain incarcerated for life. We use this illustration now to represent the choice facing Colorado legislators: continue down the path of humanistic principles originally enunciated in the Act’s legislative declaration, or veer off down the path of failed recidivist legislation by abandoning these humanistic principles in the face of public fears about sex offenders.*

FOREWORD

In the past twenty years Colorado has implemented radical new programs for sentencing, monitoring and treating sex offenders. These programs are extraordinarily expensive, and there are serious questions about their effectiveness, legality and fairness. My article on sex offenders addresses these issues in more detail. (*Reflections on Colorado's Sex Offenders Law*, Boulder County Bar Online Newsletter 1, 14 (November 2004), available at <http://www.boulderbar.org>)

This report to the General Assembly is an important effort to demonstrate the failure of the Colorado Department of Corrections to meet its obligation to provide treatment to sentenced sex offenders. Unless sex offenders are treated, they will never be released from prison. As a trial judge, I was concerned that sentenced sex offenders were not being treated and instead were sent into a black hole of a lifetime sentence with no way out. This study confirms the validity of those concerns. Every legislator, judge and correctional official will be aghast at the statistical information in this report and should demand a response from the department of corrections.

This report reflects a betrayal of the law by those who are most responsible for its enforcement. Those district judges who are uncomfortable with these indeterminate to life sentences will feel betrayed by the lack of treatment and the resulting likely "lifetime" sentence. A life is a terrible thing to waste. Because sex offenders are not receiving their legally mandated treatment, hundreds of millions of dollars will be squandered on unnecessary incarceration.

The report's recommended treatment with uniform accountability ideas is good. Enactment of such concepts is a critical first step in evaluating the legality and fairness of the treatment aspects of Colorado's sex offender laws.

/s/ Frank N. Dubofsky retired,
Colorado Court of Appeals

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EXECUTIVE SUMMARY

In 1998, the Colorado General Assembly passed into law House Bill 98-1156, otherwise known as the Colorado Sex Offender Lifetime Supervision Act of 1998. The passage of this Act reflected an admirable attempt to address the serious risk of reoffense posed by sex offenders who were released from prison without having undergone treatment. Acknowledging the loss of human potential associated with sentencing schemes that merely result in lifetime incarceration, legislators sought a humane compromise by combining mandatory indeterminate sentences to incarceration with a program under which sex offenders could receive treatment and potentially earn their release to parole.

Seven years after its passage, however, the Act's impact on community safety, the number of sex offenses committed, and the incarceration of sex offenders in Colorado is unclear. As of the end of Fiscal Year 2004-2005, 793 sex offenders were incarcerated under the Lifetime Supervision Act's indeterminate sentencing provisions, yet a shocking 78% of these offenders were not receiving the treatment mandated by the Act, and the Department of Corrections had successfully progressed fewer than 6 offenders in treatment to community placement - an abominable "success" rate of less than 3%.

Given the Colorado Department of Corrections' questionable record thus far in providing treatment to sex offenders incarcerated under the Lifetime Supervision Act, many professionals in the criminal justice community perceive the indeterminate sentences imposed under the Act to be life-long sentences to incarceration without meaningful possibility for successful progression through treatment to community placement. The result of this perception is an "open secret" - judges are reluctant to sentence offenders to incarceration under the Act, and both prosecutors and defense attorneys regularly utilize plea bargaining to avoid the Act's mandatory sentencing provision altogether.

Despite the clear legislative intent of the Colorado Sex Offender Lifetime Supervision Act of 1998 to avoid the high costs of lifetime incarceration, the burden of incarcerating sex offenders sentenced under the Act is already significant, and is rapidly growing heavier. This fiscal year, Colorado taxpayers will spend an estimated \$19.7 million to incarcerate the 793 sex offenders already sentenced to prison under the Act, and this amount is expected to grow by approximately \$3.7 million per year, as new offenders continue to be sentenced to incarceration under the Act. There is no end in sight to this ever-increasing financial burden - the Colorado Department of Corrections has failed to adequately implement the Act's treatment provisions to provide the treatment necessary for these incarcerated sex offenders to successfully progress through treatment to community placement.

Given the clear and affirmative legislative intentions expressed within the Lifetime Supervision Act, how has the Colorado Department of Corrections come to fail the people of Colorado? This report explores this question, and documents a pattern of serious professional failures and abuses by the department's Sex Offender Treatment and Monitoring Program, including:

- Intentional misrepresentations about the consequences of failing to

participate in treatment.

- Abysmal failures in professional peer review systems.
- Unethical manipulations of informed consent requirements.
- Deceptive reporting of the numbers of offenders actually participating in treatment.
- Excessive numbers of offenders terminated from treatment.
- Use of fear and coercion instead of therapeutic alliances in treatment.

The professional improprieties documented in this report constitute the ugly by-products of the SOTMP's (Sex Offender Treatment and Monitoring Program's) insistence on interpreting the Lifetime Supervision Act in such a way as to support lifetime incarceration as a norm in the "treatment" of sex offenders. Perhaps lifetime incarceration is a much simpler route to follow – but when legislators passed the Lifetime Supervision Act, they chose to pursue a higher path, and traveling this higher path requires a continuing commitment to the humanistic principles enunciated in the Act itself.

The language of the Lifetime Supervision Act speaks to brighter goals than lifetime incarceration, to the rehabilitation of sex offenders as "safe, responsible, and contributing members of society." At the time the Act became law, the legislature understood what would be necessary to achieve these goals – it would be necessary to create "a program under which sex offenders may receive treatment and supervision for the rest of their lives..."

If the Lifetime Supervision Act is to fulfill the admirable intentions that accompanied its creation, we must insist that the Colorado Department of Corrections provide treatment to the offenders sentenced under the Act in a manner that truly reflects these intentions. The SOTMP has had seven years in which to demonstrate that it is capable of implementing such a treatment program without additional direction from the legislature; the abysmal failure of these seven years indicates that it is once again time for the legislature to speak.

The Colorado Department of Corrections' Sex Offender Treatment and Monitoring Program promotes its sex offender treatment program with the catch phrase "Treatment with Accountability." Building upon this theme of "Treatment with Accountability," this report finds it appropriate to demand accountability to Colorado taxpayers from the Colorado Department of Corrections in its Sex Offender Treatment and Monitoring Program, and therefore recommends that the legislature should amend the statutory reporting requirements found within the Lifetime Supervision Act to require additional data from the Colorado Department of Corrections, including:

- (1) The average number of offenders participating in treatment each month;
- (2) the number of offenders denied admission to SOTMP programs each month;
- (3) the number of offenders terminated from treatment each month;
- (4) the average length of participation in treatment;
- (5) the number of offenders refused readmission to treatment each month after being terminated from treatment;
- (6) the number of offenders recommended by the SOTMP to the parole board for release to parole each month; and
- (7) the number of offenders recommended by the SOTMP for release to community corrections each month.

SECTION I. INTRODUCTION

In 1998, the Colorado General Assembly passed into law H.B. 98-1156, otherwise known as the Colorado Sex Offender Lifetime Supervision Act of 1998. Its passage reflected admirable intentions, expressed in a legislative declaration:

The general assembly hereby finds that the majority of persons who commit sex offenses, if incarcerated or supervised without treatment, will continue to present a danger to the public when released from incarceration and supervision. The general assembly also finds that keeping all sex offenders in lifetime incarceration imposes an unacceptably high cost in both state dollars and loss of human potential. The general assembly further finds that some sex offenders respond well to treatment and can function as safe, responsible, and contributing members of society, so long as they receive treatment and supervision. The general assembly therefore declares that a program under which sex offenders may receive treatment and supervision for the rest of their lives, if necessary, is necessary for the safety, health, and welfare of the state.¹

Seven years after its passage, however, the Act's impact on community safety, the number of sex offenses committed, and the incarceration of sex offenders in Colorado is unclear. As of the end of Fiscal Year 2004-2005, 793 sex offenders were incarcerated in the Colorado Department of Corrections under the indeterminate sentencing provisions of the Lifetime Supervision Act, yet a shocking 78% of these offenders were not receiving the treatment mandated by the Act², and the department had successfully progressed fewer than 6 of these offenders through treatment to community placement – a “success” rate of less than 3%.³

Given the Colorado Department of Corrections' questionable record thus far in providing treatment to sex offenders incarcerated under the Lifetime Supervision Act, many professionals in the criminal justice community perceive the indeterminate sentences imposed under the Act to be life-long sentences to incarceration without meaningful possibility for release. The result of this arguably valid perception is an “open secret” – judges are reluctant to sentence offenders to incarceration under the Act, and both prosecutors and defense attorneys regularly utilize plea bargaining to avoid the Act's mandatory sentencing provisions altogether.⁴ In its November 1, 2005 *Lifetime Supervision of Sex Offenders Annual Report*, the Colorado Department of Corrections acknowledged:

The Department of Corrections continues to work with the courts and prosecuting attorneys where possible to clarify cases that appear to meet the lifetime sentencing requirements but were not sentenced under these provisions [...]⁵

Offenders are being admitted to prison each year for a conviction of a non-lifetime offense, with a concurrent or consecutive lifetime sentence to probation for the qualifying sexual offense conviction. Additionally, the Department has seen an increase in the number of offenders originally sentenced to prison under the Lifetime Provision being released to probation or court order discharged. Several offenders have been subsequently re-sentenced to prison for a non-lifetime sentence.⁶

Despite the clear legislative intent in the Lifetime Supervision Act to avoid the high costs associated with lifetime incarceration, the burden of incarcerating sex offenders under the Lifetime Supervision Act is already significant, and is rapidly growing heavier. This fiscal year, Colorado taxpayers will spend an estimated \$19.7 million to incarcerate the 793 offenders already sentenced to prison under the Act⁷, and this expense will increase by approximately \$3.7 million *per year* as new offenders continue to be incarcerated under the Lifetime Supervision Act each year.⁸ There is no end in sight to this ever-increasing financial burden – the Colorado Department of Corrections has failed to adequately implement the Act’s treatment provisions to provide the treatment necessary for these incarcerated “Lifetime Supervision” offenders to successfully progress through treatment to community placement.

Given the clear and affirmative legislative intentions expressed within the Lifetime Supervision Act, how has the Colorado Department of Corrections come to fail the people of Colorado? This report researched this question and documented a pattern of serious professional failures and abuses by staff of the department’s Sex Offender Treatment and Monitoring Program, including webs of deceptive semantics used to describe treatment, unchecked abuses of authority, meaningless systems of peer review, unethical manipulations of the Informed Consent Doctrine, and a stubborn refusal by the Colorado Department of Corrections to adjust its Sex Offender Treatment and Monitoring Program to reflect the new approach to sex offender treatment mandated by the Lifetime Supervision Act.

Despite its lackluster and manipulative implementation by the Colorado Department of Corrections, the Lifetime Supervision Act continues to hold great promise, both for the people of Colorado and the sex offenders sentenced under it. In the conclusion, this report recommends that the general assembly amend the statutory reporting requirements found within the Lifetime Supervision Act to require additional data from the Sex Offender Treatment and Monitoring Program concerning its performance in providing treatment to sex offenders incarcerated under the Act. With the help of state legislators, the Colorado Sex Offender Lifetime Supervision Act of 1998 can live up to the admirable intentions that accompanied its passage into law.

SECTION II.
THE ROLE OF TREATMENT UNDER THE LIFETIME SUPERVISION ACT

Prior to the passage of the Colorado Sex Offender Lifetime Supervision Act of 1998, participation in sex offender treatment for incarcerated offenders was understood to be entirely voluntary.⁹ No incentive or disincentive existed to compel or entice a sex offender to participate in treatment, other than the deduction of a few days per month from the sentences of offenders participating in treatment. Given the absence of incentives and the significant stigmatization experienced by offenders who participated in treatment, incarcerated offenders often chose to decline participation in treatment.¹⁰

The lack of participation in sex offender treatment by incarcerated sex offenders became a key focal point of the authors of the Colorado Sex Offender Lifetime Supervision Act of 1998. Acting on research suggesting that sex offenders who undergo sex offender treatment exhibit a lower rate of recidivism than “untreated” sex offenders,¹¹ the bill’s authors attempted to create a sentencing scheme for sex offenders that predicated the length of incarceration upon each offender’s progression in sex offender treatment.

The language of the Colorado Sex Offender Lifetime Supervision Act of 1998 is clear and unambiguous with regard

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to the role that treatment is to play: “Each sex offender sentenced pursuant to this section shall be required as part of the sentence to undergo treatment [...]”¹² Offenders sentenced to incarceration under the Act are sentenced to an “indeterminate term of at least the minimum of the presumptive range [...] for the level of offense committed and a maximum of the sex offender’s natural life.”¹³ In determining whether a sex offender serving an indeterminate sentence to incarceration should be released to parole, “the parole board shall determine whether the sex offender has successfully progressed in treatment [...]”¹⁴

Records of the legislative proceedings concerning the passage of the Lifetime Supervision Act further clarify the role that treatment was intended to play. On April 29, 1998, the Senate Committee on Judiciary held hearings on the Act. Bob Grant, President of the Colorado District Attorneys Council, testified about the bill:

The issue that is presented by this bill is very real. What we are talking about here is... you don’t get off supervision, you don’t go back to community, you don’t have an opportunity to reoffend until and unless you have made the progress mandated by the Treatment Board in the treatment program...¹⁵

Reviewing the language of the Lifetime Supervision Act itself, the transcripts from the hearings conducted by the legislative committees on the bill, and the dozens of documents generated during the legislative process, it's fair to conclude:

- (1) The Colorado general assembly intended for sex offender treatment to be a required and fundamental part of a sex offender's sentence to incarceration;
- (2) The Colorado general assembly intended for the length of a sex offender's sentence to incarceration to be predicated upon the sex offender's participation and progress in sex offender treatment; and
- (3) The Colorado general assembly was concerned with the high costs associated with simply incarcerating sex offenders for life.
- (4) The Colorado general assembly viewed sex offender treatment as a cost-effective and humane alternative to lifetime incarceration, and therefore mandated that sex offenders must participate in sex offender treatment as part of their sentence.

SECTION III. THE IMPORTANCE OF TREATMENT UNDER THE ACT

Treatment serves as the sole means by which sex offenders incarcerated under the Lifetime Supervision Act may be progressed to community placement – absent participation and progress in such treatment, the Act requires that “Lifetime Supervision” offenders remain incarcerated for life.¹⁶ As such, treatment represents the *sole* means of accomplishing the legislative intent of the Lifetime Supervision Act to avoid the high costs of lifetime incarceration.¹⁷

According to the administrative regulations of the Colorado Department of Corrections, “it is the policy of the Department of Corrections (DOC) to provide specialized treatment to identified sex offenders to reduce the risk of sex offense behavior.”¹⁸ To this end, the DOC operates the Sex Offender Treatment and Monitoring Program (SOTMP).¹⁹

The SOTMP provides sex offender treatment to incarcerated offenders in two phases. Phase I is a “time-limited therapy group” that includes a core-curriculum of thinking errors, anger management, and stress management.²⁰ After successfully completing Phase I, offenders progress to Phase II, a more intensive treatment in which offenders participate in a therapeutic community “24 hours a day, 7 days a week.”²¹ There is no time limit for Phase II - the SOTMP states “inmates stay in this phase of treatment instead of being placed back in general population in order to maintain the therapeutic progress they have made.”²²

Unfortunately, the SOTMP only offers its Phase II treatment at Arrowhead Correctional Center, a “Level II” security facility.²³ Administrative Regulations permit sex offenders to be housed in Level II facilities only when they are participating in treatment.²⁴ As a result, each time the SOTMP terminates a sex offender from Phase II treatment, the offender must be transferred to a higher security level facility.

Although the SOTMP downplays the negative implications of removing sex offenders from Phase II (they actually claim that termination is a “treatment tool”),²⁵ the facts surrounding such terminations show three things: (1) offenders who are terminated from Phase II are frequently transferred to prisons that do not offer sex offender treatment, thereby negating the SOTMP’s stated goal of maintaining the “therapeutic progress” each offender had made in Phase II; (2) terminated offenders are not eligible for readmission to Phase II for six months; and (3) readmission to Phase II is frequently delayed by six months or more, as prison officials wait for bed space at Arrowhead or arrange for the offender to be transported back to Arrowhead.²⁶

If we accept the estimate that it costs an average of \$24,800.00²⁷ per year to incarcerate each sex offender, then each termination of a “Lifetime Supervision” offender from Phase II costs Colorado taxpayers between \$12,400.00 and \$24,800.00 in “lost treatment time,”²⁸ and this cost does not include the lost “therapeutic progress” that the SOTMP claims to be so concerned about. Once a “Lifetime Supervision” sex offender has satisfied his minimum sentence to incarceration, each year that sex offender remains incarcerated without treatment costs taxpayers tens of thousands of dollars, needlessly spent.

**SECTION IV.
FAILURES AND ABUSES IN THE COLORADO
DEPARTMENT OF CORRECTIONS' IMPLEMENTATION OF
THE LIFETIME SUPERVISION ACT**

This report documents a number of serious failures and abuses by the Colorado Department of Corrections' Sex Offender Treatment and Monitoring Program in its implementation of the Lifetime Supervision Act's treatment provisions. These failures and abuses should be considered in the context of the following three fundamental facts concerning sex offender treatment, all of which are derived from the Sex Offender Management Board's and the Sex Offender Treatment and Monitoring Program's own publications:

- Fact 1: It costs 2.5 to 3 times *more* to house a sex offender in prison than it does to house *and* treat a sex offender in community placement.²⁹
- Fact 2: Sex offender treatment in prison is merely a precursor to continued treatment in the community - sex offenders cannot "complete" sex offender treatment in prison.³⁰
- Fact 3: The legislative intent of the Lifetime Supervision Act is to avoid the high costs of lifetime incarceration by treating sex offenders in prison until they can be safely treated in the community.³¹

FAILURE 1: The SOTMP's Failed Peer Review Systems

If the Lifetime Supervision Act is to successfully accomplish its legislative intent of limiting the high costs associated with lifetime incarceration, it is critically important that no "Lifetime Supervision" sex offender is ever removed from treatment unnecessarily. As discussed in Section III, each termination of a "Lifetime Supervision" offender from Phase II treatment costs Colorado taxpayers between \$12,400.00 and \$24,800.00 in "lost treatment time," negates much of the therapeutic progress made by the offender in Phase II, and results in significant delays before treatment is resumed.

The majority of terminations from treatment are attributed to alleged violations of treatment conditions.³² Procedural protections are readily available to ensure that each offender so accused has indeed violated treatment conditions before the offender is terminated from treatment - the SOTMP simply declines to use such procedures.³³

In law, these procedural protections are known as due process, and typically consist of (1) an opportunity to have the determination of whether the offender has violated treatment conditions made by a neutral person (as opposed to being made by the same official making the accusation); (2) the right to present a defense against the alleged violation; and (3) the right to call witnesses in support of that defense.³⁴ The United States Supreme Court instructs, "the touchstone of due process is the protection of the individual against arbitrary action of government."³⁵

When asked to describe what due process protections, if any, were employed by the SOTMP to ensure against arbitrary terminations from treatment, the SOTMP responded that they do not use due process, but instead use "Termination Guidelines," a system of professional peer review.³⁶ At first glance, these Termination Guidelines appear to offer at least *some* level of procedural protection:

When a therapist believes it is appropriate to terminate an inmate from group, he/she will present the reason for termination to the facility sex offender treatment team.³⁷

Actions often speak louder than words, however. If the SOTMP's Termination Guidelines were truly part of an effective peer review system, we would expect to see a percentage of the "termination staffings" required under the guidelines resulting in peer disagreement with the therapist's desire to terminate an offender from treatment. Therapists were asked to provide statistics concerning the operation of their Termination Guidelines, and their answers are shocking:³⁸

- Q. How many "facility sex offender treatment team" meetings have you participated in involving the issue of whether an offender should be terminated from treatment?
- A. Two therapists had participated in approximately 156 meetings over a three-year period.
- Q. How many of those meetings resulted in a decision that the offender should *not* be terminated from treatment?
- A. None - offenders were terminated 100% of the time.
- Q. How many of those meetings ended in an inability of the members involved to reach a consensus, and thus required the matter to be referred to supervisors for a decision?
- A. None - therapists never disagreed in the meetings.

The fact that 156 "termination staffings" occurred without a single dissent among peers demonstrates an abysmal failure in the SOTMP's Termination Guidelines, especially since these guidelines were intended to provide a professional peer review system as an alternative to more formal due process protections against the arbitrary termination of offenders from treatment. Given this abysmal failure, the SOTMP has essentially had no process in place during the last seven years to ensure that "Lifetime Supervision" offenders were not removed from treatment unnecessarily.

FAILURE 2: The SOTMP’s Abuse of Informed Consent

The abysmal failure of SOTMP to conduct meaningful peer review when terminating offenders from treatment is serious enough to warrant legislative review in itself. Further investigation, however, uncovered much more troubling problems in the SOTMP, including manipulative abuses of the doctrine of informed consent to justify terminating offenders from mandated treatment. These abuses reveal a fundamental failure by the DOC to implement the Lifetime Supervision Act.

1. Manipulative Informed Consent Disclosures

The doctrine of informed consent essentially involves a patient’s right to be fully informed about the risks associated with a treatment before deciding whether to undergo that treatment. In the context of this report, it is sufficient to understand that informed consent “means that the person involved has legal capacity to give consent, is so situated as to be able to exercise free power of choice, and is provided with a *fair* explanation of all material information [...]”³⁹

The Colorado Sex Offender Management Board’s *Standards & Guidelines* specifically requires therapists providing sex offense-specific treatment to utilize a written contract with each sex offender prior to the commencement of treatment.⁴⁰ This contract must “[d]escribe the right of the client to refuse treatment and/or refuse to waive confidentiality, *and describe the risks and potential outcomes of that decision.*”⁴¹

An examination of the language from several Treatment Contracts used by the SOTMP immediately reveals serious misrepresentations concerning treatment under the Lifetime Supervision Act. For instance, the sole description of the “risks and potential outcomes” associated with refusing treatment found in the Phase I Treatment Contract is as follows:

I have been recommended for participation in the Sex Offender Treatment Program. Although there are certain privileges associated with participation in recommended programs, I understand that participation is voluntary and that I have the right to refuse treatment.⁴²

The SOTMP contract fails to describe crucial facts, such as the potential outcome that, should the offender refuse treatment, he or she will technically be ineligible for consideration as a candidate for parole, and will therefore be subject to lifetime incarceration.

Manipulation in the context of informed consent is “any intentional and successful influence of a person by [. . .] nonpersuasively altering the person’s perception of those choices.”⁴³ Describing statutorily mandated treatment as voluntary and implying

**...referring to statutorily mandated treatment as
“voluntary” is at best manipulative...**

that the only risk associated with refusing such treatment is the potential loss of “certain

privileges” is manipulative, and renders the informed consent of the offender to such treatment impossible. The SOTMP has a *duty* to adequately inform offenders of the risks and potential outcomes of refusing treatment, and its failure to do so reinforces this

report's conclusion that the DOC and its SOTMP have failed to implement the Lifetime Supervision Act's new approach to sex offender treatment.

2. Misuse of Informed Consent to Justify Terminations

The SOTMP's manipulative misrepresentation of treatment under the Lifetime Supervision Act is unfortunately representative of the program's overall approach to treating sex offenders. Unethical abuses of authority appear to be pervasive and ingrained, resulting in an environment where semantics take precedence over meaningful rehabilitative goals.

The authors of this report were shocked to uncover, for instance, the fact that SOTMP therapists often attempt to justify their termination of disfavored offenders from treatment by claiming that the offenders "refused treatment." The inference in such a claim is that the offender in question affirmatively exercised his or her right to refuse treatment under the doctrine of informed consent. In reality, no such refusal occurs in these instances – *instead, therapists deceptively construe the offenders' lack of progress in treatment or violation of treatment contract conditions to be refusals of treatment.*

When challenged on this unethical practice, SOTMP therapists ironically seek to justify their deception in terms of ethics: "It would be unethical to allow a sex offender to continue in treatment when they [sic] were not progressing."⁴⁴ This assertion, however, has no support in either Colorado

Construing offenders' lack of progress or contractual violations as a refusal of treatment only serves to insulate therapists from accountability...

law or applicable ethical standards. While Colorado law does prohibit psychotherapists from maintaining therapeutic relationships when it is "reasonably clear that the client [is] not benefiting from the relationship,"⁴⁵ this prohibition applies only to extreme instances where the client "is not likely to gain [. . .] benefit in the future,"⁴⁶ and offers nothing in the way of explanation or support for the practice of misusing informed consent to justify terminating offenders from treatment.

At issue here is accountability in the treatment process. Therapists assert a valid penological interest in holding sex offenders responsible for their deviant thoughts and behaviors – an aspect of treatment that the SOTMP refers to as "Treatment with Accountability"⁴⁷. The immediate question, however, is whether construing misbehavior as refusal of treatment furthers this goal?

The answer to this question is a resounding "No": construing offenders' lack of progress or contractual violations as refusal of treatment only serves to insulate the therapists involved from accountability by obscuring their decision to terminate the offenders in a confusing fog of semantics. The harm caused by these semantics is a blurring of the distinction between an offender's temporary failure to meet treatment goals and the offender's deliberate decision of whether to participate in treatment. Such obscene distortions of informed consent are inexcusable in the context of the Lifetime Supervision Act, where an offender's refusal to participate in statutorily mandated treatment essentially condemns the offender to a lifetime of incarceration.

Treatment is the *sole* path to rehabilitation for incarcerated sex offenders, and every termination of an offender from treatment must be regarded as a failure not only on the part of the offender, but also on the part of the SOTMP. Absent a clear and expressed

intent by an offender to refuse treatment, the decision by a therapist to terminate an offender from treatment should *never* be disguised as a refusal of treatment. The *only* purpose served by such deception is the protection of SOTMP therapists from scrutiny and accountability.

FAILURE 3: The SOTMP’s Failure to Establish Therapeutic Alliances

The professional improprieties discussed in this report – misrepresentations of treatment, abysmal failures of peer review systems, and the abuse of informed consent – constitute the ugly byproducts of the SOTMP’s self-serving insistence on interpreting the Lifetime Supervision Act in such a way as to support lifetime incarceration as a norm in sex offender treatment. When challenged publicly on any of these unsettling failures, the SOTMP has to date maintained a haughty ambivalence – the experience of the past seven years has shown, after all, that the SOTMP is accountable to no one.

As unsettling as the SOTMP’s failures may seem, they nevertheless are to be expected, given the serious conceptual flaws that exist in the program’s approach to sex offender treatment. Foremost among these inherent flaws is an exaggerated emphasis on community safety that sacrifices meaningful treatment for meaningless dogma.

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1. The Effect of the SOTMP’s Exaggerated Emphasis

Robert D. Miller, Professor of Forensic Psychiatry at the University of Colorado Health Sciences Center and Lecturer in Law at the University of Denver College of Law, examined the Colorado Sex Offender Management Board’s exaggerated emphasis on community safety in a 1998 journal article: “Too many so-called SOTPs are so concerned with victims’ rights and protection of society that they give short shrift to effective treatment [. . .].”⁴⁸ After reviewing Colorado’s approach to sex offender treatment, Dr. Miller observed, “[f]or example, the report of the state sex offender treatment board in Colorado⁴⁹ is 106 pages; the original draft did not even mention any type of medical evaluation, and the final report devotes a total of 31 pages to treatment.”⁵⁰ Although these initial documentary shortcomings have since been corrected, the underlying attitude of blindly emphasizing community safety over treatment remains.

While community safety is of vital importance in instances where sex offenders are either on probation or parole in the community, such a concern is of substantially less importance when sex offenders are incarcerated, *because incarceration itself removes the offenders as threats to the community*. In the context of the Lifetime Supervision Act, the SOTMP deals almost exclusively with incarcerated offenders, and should therefore be primarily focused on providing meaningful treatment to these offenders. Despite this fact, SOTMP therapists blindly conform to the SOMB’s (Sex Offender Management Board) guiding principle that “community safety is paramount.”⁵¹

A substantial body of research⁵² indicates that requiring therapists to place community safety ahead of the treatment needs of their incarcerated clients ultimately forces these therapists to assume the role of jailers, fundamentally altering the nature of the therapist-client relationship. The resulting conflict in professional roles poses devastating consequences for the efficacy of sex offender treatment in the SOTMP.

2. The Importance of Therapeutic Alliances in Treatment

Professionals agree that effective treatment requires meaningful therapist-client relationships in the form of therapeutic alliances.⁵³ “A therapeutic alliance is defined as the feeling of mutual respect that builds out of the respective roles of helper and the helped or, in this case, between the mental health clinician who is trying to assist the patient to change and the patient himself who desires to change.”⁵⁴

The nature of therapeutic alliances inherently requires a certain level of trust between clinicians and offenders. “It is vital that patients believe that their treating therapists sincerely want to help them improve and be released.”⁵⁵ Absent such trust, “it should come as no surprise that there is minimal possibility of forming a therapeutic alliance between treatment providers and patients.”⁵⁶

**True therapeutic alliances within the SOTMP
are largely illusory....**

3. The SOTMP’s Bare-Knuckle Approach to Treatment

True therapeutic alliances within the SOTMP are largely illusory. Although the SOTMP may extol the virtues of its treatment program and employ warm phrases such as “therapeutic community,” the facts set forth in this report demonstrate that the SOTMP focuses more effort on its assumed role as jailer than on its assigned role as treatment provider. Consider, for example, the comments of Kim English (Colorado Department Of Justice) on the role of treatment in dealing with sex offenders - comments that Ms. English attributes to Peggy Heil, the former SOTMP Administrator:

Regardless of whether therapy works, its role in the criminal justice containment strategy is, at a very minimum, to get inside the offender’s head and obtain the method-of-operation information necessary for criminal justice officials to safely manage the offender and protect potential victims.⁵⁷

Absent from Ms. English’s journal articles is any mention of possible therapeutic alliances between therapists and sex offenders. Instead, therapists are encouraged to utilize “criminal justice system consequences” to “motivate” offenders in treatment.⁵⁸

4. The SOTMP’s Overemphasis on Termination from Treatment

In the context of prison, the “criminal justice system consequences” that therapists are encouraged to use essentially involve removing the offender from treatment.⁵⁹ Because “Lifetime Supervision” offenders *must* participate and progress in treatment, removing such an offender from treatment has devastating consequences, including the potential of lifetime incarceration if the offender cannot truthfully admit guilt for the alleged violation for which he was removed from treatment.⁶⁰

**...the SOTMP’s claim that termination is an
effective treatment tool is analogous to the famed \$50,000
military toilet seats from the 1980’s...**

The SOTMP’s *Termination Guidelines* advises therapists that “probation and termination can be powerful treatment tools to help motivate an offender.”⁶¹ Given the

estimated cost of \$12,400.00 to \$24,800.00 per termination, the resultant loss of therapeutic progress associated with termination, and the inherent delays in resuming treatment following termination, the SOTMP's claim that termination is an effective treatment tool is analogous to the famed \$50,000 military toilet seats from the 1980s - both are outrageously expensive, and both are indicative of a lack of accountability by government employees to taxpayers.

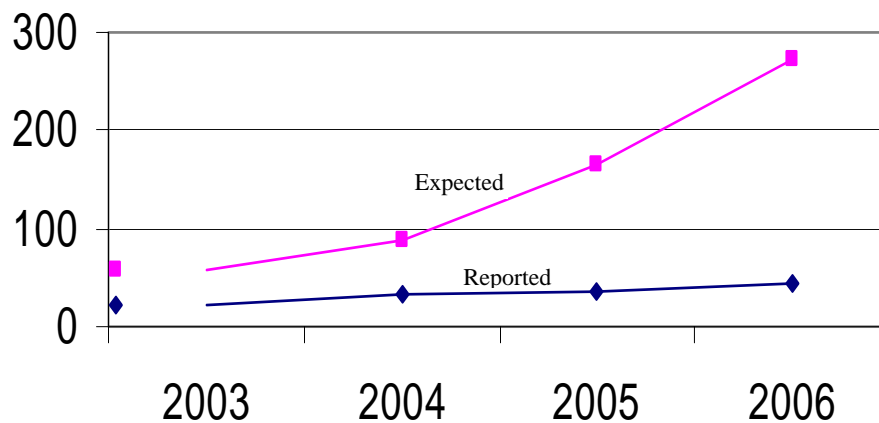
FAILURE 4: The SOTMP's Misrepresentations in Required Reporting

The Colorado Department of Corrections is statutorily required under the Lifetime Supervision Act to cooperate with the department of public safety and the judicial department in submitting annual reports to the Colorado General Assembly specifying “the impact on the prison population, the parole population, and the probation population in the state due to the extended length of incarceration and supervision provided for” by the Lifetime Supervision Act.⁶² To date, the Colorado Department of Corrections has only marginally complied with this reporting requirement, and it has done so in a manner that arguably misrepresents its performance in treating sex offenders incarcerated under the Act.

1. Examining the Number of “Lifetime Supervision” Offenders in Phase II

The Department of Corrections’ misrepresentations in required reporting are best illustrated by examining the number of “Lifetime Supervision” offenders reported by the SOTMP as participating in Phase II each year. Since only 6 “Lifetime Supervision” offenders have been released to community placement thus far, and since the SOTMP states that offenders remain in Phase II until they are released to community placement, the number of “Lifetime Supervision” sex offenders participating in Phase II should have significantly increased each year, as these offenders successfully complete Phase I and progress to Phase II.⁶³ Instead, there is a marked disparity between the expected and reported number of offenders participating in Phase II, as illustrated in Chart 1 below.

Comparison of the Expected Number of "Lifetime Supervision" Offenders in Phase II Treatment with the Number Reported by SOTMP



The disparity between the expected and reported number of “Lifetime Supervision” offenders participating in Phase II is a result of the SOTMP’s heavy reliance on termination as a “treatment tool” in lieu of the therapeutic alliances that experts agree are necessary for effective treatment.⁶⁴ More importantly, the offenders reported as participating in Phase II in 2004-2005 are not necessarily the same offenders as were participating in Phase II in the previous year - a significant number of the earlier Phase II participants were likely terminated from treatment before 2004-2005.⁶⁵ If the number of offenders participating in Phase II significantly changes during a fiscal year due to terminations of offenders from treatment, or if the majority of “Lifetime Supervision” offenders are actually in Phase II for so short a time that they do not meaningfully satisfy the requirements of the Lifetime Supervision Act, these facts need to be clarified in the department’s annual reports.

2. The Significance of the SOTMP’s Misrepresentations in Reporting

At present, it is impossible to accurately evaluate the true implications of the SOTMP’s failures and abuses in implementing the treatment provisions of the Lifetime Supervision Act – the SOTMP intentionally provides an absolute minimum of data in the statutorily mandated annual report to the Colorado General Assembly. The data concerning the number of “Lifetime Supervision” offenders participating in treatment is undeniably inadequate – rather than providing meaningful statistics, the SOTMP merely provides a snapshot of participation in treatment for a single day during the fiscal year being reported.⁶⁶ The number of offenders actually participating in treatment may vary significantly the day before or after the snapshot, rendering the data meaningless.

The disparity between the expected and actual numbers of “Lifetime Supervision” offenders participating in Phase II treatment is especially troubling, because it indicates an astronomical rate of termination that inherently suggests the SOTMP is a failed program.⁶⁷ If the SOTMP is indeed relying on termination as a “treatment tool” as heavily as the sparse data suggests, the Colorado Department of Corrections will *never* be able to satisfy the legislative

**...it indicates an astronomical rate of
termination that inherently suggest the SOTMP is a
failed program**

intent of the Lifetime Supervision Act to limit the high costs of lifetime incarceration.⁶⁸ The fact that the Colorado Department of Corrections has failed to advise the Colorado General Assembly in its annual reports that it will be unable to satisfy its responsibilities under the Lifetime Supervision Act constitutes a deliberate misrepresentation of fact by the department that cannot be overlooked.

SECTION V.
THE IMPACT OF CDOC'S FAILURES AND ABUSES

The Colorado Department of Corrections has a responsibility under the Lifetime Supervision Act to treat offenders incarcerated under the Act until they can be safely treated in less costly community placement. To date, the CDOC's Sex Offender Treatment and Monitoring Program has neglected this responsibility, electing instead to interpret the Lifetime Supervision Act as an endorsement of lifetime incarceration as a norm in the treatment of sex offenders.

The precise costs and impact of the CDOC's failures and abuses are impossible to determine from the sparse data provided thus far by the department in its Annual Reports. What follows are conservative estimates of these costs and effects, based on published statistics from the Colorado Division of Criminal Justice, the Colorado Department of Corrections, and the Safer Society. With the General Assembly's help in enacting this Reports recommendations for more detailed reporting requirements for the Colorado Department of Corrections, future editions of this Report shall provide more accurate cost analyses.

IMPACT 1: The Impact of the SOTMP's Failures on the Prison Population

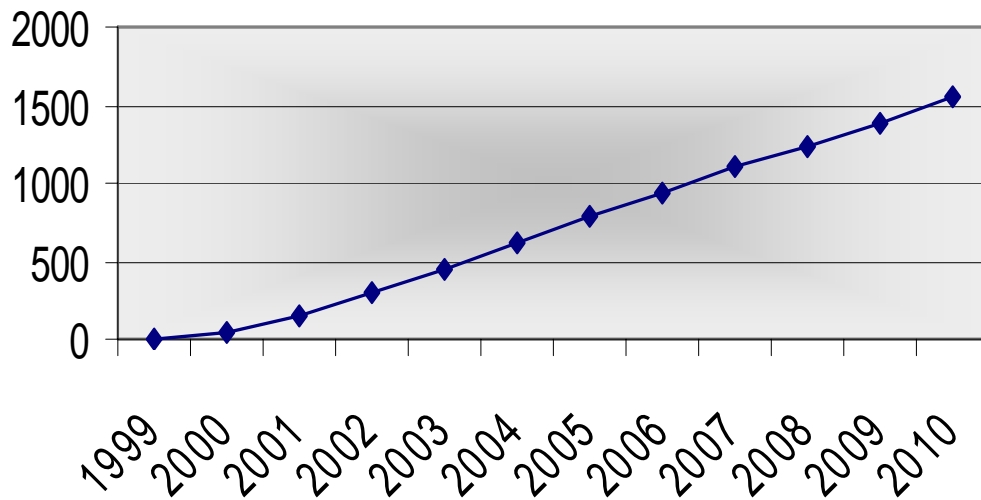
While sex offenders incarcerated under the Lifetime Supervision Act currently represent only 3.4% of the adult inmate population in Colorado,⁶⁹ they account for a disproportionate percentage of the annual growth in the state's prison population. In 2004, the state's prison population grew by 661 inmates, 172 of which were sentenced under the Lifetime Supervision Act.⁷⁰ These 172 "Lifetime Supervision" offenders therefore accounted for 26% of the prison population growth that year.⁷¹

Offenders sentenced under the Lifetime Supervision Act present a unique and significant challenge to the Colorado Department of Corrections as a result of their indeterminate sentences to life. Simply stated, a prison population remains stable only when the number of new prisoners coming into the system equals the number of prisoners being released from the system. In 2004, 8,165 prisoners came into the state's prison system, but only 7,504 were released, leading to a significant growth in the prison population for that year.⁷²

This problem is magnified a hundredfold within the population of offenders incarcerated under the Lifetime Supervision Act, because offenders sentenced under this Act are not being progressed through treatment to community placement – in 2004, 172 new "Lifetime Supervision" offenders came into the state's prison system, but only 2 were released to community placement.⁷³

Unless the Colorado Department of Corrections can substantially improve the performance of its Sex Offender Treatment and Monitoring Program, sex offenders incarcerated under the Lifetime Supervision Act will continue to constitute an ever-increasing and potentially permanent burden on the state prison system.

Actual and Projected Number of "Lifetime Supervision" Offenders Incarcerated

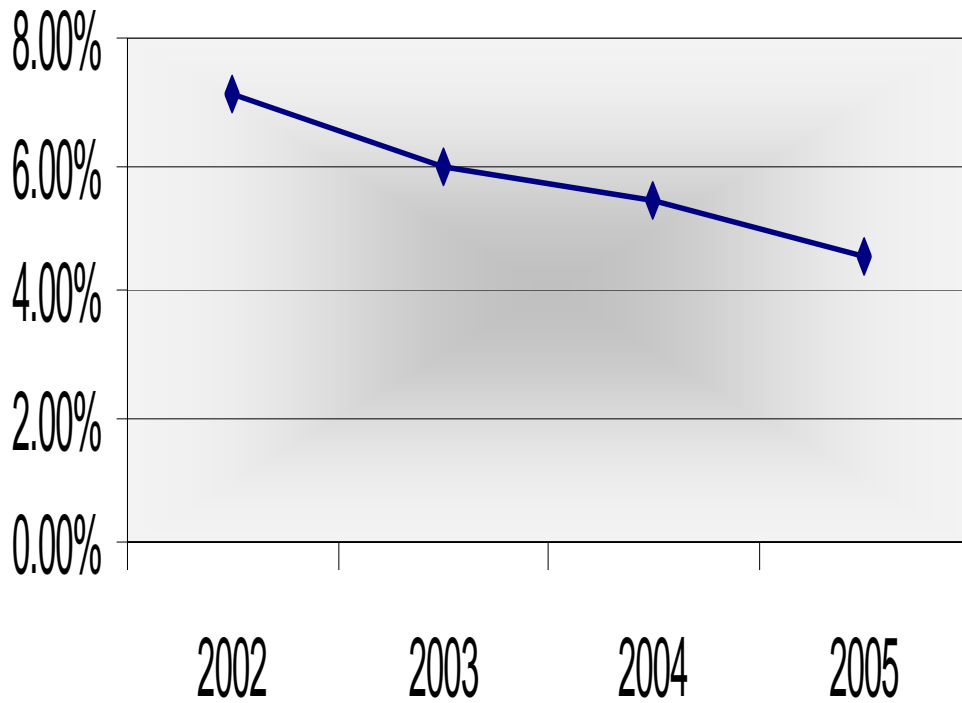


IMPACT 2: The Impact of the SOTMP’s Failures on The Number of “Lifetime Supervision” Offenders in Phase II Treatment

The SOTMP advises that once sex offenders progress to Phase II treatment, they should remain in Phase II until they progress to community placement.⁷⁴ Logic therefore dictates that, in the seven years since the Act became law, the percentage of “Lifetime Supervision” offenders participating in Phase II treatment should have increased each year, as these offenders progressed through Phase I to Phase II treatment.

In reality, the percentage of “Lifetime Supervision” offenders reported as participating in Phase II treatment has steadily *declined* each year, to a shameful 4.5% in Fiscal Year 2004-2005.⁷⁵

**Percentage of "Lifetime Supervision" Offenders
Reported as Participating in Phase II Treatment**



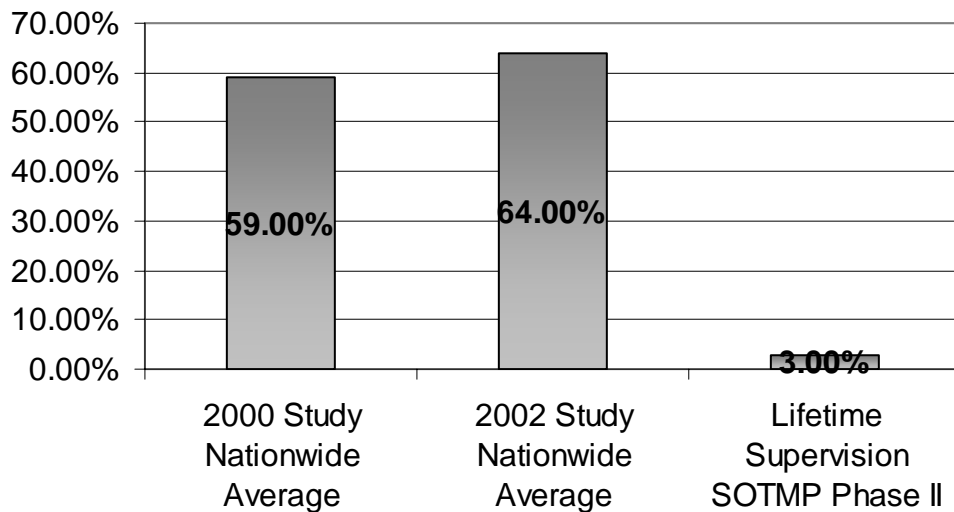
This disturbing trend cannot be lightly dismissed as the result of budget cuts – the SOTMP has maintained the same number of beds in Phase II treatment during the entire period in question.⁷⁶ Operating under the flawed conviction that the Lifetime Supervision Act endorses lifetime incarceration as a norm in sex offender treatment, the SOTMP has simply allocated its Phase II resources for uses other than progressing “Lifetime Supervision” offenders through treatment to community placement.⁷⁷

IMPACT 3: The Rate of Successful Treatment for “Lifetime Supervision” Offenders

In its November 1, 2005 Annual Report on the Lifetime Supervision of Sex Offenders, the Colorado Department of Corrections revealed the first meaningful statistic in the entire six-year history of the report – it identified the number of “Lifetime Supervision” offenders who had met the treatment criteria necessary for progression to community placement⁷⁸. Unfortunately, the number of qualifying offenders it identified – 14 – is pitifully low, and represents a shameful “success” rate of approximately 3%.⁷⁹

The Safer Society, a nationwide organization advocating the rights of victims of sexual abuse, estimates the nationwide average success rate for residential treatment programs such as the SOTMP’s Phase II therapeutic community is between 59% and 64%.⁸⁰ The SOTMP’s “success” rate, however, is an abysmal 3% – an indication that the SOTMP’s approach to sex offender treatment is *seriously* flawed.

Comparison of Nationwide Average Completion Rates with SOTMP's Success Rate in Phase II for Lifetime Supervision Offenders



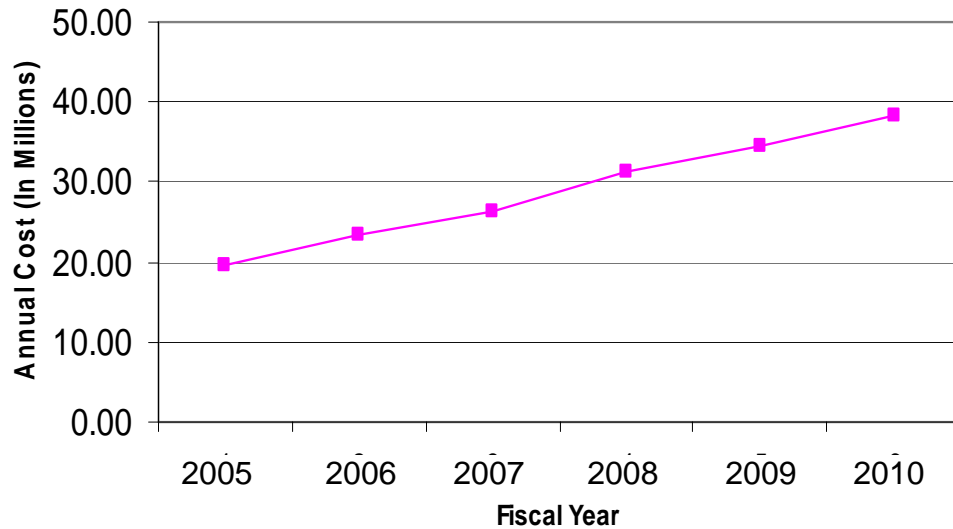
This report identifies the SOTMP’s heavy reliance on termination as a “treatment tool” as one of the most serious flaws underlying the SOTMP’s approach to the treatment of offenders under the Lifetime Supervision Act. Each time that a “Lifetime Supervision” offender is terminated from Phase II treatment, the offender ceases to meet the criteria necessary for progression to community placement, the therapeutic progress made by the offender is compromised, and the offender’s readmission to treatment is significantly delayed.⁸¹

While a certain level of failure in a treatment program may be attributable to the numerous difficulties associated with treating sex offenders, there comes a point where the level of failure can no longer be excused. When compared to the nationwide average success rate of 59-64%, the SOTMP’s 3% success rate is indefensible.

IMPACT 4: Colorado Taxpayers

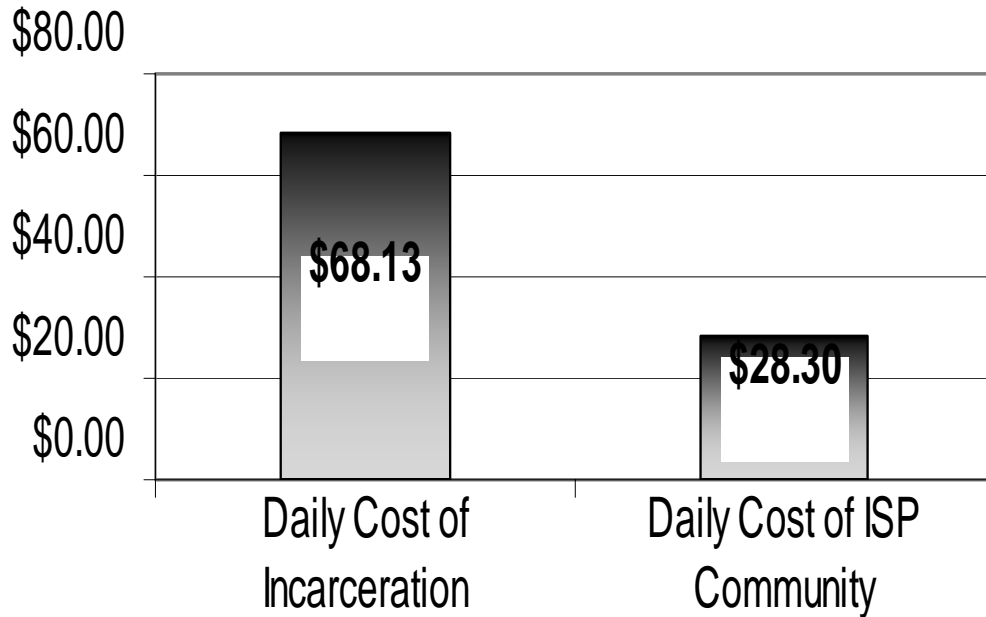
As of the end of Fiscal Year 2004-2005, 793 sex offenders were incarcerated under the indeterminate sentencing provision of the Lifetime Supervision Act, at an estimated annual cost of \$19.7 million.⁸² The number of incarcerated “Lifetime Supervision” offenders is expected to grow by approximately 150+ per year,⁸³ resulting in an estimated \$3.7 million increase in the annual cost of incarcerating “Lifetime Supervision” offenders each year.⁸⁴ Since the Lifetime Supervision Act took effect on November 1, 1998, Colorado taxpayers have spent more than \$58 million to incarcerate sex offenders under the Act,⁸⁵ and they have only two successful releases of sex offenders to parole to show for it.⁸⁶

Estimated and Projected Annual Costs of Incarcerating Offenders Under the Lifetime Supervision Act



Instead of successfully treating “lifetime Supervision” offenders the SOTMP’s history thus far has been one of costly failures. Although the treatment of sex offenders in the community is a highly cost effective alternative to treating these offenders in prison⁸⁷ – community treatment saves approximately \$ 14,500.00 per year per offender⁸⁸ – the SOTMP to date has progressed only 5 of the 793 incarcerated “Lifetime Supervision” offenders to community treatment.⁸⁹ At the same time, the Sex Offender Issues Group of Colorado CURE (Citizens United for the Rehabilitation of Errants) has documented 126 “Lifetime Supervision” offenders who have been terminated by the SOTMP from mandated treatment, some more than once.⁹⁰ The total cost to Colorado taxpayers of these 126+ terminations is estimated to be between \$1.5 million and \$3.0 million in lost treatment time alone.⁹¹

Comparison of Daily Costs for "Lifetime Supervision" Offenders Incarceration versus ISP Community



Given the fact that each of these 126 terminated offenders *must* by law eventually be treated, the time spent by these offenders outside of treatment has resulted in a senseless waste of millions of dollars of taxpayer money. Each termination of a "Lifetime Supervision" offender from treatment should be considered not only a failure by the offender, but an even larger failure by the SOTMP therapists who were employed to treat that offender.

SECTION VI. CONCLUSION

The Colorado Sex Offender Lifetime Supervision Act of 1998 is not a failure – to consider it as such would be to ignore the reality that it has never been truly implemented by the Colorado Department of Corrections. For seven years now, CDOC’s Sex Offender Treatment and Monitoring Program has obstinately refused to view the Lifetime Supervision Act as anything other than an endorsement of the status quo.

Indeed, SOTMP therapists appear to be obsessed with a sense of their own self-importance – an obsession that is expressed in their insistence on pursuing a containment approach to sex offender treatment that places a heavy emphasis on confinement, at the expense of treatment. Rather than modifying this containment approach to reflect the legislative view of lifetime incarceration as a costly tool to be avoided, the SOTMP has convinced itself that lifetime incarceration is the norm rather than the extreme in this containment approach, and continues to act accordingly.

Doubtless, some readers may approve of the SOTMP’s bare-knuckled approach to the treatment of incarcerated sex offenders. Lifetime incarceration, after all, is a much simpler path to pursue than attempting to rehabilitate sex offenders. When legislators passed the Lifetime Supervision Act, however, they chose to pursue a higher path, and traveling this higher path requires a continuing commitment to the humanistic principles enunciated in the Act’s legislative declaration.

If we turn away from this higher path now, the end result shall be indistinguishable from the failed recidivist laws passed by other states. We are on that precipice now – as Bob Grant testified before the Senate, “what we are doing here is prepackaging predatory recidivist [laws].”⁹²

Treatment – *meaningful* treatment – is the only thing separating the Lifetime Supervision Act from degenerating into the base nature of recidivist legislation. Without treatment, voiced concerns of the “loss of human potential” shall ring hollow, and the Lifetime Supervision Act shall become nothing more than a “return to indefinite commitments in a (not so) covert attempt to alleviate public fear of sex offenders, not to provide adequate time for treatment; an incapacitation of offenders, cloaked in the appearance of beneficence.”⁹³

The language in the Lifetime Supervision Act speaks to brighter goals, to the rehabilitation of sex offenders as “safe, responsible, and contributing members of society.” At the time the Act passed into law, the legislature understood what would be necessary to achieve these goals – it would be necessary to create “a program under which sex offenders may receive treatment and supervision for the rest of their lives.”

If the Lifetime Supervision Act is to fulfill the admirable intentions that accompanied its creation, we must insist that the Colorado Department of Corrections provide treatment to the offenders sentenced under the Act in a manner that truly reflects these intentions. The SOTMP has had seven years in which to demonstrate that it is capable of implementing such a treatment program without additional direction from the legislature; the abysmal failure of these seven years indicates that it is once again time for the legislature to speak.

SECTION VII. RECOMMENDATIONS

Building upon the SOTMP's theme of "Treatment with Accountability," the authors of this report find it appropriate for the legislature to demand accountability from the Colorado Department of Corrections in its Sex Offender Treatment and Monitoring Program, and therefore respectfully recommend that the legislature adopt a program of accountability as follows:

TREATMENT WITH UNIFORM ACCOUNTABILITY

Presently, the Colorado Department of Corrections is subject only to a vague requirement that it cooperate with the department of public safety and the judicial department in submitting an annual report specifying "the impact on the prison population, the parole population, and the probation population in the state due to the extended length of incarceration and supervision provided for" by the Lifetime Supervision Act. This reporting requirement, as well as the department of corrections' compliance with it, is inadequate to address the problems documented in this report.

Specifically, in the past three years the Colorado Department of Corrections has only marginally complied with the reporting requirement, by reporting the number of sex offenders sentenced to incarceration pursuant to the Lifetime Supervision Act and the number of these offenders who are participating in treatment. The data reported represents a mere "snapshot" of the Sex Offender Treatment and Monitoring Program's operation "as of October 13, 2004."

In order to address the problems documented in this report, the Department of Corrections and its Sex Offender Treatment and Monitoring Program must be required to report, in addition to the current reporting requirements:

- (1) the average number of "Lifetime Supervision" offenders participating in Phase I and Phase II of the SOTMP during each of the twelve months in the fiscal year;
- (2) the number of "Lifetime Supervision" offenders denied admission in Phase I and Phase II of the SOTMP for reasons other than length of sentence remaining in each of the twelve months in the fiscal year;
- (3) the number of "Lifetime Supervision" offenders terminated from Phase I and Phase II of the SOTMP in each of the twelve months in the fiscal year;
- (4) the average length of participation by "Lifetime Supervision" offenders in Phase I and Phase II of the SOTMP during each of the twelve months of the fiscal year;

- (5) the number of “Lifetime Supervision” offenders refused readmission to Phase I and Phase II of the SOTMP during each of the twelve months in the fiscal year;
- (6) the number of “Lifetime Supervision” offenders recommended by the SOTMP to the parole board for release to parole in each of the twelve months of the fiscal year; and
- (7) the number of “Lifetime Supervision” offenders recommended by the SOTMP for placement in community corrections in each of the twelve months in the fiscal year.

ENDNOTES

¹ COLO.REV.STAT. § 18-1.3-1001 (2002).

² The November 1, 2005 *Lifetime Supervision of Sex Offenders Annual Report* states on page 3 that 793 offenders have been sentenced to prison under the Lifetime Supervision provisions through Fiscal Year 2004-2005. As of October 13, 2005, 101 of these offenders were participating in treatment, while 69 were on wait lists for treatment after having progressed in at least one phase of treatment (Our figures do not include the 80 offenders listed as waiting for Core Curriculum, as those offenders have not yet met the minimum requirement of progressing in treatment). This leaves 623 offenders not in treatment or on waiting lists for treatment following progression (793 – 101 – 69 = 623). The number 623 represents 78% of the total 793 offenders incarcerated under the Lifetime Supervision Act at the time of the Annual Report.

³ The success rate is calculated by dividing the number of offenders reported as meeting the treatment criteria for community placement by the number of offenders who have been incarcerated for at least one year (and who therefore have had sufficient time to progress in treatment, if treatment had been offered). We decline to calculate the success rate using the number of “Lifetime Supervision” offenders who are actually participating in treatment, because by law *all* “Lifetime Supervision” offenders are required to undergo treatment as part of their sentence to incarceration.

⁴ See, e.g., F. Dubofsky, *Reflections on Colorado’s Sex Offenders Law*, Boulder County Bar Online Newsletter 1, 14 (November 2004), available at <http://www.boulderbar.org> (“Because of the harshness of the new sex offender laws, fair-minded DA’s are often forced to agree to enter plea agreements that belie the truth and undermine the law.”)

⁵ November 1, 2005 *Lifetime Supervision of Sex Offenders Annual Report*, at 3. The full text is “The Department of Corrections continues to work with the courts and prosecuting attorneys where possible to clarify cases that appear to meet the lifetime sentencing requirements but were not sentenced under these provisions and to clarify issues surrounding Lifetime Supervision sentencing,”

⁶ *Id.*

⁷ This estimate is based on data provided in the Colorado Department of Corrections’ *Statistical Report for Fiscal Year 2004*, and takes into account the distribution of “Lifetime Supervision” offenders among various facilities in the department, as well as the average cost per inmate at each of the facilities in question.

⁸ The estimated increase in the annual cost of incarcerating “Lifetime Supervision” offenders as a result of new offenders entering the system under the act is calculated by multiplying the estimated number of new offenders each year by the estimated annual cost of incarcerating each “Lifetime Supervision” offender.

⁹ See, e.g., *Chambers v. Colorado Department of Corrections*, 205 F.3d 1237, 1241 (10th Cir. 2000) (“[The Colorado Department of Corrections] insists Mr. Chambers, even without his participation in the SOTP, will not be held beyond his sentence or denied his statutory right to appear before the Parole Board on his parole eligibility date”). One exception to this would be the Colorado Sex Offender Act of 1968, codified as COLO.REV.STAT. §§ 16-13-201 to 16-13-216. This Act of 1968 is a sexually violent predator sentencing scheme in which the legislature “[e]mphasized penal goals of protection and restraint rather than treatment [...]” See *People v. White*, 656 P.2d 690, 693 (Colo. 1983).

¹⁰ The stigmatization related to being identified as a sex offender in prison is very real, and can lead to life-threatening situations. At the Fremont Correctional Facility, for instance, the sex offender treatment groups meet in a separate building dedicated to mental health treatment, and often inmates attending such groups are forced to wait outside this building in plain view of other inmates, where they can easily be identified as waiting for sex offender treatment. The situation at Arrowhead Correctional Center is even more serious, as this facility is widely known within the CDOC inmate population as a therapeutic community for sex offenders. Inmates terminated from Arrowhead's Phase II sex offender treatment program are intentionally transferred by CDOC staff to prisons other than Fremont Correctional Facility, and upon arrival at these new facilities, these inmates are easily identified by their identification labels on their uniforms (which bear a symbol indicating Arrowhead Correctional Center) as having been transferred from Arrowhead. Such identification at a minimum results in stigmatization, and often leads to threats or physical assault.

¹¹ The language of the legislative declaration in the Colorado Sex Offender Lifetime Supervision Act of 1998 itself cites this line of reasoning. *See, e.g.*, COLO.REV.STAT. § 18-1.3-1001 (“The general assembly hereby finds that the majority of persons who commit sex offenses, if incarcerated or supervised without treatment, will continue to present a danger to the public [...]”).

¹² *See* COLO.REV.STAT. § 18-1.3-1004(3). The full text of this subsection is “Each sex offender sentenced pursuant to this section shall be required as a part of the sentence to undergo treatment to the extent appropriate pursuant to section 16-11.7-105, C.R.S.”

¹³ *See* COLO.REV.STAT. § 18-1.3-1004(1)(a)(“[t]he district court having jurisdiction shall sentence a sex offender to the custody of the department for an indeterminate term of at least the minimum of the presumptive range specified in section 18-1.3-401 for the level of offense committed and a maximum of the sex offender's natural life”).

¹⁴ *See* COLO.REV.STAT. § 18-1.3-1006(1)(a)(“In determining whether to release the sex offender on parole, the parole board shall determine whether the sex offender has successfully progressed in treatment and would not pose an undue threat to the community if released under appropriate treatment and monitoring requirements and whether there is a strong and reasonable probability that the person will not thereafter violate the law”).

¹⁵ *A Bill for an Act Concerning Supervision of Sex Offenders*: Hearing on H.B. 98-1156 Before the House Comm. on Judiciary, Sixty-first General Assembly (Colo. January 27, 1998) (statement of Bob Grant, President, Colorado District Attorneys Council).

¹⁶ *See, e.g.*, COLO.REV.STAT. § 18-1.3-1004(3) (“Each sex offender sentenced pursuant to this section shall be required as a part of the sentence to undergo treatment to the extent appropriate pursuant to section 16-11.7-105, C.R.S.”); *see also* COLO.REV.STAT. § 18-1.3-1006(1)(a) (“In determining whether to release the sex offender on parole, the parole board shall determine whether the sex offender has successfully progressed in treatment [...]”).

¹⁷ The Colorado General Assembly specifically found “that keeping all sex offenders in lifetime incarceration imposes an unacceptably high cost in both state dollars and loss of human potential.” *See* COLO.REV.STAT. §18-1.3-1001. Since a “Lifetime Supervision” offender's release from incarceration to community placement is predicated upon participation and progress in treatment, treatment serves as the only means of limiting the expenses of lifetime incarceration within the context of the Act.

¹⁸ Colorado Department of Corrections' Administrative Regulation 700-19, “Sex Offender Treatment and Management Program,” at 1.

¹⁹ *Id.*

²⁰ November 1, 2005 *Lifetime Supervision of Sex Offenders Annual Report*, at 8.

²¹ *Id.*, at 9

²² Colorado Department of Corrections, “CURE Questions and Responses,” 11, ¶ E.5., available at <http://search.state.co.us/>. The actual question and text are: Q: “Does Phase II ever end?” A: “As stated earlier once an inmate is placed in Phase II, he remains in this phase of treatment until he receives a community corrections placement, parole, discharge, drops out of the program, or is expelled from the program, Inmates stay in this phase of treatment instead of being placed back into general population in order to maintain the therapeutic progress they have made.”

²³ *See, e.g.*, November 1, 2005 *Lifetime Supervision of Sex Offenders Annual Report*, at 9 (“Phase II is offered at Arrowhead Correctional Center with an adapted format of Phase II offered at the Colorado Women’s Correctional Facility and the Youthful Offender System”). The Colorado Department of Corrections’ Fiscal Year 2004 Statistical Report identifies Arrowhead Correctional Center as a “Level II” security facility on page 17. *See also* COLO.REV.STAT. § 17-1-104.3.

²⁴ *See* Colorado Department of Corrections Administrative Regulation 600-01 “Offender Classification,” at § IV.K.4 (“Offenders who are required to attend, or are recommended to attend, specialized programs (Sex Offender Treatment Program, therapeutic communities) will be screened for referral to the appropriate program. In the event that an offender fails to comply with the specific program requirements, their facility assignment will not be lower than a Level III facility, regardless of scored custody level. If their facility assignment for the specialized program was Level II, the offender will be assigned to a Level III facility”).

²⁵ *See, e.g.*, “Sex Offender Treatment Program Probation and Termination Guidelines Phase I,” at 1 (“Probation and Termination can be powerful treatment tools to help motivate an offender”).

²⁶ The six month delay in eligibility for readmission to treatment is set forth in some, but not all, of the notices the SOTMP uses in terminating offenders from treatment. The six month delay is not documented in the Colorado Department of Corrections’ Administrative Regulation 700-19 “Sex Offender Treatment and Monitoring Program,” nor is it set forth in either state law or the Sex Offender Management Board’s Standards and Guidelines for the Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders publication – it is, instead, merely an internal SOTMP policy. The Sex Offense Issues Group of Colorado-CURE has documented instances of delays in readmission to Phase II attributable to lack of bed-space or to delays in transferring the offender back to Arrowhead Correctional Center.

²⁷ This estimate is based on data provided in the Colorado Department of Corrections’ *Statistical Report for Fiscal Year 2004*, and takes into account the distribution of “Lifetime Supervision” offenders among various facilities in the department, as well as the average cost per inmate for each facility in question.

²⁸ The concept of “lost treatment time” is used in this Report to refer to any time that a “Lifetime Supervision” offender is incarcerated but not in treatment. Once an incarcerated “Lifetime Supervision” offender serves his or her minimum sentence, the length of his or her incarceration thereafter is almost entirely predicated on his or her progress in treatment. Termination removes the offender from treatment and places the offender essentially in “storage,” resulting in lost treatment time. If, for example, a “Lifetime Supervision” offender is terminated from treatment and “stored” for 12 months before being readmitted to treatment, that entire 12 month period is lost treatment time, because taxpayers were paying to incarcerate the offender but no progress was being made by the offender in treatment towards placement in less expensive, more effective treatment in the community. The calculated cost of a termination is based upon the average cost of incarcerating a “Lifetime Supervision” offender for a year, multiplied by the time that the offender was incarcerated but not in treatment. If, for instance, an offender is terminated and removed from treatment for 6 months, the cost of that termination to Colorado taxpayers would be ½ year x \$24,800 = \$12,400. This report estimates that the average termination result is between 6 months and 1 year in lost treatment time, thus the range in estimated cost per termination.

²⁹ This fundamental fact is based on data from the Colorado Department of Corrections’ *Statistical Report for Fiscal Year 2004*. The calculated average cost of incarcerating a “Lifetime Supervision” offender is

\$68.13 per day, and this cost does *not* include the cost of providing sex offender treatment. Housing the same offender in ISP Community Corrections, meanwhile, costs \$28.00 per day, and “in community based programs, most sex offenders are expected to bear the costs of treatment and behavioral monitoring themselves.” See November 1, 2005 *Lifetime Supervision of Sex Offenders Annual Report*, at 19.

³⁰ See, e.g., Sex Offender Management Board Lifetime Supervision Criteria, LS 4.210 (“Sex offender treatment in the prison setting is always preliminary to continued treatment and supervision in the community post release from prison. Since sex offenders who participate in treatment in the prison setting cannot complete treatment in prison, the Sex Offender Treatment and Management [sic] Program has developed three formats for sex offender participation in prison treatment based on differing minimum sentences and time to parole eligibility”).

³¹ See, e.g., COLO.REV.STAT. § 18-1.3-1001 (2002).

³² This assertion is based on 126 “Lifetime Supervision” offenders documented by the Sex Offense Issues group of Colorado-CURE as having been terminated from treatment.

³³ This information was obtained from the plaintiff in *Beebe v. Heil*, No. 02-cv-1993-WYD-BNB (D.Colo. October 7, 2002), prior to the entry of counsel for the plaintiff in that case.

³⁴ See, e.g., *Wolff v. McDonnell*, 418 U.S. 539, 563-68, 94 S.Ct. 2963, 2979-80, 41 L.Ed.2d 935 (1974).

³⁵ *Id.* at 558, 94 S.Ct. at 2976.

³⁶ This information was obtained from the plaintiff in *Beebe v. Heil*, No. 02-cv-1993-WYD-BNB (D.Colo. October 7, 2002), prior to the entry of counsel for the plaintiff in that case.

³⁷ See “Sex Offender Treatment Program Probation and Termination Guidelines Phase I” at p. 3, ¶ 3.

³⁸ This information was obtained from the plaintiff in *Beebe v. Heil*, No. 02-cv-1993-WYD-BNB (D.Colo. October 7, 2002), prior to the entry of counsel for the plaintiff in that case.

³⁹ See Ruth R. Faden & Tom L. Beauchamp, *A History and Theory of Informed Consent* 282 (1996) (quoting FDA regulations).

⁴⁰ See *Standards & Guidelines for the Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders* § 3.310 (Sex Offender Management Board 2001).

⁴¹ See *id.* § 3.310.A.3.

⁴² Phase I Treatment Contract at 6.

⁴³ Faden & Beauchamp, *supra* note 39 at 261.

⁴⁴ This information was obtained from the plaintiff in *Beebe v. Heil*, No. 02-cv-1993-WYD-BNB (D.Colo. October 7, 2002), prior to the entry of counsel for the plaintiff in that case.

⁴⁵ See COLO.REV.STAT. § 12-43-222(1)(h).

⁴⁶ *Id.*

⁴⁷ Colorado Department of Corrections Sex Offender Treatment and Monitoring Program CURE Presentation 18 (June 15, 2004)

⁴⁸ Robert D. Miller, *Forced Administration of Sex-Drive Reducing Medications to Sex Offenders: Treatment or Punishment?*, 4 PSYCHOL. PUB. POL'Y & L. 175, 197 (June 1998).

⁴⁹ *Id.* at n. 133.

⁵⁰ *Id.*

⁵¹ See Sex Offender Management Board, *supra* note 40 at Guiding Principle 2.

⁵² See, e.g., Robert D. Miller, *The Continuum of Coercion: Constitutional and Clinical Considerations in the Treatment of Mentally Disordered Persons*, 74 DEN. U.L. REV. 1169, 1188 (1997); See also generally John Q. LaFond, *Can Therapeutic Jurisprudence Be Normatively Neutral? Sexual Predator Laws: Their Impact on Participants and Policy*, 41 ARIZ. L. REV. 375 (1999).

⁵³ See generally John Q. LaFond, *supra* note 52, at § IV.C.

⁵⁴ *Id.* at § IV.C. n. 201.

⁵⁵ *Id.* at § IV.C.

⁵⁶ *Id.*

⁵⁷ Kim English, *The Containment Approach: An Aggressive Strategy for the Community Management of Adult Sex Offenders*, 4 PSYCHOL. PUB. POL'Y & L. 218, 226 (1998).

⁵⁸ The actual sentence is “Also, by using criminal justice system consequences, therapists help to motivate nonvoluntary clients to engage in treatment, complete homework assignments, and learn and use the tools of internal management.”

⁵⁹ Ms. English’s article addressed the use of “criminal justice system consequences” in the context of sex offenders being treated in the community, and states that “[i]n cases of noncompliance with treatment or supervision requirements, [probation or parole] officers can request that the court or parole board consequence [sic] the offender with supervised community service, jail time, halfway house placement, or long term prison sentences.” See English, *supra* note 57, at 227. The emphasis on restricting a noncompliant sex offender’s movement in the community through criminal justice system consequences is appropriate, as the offender’s noncompliance may be indicative of an increased risk of reoffense. The SOTMP, however, is applying the containment approach’s “criminal justice system consequences” in the context of sex offenders who are already incarcerated in prison, where the risk of reoffense is negated by the very nature of incarceration. Although the SOTMP does utilize various restrictions of privileges in prison to “motivate” noncompliant sex offenders in treatment, it is the SOTMP’s reliance on termination from treatment as a “criminal justice system consequence” and “treatment tool” that is most troubling.

⁶⁰ When a sex offender is terminated from treatment for allegedly violating treatment conditions, the SOTMP requires the offender to admit guilt or responsibility for the violation before the offender will be readmitted to treatment. This requirement is troubling, because the SOTMP fails to employ any procedural protection prior to termination to verify that the offender actually violated treatment conditions. Absent even a minimally effective peer review system, see Section IV at FAILURE 1, *supra*, the potential for terminating an offender from treatment for a violation that the offender did not actually commit is very real, and requiring an offender who has been erroneously terminated from treatment to admit guilt to a violation he or she did not commit is both inappropriate and anti-therapeutic.

⁶¹ See, e.g., “Sex Offender Treatment Program Probation and Termination Guidelines Phase I,” at 1 (“Probation and Termination can be powerful treatment tools to help motivate an offender”).

⁶² See COLO.REV.STAT. §§ 18-1.3-1011(1), (1)(a).

⁶³ The SOTMP advises that Phase I is a “time-limited therapy group.” See November 1, 2005 Lifetime Supervision of Sex offenders Annual Report, at 8. Phase I takes between 6 months and one year to complete. Given these facts, those offenders identified by the SOTMP as participating in Phase I in the previous year’s Annual Report should be identified as participating in Phase II in the current Annual Report, as should those offenders identified as being on a “Wait List” for Phase II in the previous year’s Annual Report. A certain percentage of offenders in Phase I can, of course, be expected to fail to successfully complete Phase I, and these offenders will need to participate in Phase I again, instead of progressing to Phase II. At the same time, the SOTMP conducts more than one “round” of Phase I therapy groups per year, yet it fails to report these additional rounds of Phase I in its Annual Reports. As such, it is impossible to accurately calculate the number of “Lifetime Supervision” offenders who *should* be in Phase II treatment each year. Since the SOTMP conducts more than one round of Phase I therapy groups per year, however, this report’s estimates are conservative; if data was provided by the SOTMP on the additional Phase I groups it conducts each year, the expected number of “Lifetime Supervision” offenders in Phase II would rise considerably.

⁶⁴ See Section IV at FAILURE_3, *supra*, for a discussion of termination and the importance of therapeutic alliances in treatment.

⁶⁵ The data currently provided by the SOTMP in its Lifetime Supervision of Sex Offenders Annual Reports makes it impossible to determine how many offenders have been in Phase II treatment for more than one continuous year.

⁶⁶ See, e.g., November 1, 2005 *Lifetime Supervision of Sex Offenders Annual Report*, at Table 1.10 (“Lifetime Sex Offenders in Treatment As of October 13, 2005”).

⁶⁷ The only way that the SOTMP can progress “Lifetime Supervision” offenders to community placement is through successful progression in treatment. The SOTMP therefore essentially “shoots itself in the foot” each time that it terminates a “Lifetime Supervision” offender from Phase II treatment.

⁶⁸ Given its unacceptably low 3% success rate, the SOTMP will not be able to successfully progress through treatment as many “Lifetime Supervision” offenders as are coming into the system each year. The population of incarcerated “Lifetime Supervision” offenders will therefore continue to grow each year, as will the cost to taxpayers of incarcerating the ever-growing “Lifetime Supervision” population.

⁶⁹ See Colorado Department of Corrections’ *Statistical Report for Fiscal Year 2004*, at Table 58

⁷⁰ The figure of 661 inmates is calculated by subtracting the number of inmates released by the Colorado Department of Corrections in Fiscal Year 2004 from the number of “new admissions” in the same year. See Colorado Department of Corrections’ *Statistical Report for Fiscal Year 2004*, at Table 23.

⁷¹ The state’s prison population grew by 661 inmates in Fiscal Year 2004. See note 70, *supra*. The 172 new “Lifetime Supervision” offenders incarcerated in 2004 represent 26% of these 661 inmates.

⁷² See note 70, *supra*.

⁷³ See Colorado Department of Corrections’ *Statistical Report for Fiscal Year 2004*, at 43 (“The lifetime prison commitments to date include: [. . .] 172 in 2004”); see also November 1, 2004 *Lifetime Supervision of Sex Offenders Annual Report*, at 11 (“Two lifetime sex offenders have been accepted and placed in transition community corrections and one lifetime sex offender is currently in the Intensive Supervision (inmate status) Program as of September 30, 2004”).

⁷⁴ See, e.g., Colorado Department of Corrections, “CURE Questions and Responses,” *supra* note 22.

⁷⁵ The percentage of “Lifetime Supervision” offenders reported as participating in Phase II treatment is calculated by dividing the number of such offenders reported in the Lifetime Supervision of Sex offenders Annual Report for each year by the number of “Lifetime Supervision” offenders reported as incarcerated in the same year.

⁷⁶ See, e.g., “Colorado Department of Corrections’ State Sex Offender Treatment Programs: 50-State Survey” 31, available at <http://www.doc.state.co.us/programs> (“One unit at Arrowhead Correctional Center is dedicated to a 96-bed residential therapeutic community for sex offenders”). The SOTMP has maintained this 96-bed unit during the entire time-period in question.

⁷⁷ The SOTMP controls how many beds in its 96-bed unit at Arrowhead Correctional Center are allocated to the treatment of “Lifetime Supervision” offenders. Evidence suggests that the SOTMP has elected to allocate many of its Arrowhead beds to non-Lifetime Supervision offenders who are close to discharging their sentences to incarceration.

⁷⁸ See November 1, 2005 *Lifetime Supervision of Sex Offenders Annual Report*, at 7 (“Five lifetime sex offenders have been accepted and placed in transition community corrections out of fourteen offenders who have met SOMB criteria for community corrections recommendation”).

⁷⁹ The success rate is calculated by dividing the number of offenders reported as meeting the treatment criteria for community placement by the number of offenders who have been incarcerated for at least one year (and who therefore have had sufficient time to progress in treatment, if treatment had been offered). We decline to calculate the success rate by the number of offenders who have actually been in treatment, because by law *all* “Lifetime Supervision” offenders are required to undergo treatment – the SOTMP should not be permitted to benefit from its decision to terminate or otherwise deny “Lifetime Supervision” offenders treatment by using those decisions to artificially inflate its “success” rate.

⁸⁰ Robert J. McGrath, Georgia F. Cumming, & Brenda L. Buchard, *Current Practices and Trends in Sexual Abuser Management: The Safer Society 2002 Nationwide Survey* 66 (Safer Society Press 2003) (“Residential programs for adult males have the lowest average completion rate (see Table 14.2). The 64 percent average completion rate is similar to the 59 percent rate reported by West, Hromas, and Wegner (2000) in their study of sex offender treatment programs in United States adult prisons”).

⁸¹ See discussion in section IV at FAILURE 3, *supra*.

⁸² See note 27, *supra*.

⁸³ In the period beginning with Fiscal Year 2002 and ending with Fiscal Year 2005, an average of 158.5 offenders per year were sentenced to incarceration under the Lifetime Supervision Act. A trend exists in the criminal justice community, however, in which sex offenders are increasingly utilizing plea bargaining to avoid the indeterminate sentencing provisions of the Act - if this trend continues, the number of sex offenders sentenced under the Lifetime Supervision Act may continue to decline each year. This report’s estimate of 150+ new offenders entering the system is therefore conservative.

⁸⁴ The estimated increase in the annual cost of incarcerating “Lifetime Supervision” offenders as a result of new offenders entering the system under the Act is calculated by multiplying the estimated number of new offenders each year by the estimated annual cost of incarcerating each “Lifetime Supervision” offender.

⁸⁵ The estimated cost-to-date is calculated by multiplying the number of “Lifetime Supervision” offenders incarcerated in each year since the Lifetime Supervision Act took effect by the estimated average annual cost of incarcerating a “Lifetime Supervision” offender.

⁸⁶ See note 73, *supra*.

⁸⁷ This fundamental fact is based on data from the Colorado Department of Corrections' *Statistical Report for Fiscal Year 2004*. The calculated average cost of incarcerating a "Lifetime Supervision" offender is \$ 68.13 per day, and this cost does *not* include the cost of providing sex offender treatment. Housing the same offender in ISP Community Corrections, meanwhile, costs \$28.00 per day, and "in community based programs, most sex offenders are expected to bear the costs of treatment and behavioral monitoring themselves." See November 1, 2005 *Lifetime Supervision of Sex Offenders Annual Report*, at 19.

⁸⁸ The estimated savings is the difference in cost between incarcerating a "Lifetime Supervision" offender for a year and housing the same offender in ISP Community Corrections for a year. The cost savings does not include the cost of treating the sex offender while he or she is incarcerated - in community placement, the offender would bear the costs of treatment, resulting in even more savings per year over an incarcerated offender.

⁸⁹ The SOTMP's language in the November 1, 2005 *Lifetime Supervision of Sex Offenders Annual Report* is confusing concerning the number of "Lifetime Supervision" offenders actually in community placement. The language in question is as follows: "Five lifetime sex offenders have been accepted and placed in transition community corrections out of fourteen offenders who have met SOMB criteria for a community corrections recommendation. Two lifetime sex offenders are currently in community corrections programs as of September 20, 2005." See *id.* at 7.

⁹⁰ Several "Lifetime Supervision" offenders documented by the Sex Offense Issues Group of Colorado-CURE describe having been terminated from treatment two or more times over several years.

⁹¹ The total estimated cost of the terminations is calculated by multiplying the number of offenders terminated by the estimated cost per termination of between \$12,138 and \$24,275. The total estimated cost is conservative, as it does not include the potential additional cost of those offenders who have been terminated more than once from treatment.

⁹² *A Bill for an Act Concerning Supervision of Sex Offenders*: Hearing on H.B. 98-1156 Before the Senate Comm. on Judiciary, Sixty-first General Assembly (Colo. April 29, 1998) (statement of Bob Grant, President, Colorado District Attorneys Council).

⁹³ See Robert D. Miller, *supra* note 52, at § III.

SEX OFFENDER TREATMENT PROGRAM

Probation and Termination Guidelines Phase I

Probation and termination can be powerful treatment tools to help motivate an offender. The following guidelines are not meant to discourage a therapist from using probation and/or termination. These guidelines are designed to provide direction and consistency in expectations for group participation across facilities.

Probation

1. Probation is an official documented status warning an inmate group member that he is at risk of being terminated from treatment. If a sex offender displays problematic behavior while he is in a sex offender treatment group, he in most cases should be placed on probation. The probation period is generally for one month and may be extended. For more serious issues, the period of probation may be for less than one month. During the probationary period it may be determined that the inmate is not making sufficient progress to successfully complete probation. If the facility treatment team has expressed unanimous consensus through the termination staffing process, termination can occur before the probationary period expires. The inmate should be informed through the probationary contract that it may not take the therapists the entire probationary period to determine if the inmate will successfully complete probation. In other words, the therapists need not wait until the end of probation to terminate him from group.

Examples of situations that might call for expedited probation ending early in termination could be: Refusal to speak in group; denial of being at risk to re-offend; repeated denial of essential or central elements of his sexual assault; not meeting the basic treatment participation requirement; or displaying markedly disruptive group behavior.

2. When a therapist believes that it is appropriate to place an inmate on probation, s/he will discuss it with the co-therapist outside of group. If the co-therapist agrees, they will collaborate on writing a probationary contract. The co-therapists are encouraged to consult with the facility SOTMP team leaders and the mental health coordinator or other team members before presenting the probationary contract to the inmate. The probationary contract will be written using the attached Probation Contract Form. The probation conditions will be individually designed to address the inmate's problems. The plan for improvement needs to be written in specific measurable behavioral terms. During the probation it is the responsibility of the inmate to address the needed changes and the therapists' responsibility to give feedback. The probationary status will always be reviewed with the inmate when the probationary period ends. Copies of the signed contract will be placed in the working file and the department file, and a copy will be given to the inmate. The original will be placed in the mental health file.

3. After the contract is written and the co-therapists have signed it, it will be presented to the inmate at the next group session. The therapists may feel it is more appropriate to call the inmate in individually to present the probationary contract. In that case, the therapists will discuss the inmate's probationary status with the group at the next group meeting.
4. At the next facility mental health staff meeting, the co-therapists must present the written probationary contract and make a clinical presentation of this inmate's issues to the SOTMP team. Discussion about how to handle the inmate's treatment will be encouraged. In difficult cases where there is considerable disagreement in the team's feedback or if the team wishes additional ideas on how to handle the inmate's treatment, the case can be restaffed with the mental health SOTMP coordinators and the program administrator. The inmate's probationary status will be reviewed at each SOTMP facility team meeting during which the inmate remains on probation.

Some possible reasons for probation:

(This is not meant to be an exhaustive list of all the reasons an inmate may be placed on probation. There will always be cases that require use of clinical judgment. This list is meant to give some guidance and examples of possible reasons for placing a group member on probation.)

- ~ Habitual tardiness (being late more than 5 minutes more than twice without a verifiable reason)
- ~ Excessively tardy for one session (missing most of the session without a verifiable reason)
- ~ Failure to complete homework assignments when assigned (turning in homework late more than twice)
- ~ Persistent minimization of the sex offense and/or problem
- ~ Persistent resistance to material presented in group
- ~ Non-participation in group discussions
- ~ Denial or severe minimization of problem areas
- ~ Denial of the need to address problematic patterns and behaviors
- ~ Denial of a risk to re-offend
- ~ Failure to comply with any of the conditions of the contract

Termination

1. When a therapist believes it is appropriate to terminate an inmate from group, he/she will present the reason for termination to the facility sex offender treatment team*. In some situations it may be necessary to terminate the inmate's presence in group immediately. If the inmate's presence in group constitutes a dangerous situation, the therapist may terminate the inmate from group but will review the termination with the facility team the next working day. Terminations should generally follow periods of probation except under the following circumstances:
 - ~ Unexcused absence**

- ~ Dangerous/disruptive situations (threats, verified breaches of confidentiality, etc.)
 - ~ COPD conviction for sexual misconduct or sexual abuse
 - ~ Refusal to participate in a group activity such as videotaped role plays
 - ~ Denial of being a sex offender
2. A note should be placed in the mental health file outlining date staffed, reason for termination, and tasks for reconsideration for future treatment. This note is signed by both therapists and the facility coordinator.
 3. In difficult cases where the facility team is unable to come to consensus*** on whether an inmate should be terminated or placed on probation, the case will be restaffed with the SOTMP coordinators and administrator.

* Facility sex offender treatment team – Those members of the sex offender treatment team present in the facility that day, including the coordinator or the coordinator's designee.

** Missing group due to administrative segregation or punitive segregation is not automatically an unexcused absence unless it is for verified sexual misconduct, sexual abuse, or threats of violence and/or violence which is not the result of self defense. We should be stressing to inmates that they should follow rules since giving themselves permission to break rules has resulted in victimization of others. However, rigid expectations for behavior outside of group are not required at the Phase I level of treatment since inmates are not given significant time in group to discuss current problems.

*** Consensus – Every member present at the staffing should be able to support the final decision whether they initially agreed with it or not. If there is one or more persons who cannot support the decision, the coordinator will bring the decision to the coordinators group to determine a program direction.

Revised 11/7/95

Second Regular Session
Sixty-fifth General Assembly
STATE OF COLORADO

INTRODUCED

SENATE BILL 00-000

SENATE SPONSORSHIP

HOUSE SPONSORSHIP

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE MODIFICATION OF THE COLORADO SEX OFFENDER LIFETIME**
102 **SUPERVISION ACT OF 1998.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Amends the “Colorado Sex Offender Lifetime Supervision Act of 1998” (Lifetime Supervision Act) by establishing additional reporting requirements concerning the Colorado Department of Corrections’ performance in providing sex offense-specific treatment to sex offenders incarcerated pursuant to the Lifetime Supervision Act.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 SECTION 1. 18-1.3-1011(1), Colorado Revised Statutes, is amended by
3 THE ADDITION OF NEW PARAGRAPHS to read:

4 (h) the average number of “Lifetime Supervision” offenders
5 participating in Phase I and Phase II of the department of corrections’ Sex Offender
6 Treatment and Monitoring Program during each of the twelve months in the fiscal year;

7 (i) the number of “Lifetime Supervision” offenders denied admission to
8 treatment in Phase I and Phase II of the department of corrections’ Sex Offender
9 Treatment and Monitoring Program for reasons other than length of remaining sentence
10 in each of the twelve months in the fiscal year;

11 (j) the number of “Lifetime Supervision” offenders terminated from
12 Phase I and Phase II of the department of corrections’ Sex Offender Treatment and
13 Monitoring Program in each of the twelve months in the fiscal year;

14 (k) the average length of participation by “Lifetime Supervision”
15 offenders in Phase I and Phase II of the department of corrections’ Sex Offender
16 Treatment and Monitoring Program during each of the twelve months in the fiscal year;

17 (l) the number of “Lifetime Supervision” offenders denied readmission
18 to Phase I and Phase II of the department of corrections’ Sex Offender Treatment and
19 Monitoring Program after having previously been terminated from such treatment during
20 each of the twelve months in the fiscal year;

21 (m) the number of “Lifetime Supervision” offenders recommended by the
22 department of corrections’ Sex Offender Treatment and Monitoring Program to the

23 parole board for release to parole in each of the twelve months in the fiscal year; and
24 (n) the number of “Lifetime Supervision” offenders recommended by the
25 department of corrections’ Sex Offender Treatment and Monitoring Program for
26 placement in community corrections in each of the twelve months in the fiscal year.