

Sex Offender Management Board Presentation Pursuant to Section 16-11.7-109, C.F.
January 25, 2019 – Joint Judiciary Committee
Testimony of Dale Jenkins - Advocates for Change

Members of the Joint Judiciary Committee, thank you for the opportunity to testify today. My name is Dale Jenkins and I am speaking to you today as a representative of Advocates for Change (AFC). For more than a decade AFC has been monitoring the work of the Sex Offender Management Board (SOMB), attending and participating in both SOMB and SOMB working committee meetings, contributing to the SOMB's public comment process, and working to gather information related to the human and fiscal impacts of the Board's policies, procedures and standards and guidelines. AFC is concerned the Sex Offender Management Board is not only struggling but perpetuating containment model, one-size-fits-all thinking despite the Board, or its representatives, professing commitment to the concepts of risk-need-responsivity and individualized treatment and supervision. Most importantly, as policymakers, it is critical you understand the Sex Offender Management Board appears to be knowingly disregarding certain statutes and legislative intent, while not providing you the comprehensive, consolidated information you need to develop evidence-based, research-informed legislation. Notably, while Colorado is mired in old thinking other states have already acted on the need for a complete review of the laws and policies impacting adults and juveniles who have committed sexual offenses and are benefiting from improved evidence-based changes.

From 1992, when the Board was created and known as the Sex Offender Treatment Board, Board membership has ballooned from twelve members to twenty-five members. In addition to the twenty-five members, the Board requires a staff of 6.2 FTE's within the Division of Criminal Justice to accomplish its work. One FTE for each four Board members. Notwithstanding the excessive use of state resources the Board has failed to meet all its statutory duties. It could also be argued the Board has lost the public trust, as well as the trust of the Legislature as evidenced by the overwhelming, bipartisan support of HB18-1427 Sex Offender Management Board Interest Conflicts. Unfortunately, the bill was vetoed by Governor Hickenlooper.

While the current realities surrounding the SOMB are discouraging at best in the interest of moving boldly forward Advocates for Change has respectfully provided the Committee recommendations for possible action and legislation. I would like to specifically remark on several of the areas noted on the AFC recommendations handout.

First, the time has come for a legislative working group or interim committee to review and evaluate all matters related to adults and juveniles who have committed sexual offenses. The working

Sex Offender Management Board Presentation Pursuant to Section 16-11.7-109, C.R.S.
January 25, 2019 – Joint Judiciary Committee
Testimony of Dale Jenkins - Advocates for Change

group or interim committee should focus on the prevailing evidence and research and thoroughly understand the collateral consequences of legislation including the impacts to state fiscal resources and prison/supervision populations. It is vital the working group or interim committee also explore alternatives to or drastic reforms of the Sex Offender Management Board.

Second, over the past twenty-seven years of the Board's existence, oversight protocols for the Board have been inadequate. Although the Joint Judiciary has reviewed the SOMB's self-validated annual report since January 2012, there have been only three completed sunset reviews with one review now taking place. (Interestingly, the DORA policy analyst conducting the current sunset review conducted the last review in 2015.) Concerningly, until now, there has never been a performance audit of the Board, by the Office of the State Auditor, in the Board's twenty-seven-year existence. Due to the high cost of the impacts SOMB standards and guidelines place on state agencies the Office of the State Auditor should review the SOMB, and its supporting unit within the DCJ, at regular intervals no more than three years in length.

Third, without legislation prohibiting the practice, the SOMB's adult and juvenile standards and guidelines will continue to allow for the polygraph examination, penile plethysmograph (PPG) and viewing time testing of vulnerable populations, including juveniles under the age of eighteen.

Fourth, to move knowledgeably forward the Joint Judiciary should enact legislation requiring the annual production and review of a consolidated, comprehensive report focused on Colorado sex offense related data. Presently, this information is scattered across four departments complicating legislators' ability to have the information they need to make informed policy decisions.

Advocates for Change looks forward to discussing its recommendations in detail with interested legislators and the opportunity to work towards meaningful collaborative reforms focused on evidence, research, efficiencies, effectiveness, fiscal responsibility, and most of all public safety.

Thank you for your time and I would be happy to take any questions.



Advocates For Change

PO Box 103392

Denver, CO 80250

720-329-9096

advocates4changeafc@gmail.com

Advocates for Change (AFC), a criminal justice reform non-profit focusing on the issues impacting adults and juveniles who have committed sex offenses, respectfully submits the following recommendations to the members of the Joint Judiciary Committee. The recommendations represent several of the many opportunities for improvement, which AFC looks forward to discussing with legislators in the upcoming session.

- Establish a legislative working group or interim committee to review all things pertaining to the state's role in the issues related to the treatment, management and supervision of adults and juveniles who have committed sex offenses. This working group or committee would consider but not be limited to:
 - exploring alternatives to, or reforms of, the composition of the Sex Offender Management Board (SOMB), appointing authorities, terms and duties as described in C.R.S. 16-11.7-103. *
 - performing a review and evaluation of all sections of Title 16, Article 11.7 (Standardized Treatment Program for Sex Offenders).
 - completing an evaluation of, but not limited to the following statutes, to ensure consistency with current evidence and research, and impacts to state resources and incarcerated/community supervision populations
 - Colorado Sex Offender Lifetime Supervision Act of 1998 (C.R.S. 18-1.3-1001 - 18-1.3-1012)
 - Colorado Sex Offender Registration Act (C.R.S. 16-22-101 - 16-22-115)
 - Colorado Sex Offenders Act of 1968 (C.R.S. 18-1.3-901 - 18-1.3-916).
- Fund the follow-up evaluation of the SOMB's Adult Standards and Guidelines as recommended in the 2014 independent evaluation of the Board's Standards and Guidelines funded by the General Assembly in 2013. The evaluation stated, *"It is recommended that an external audit of the SOMB Standards and Guidelines be commissioned in approximately 24 months to determine the degree of progress has been made regarding the recommendations and provisions of this report."* (page 45 of the evaluation) Monies from the Sex Offender Surcharge Fund might be considered as a funding source for the follow-up evaluation.
- Fund an external evaluation of the SOMB's Juvenile Standards and Guidelines. To date, no external evaluation has been performed. Again, monies from the Sex Offender Surcharge Fund might be considered as a source of funding.
- Enact legislation to:
 - protect juveniles and other vulnerable populations from the SOMB's use of polygraph examinations, penile plethysmograph (PPG) tests and viewing time assessments in its standards and guidelines. *
 - establish consistent and timely oversight reviews of the SOMB and require the SOMB to complete cost-benefit analyses for the SOMB standards and guidelines and administrative policies. *
 - require the SOMB to utilize person-first language in its adult standards and guidelines and work products. (Presently juveniles are referred to as "juveniles who have committed sexual offenses" in the juvenile standards and guidelines and SOMB work products while adults are referred to as "sex offenders".)
 - require the SOMB retain an independent, academic support contractor, outside the Division of Criminal Justice to collect, review, and advise the SOMB regarding the research pertaining to adults and juveniles who have committed sex offenses. (Currently, this function is performed within the DCJ/Sex Offender Unit and there appear to be no checks and balances in place to facilitate the objectivity of research selections/reviews.)
 - require the SOMB include in its annual report to the Legislature:
 - a summarized accounting of the revenues and expenses, for the most recent fiscal year, for the Sex Offender Surcharge Fund and Sex Offender Treatment Provider Fund.
 - a summarized accounting of the revenues and expenses related to the Sex Offender Management Board's annual conference including a breakdown of conference attendees by state government entity. (Historically the conference has been held in Breckenridge, CO.)
 - require an annual consolidated, comprehensive report be provided to the Legislature, by the appropriate, designated agency, that would include all relevant state sex offense related data.
 - require an annual presentation by the DOC, DPS and Judicial Department of the Lifetime Supervision of Sex Offenders Annual Report to the Joint Judiciary and Joint Budget Committees. *

* AFC has prepared possible statutory language for these items which will be provided to legislators upon request.



Advocates For Change

PO Box 103392

Denver, CO 80250

720-329-9096

advocates4changeafc@gmail.com

Below is a sample of notable Sex Offender Management Board (SOMB) expenses. The source for the information was the state's Transparency Online Project (TOP). The TOP data was last updated by the Office of the State Controller on January 12, 2019.

- In FY2019 the SOMB spent more than **\$13,866** in **General Fund-Unrestricted** monies to develop its strategic plan. The **\$13,866** included:
 - **\$7,910** paid to JERA Partnerships, LLC for purchased services.
 - **\$5,976** paid to the Stanley Hotel where the SOMB strategic planning session was conducted on October 26, 2018.

Note: It is unknown how much was paid from **General Fund-Unrestricted** monies to reimburse SOMB members and SOMB staff for mileage and other travel expenses to and from the Stanley Hotel.

- A review of past fiscal years' SOMB expenses indicates that **Sex Offender Surcharge Fund** monies have been used to fund FTE positions. For the past fiscal years, the estimated costs for the FTE, including associated costs, has been:
 - FY2019 - **\$48,835**. (through 01/12/2019)
 - FY2018 - **\$151,464**.
 - FY2017 - **\$119,483**.
 - FY2016 - **\$122,680**.

The review also indicates **Sex Offender Surcharge Fund** monies have been used to pay for items described as: books/periodicals/subscriptions; communication charges-external; dues and memberships; noncapitalizable furniture and office systems; noncapitalizable information technology; office supplies; official functions (food/meals); postage; prizes and awards; purchased services; registration fees.

Per the Judicial Department Annual Statistical Report the following amounts were collected in the **Sex Offender Surcharge Fund** for the above noted fiscal years other than FY2019 for which there is no Judicial Department report:

- FY2018 - **\$588,121**.
 - FY2017 - **\$589,976**.
 - FY2016 - **\$566,208**.
- Past fiscal years' SOMB expenses also indicate the SOMB appears to be utilizing an outside investigator(s) to perform background checks on SOMB approved provider applicants/renewals. The expense for the investigator(s) is paid from the **Sex Offender Treatment Provider Fund**. The SOMB should explain why it does not utilize the resources of the Colorado Bureau of Investigation (CBI) to complete this task. Use of the CBI might result in a lower application/renewal fee for SOMB approved provider applicants/renewals. Past totals for the outside investigator(s) have been:
 - FY2019 - **\$6,175**. (through 01/12/2019)
 - FY2018 - **\$13,400**.
 - FY2017 - **\$12,400**.
 - FY2016 - **\$13,200**.
 - The expenses/revenues associated with the SOMB's annual conference, which has traditionally been held at the Beaver Run Resort in Breckenridge, CO, are extensive. The SOMB should be required to provide an accounting of all past conference expenses/revenues for completeness and accuracy. The TOP data shows the annual conference expenses/revenues posted to the **Criminal Justice Training Fund**.