

SEXUALLY VIOLENT PREDATORS

ANNUAL REPORT



January 15, 2009

Colorado Department of Corrections
State Judicial Department

Sexually Violent Predators Annual Report | 2008

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INTRODUCTION

The State Judicial Department and the Department of Corrections jointly submit this second Annual Report on Sexually Violent Predators (SVPs). The report is prepared in accordance with the provisions implemented in House Bill 07-1172. Pursuant to section 18-3-414.5(4), C.R.S.:

On or before January 15, 2008, and on or before January 15 each year thereafter, the Judicial Department and the Department of Corrections shall jointly submit to the judiciary committees of the Senate and House of Representatives, or any successor committees, to the Division of Criminal Justice in the Department of Public Safety, and to the Governor a report specifying the following information:

- a) the number of offenders evaluated pursuant to this section in the preceding twelve months;
- b) the number of sexually violent predators identified pursuant to this section in the preceding twelve months;
- c) the total number of sexually violent predators in the custody of the Department of Corrections at the time of the report, specifying those incarcerated, those housed in community corrections, and those on parole, including the level of supervision for each sexually violent predator on parole;
- d) the length of the sentence imposed on each sexually violent predator in the custody of the Department of Corrections at the time of the report;
- e) the number of sexually violent predators discharged from parole during the preceding twelve months;
- f) the total number of sexually violent predators on probation at the time of the report and the level of supervision of each sexually violent predator on probation; and
- g) the number of sexually violent predators discharged from probation during the previous twelve months.

BACKGROUND OF SEXUALLY VIOLENT PREDATOR (SVP) LAWS

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

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

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

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

In 1999 changes were made to reflect that the offense date must be on or after July 1, 1997 with a conviction date on or after July 1, 1999. The statute was changed to require the court to order a SVP risk assessment for an offender convicted of one of the five enumerated offenses at the time of the presentence investigation report, to make findings of fact and to enter an order concerning whether the defendant was a SVP. Also in 1999 the statute was amended to reflect that the parole board would make specific findings regarding SVP when considering release on parole for an offender convicted of one of the 5 enumerated offenses and based on results of an SVP assessment conducted by the Department of Corrections. Finally, in 1999 the General Assembly added part 9 of Article 13 of Title 16 C.R.S. to require community notification as a consequence of a SVP finding.

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

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

In 2006 the SVP statute was expanded to include attempts, solicitations, or conspiracies to commit one of the 5 enumerated offenses. "Convicted" was amended to include a defendant having received a deferred judgment and sentence. The time for conducting the SVP assessment was changed from "at the time of presentence investigation report is conducted" to "when a defendant is convicted." The statute as amended allows a previous SVP assessment within the prior 6 months to be used or waives the requirement if the defendant has previously been designated a SVP. The parole section of the statute was expanded to require the SVP assessment not only when considering release on parole but also discharge. The legislation specifically cross-referenced the community notification statute.

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

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

SEXUAL PREDATOR RISK ASSESSMENT SCREENING INSTRUMENT

The Sexual Predator Risk Assessment Screening Instrument was developed in 1998 by the Office of Research and Statistics in the Division of Criminal Justice. The most recent version, dated January 2008 is provided as Attachment A.

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

1. Eighteen years of age or older as of the date the offense is committed or who is less than eighteen years of age as of the date the offense is committed but is tried as an adult pursuant to section 19-2-517 or 19-2-518, C.R.S.
2. Convicted on or after July 1, 1999 of one of the following offenses or of an attempt, solicitation, or conspiracy to commit one of the following offenses committed on or after July 1, 1997.
 - A. Sexual assault, in violation of section 18-3-402, C.R.S., or sexual assault in the first degree, in violation of section 18-3-402, C.R.S. as it existed prior to July 1, 2000;
 - B. Sexual assault in the second degree, in violation of section 18-3-403, C.R.S. as it existed prior to July 1, 2000;
 - C. Unlawful sexual contact, in violation of section 18-3-404(1.5) or (2), C.R.S., or sexual assault in the third degree, in violation of section 18-3-404(1.5) or (2), C.R.S. as it existed prior to July 1, 2000;
 - D. Sexual assault on a child, in violation of section 18-3-405; or
 - E. Sexual assault on a child by one in a position of trust, in violation of section 18-3-405.3.
3. Whose victim was a stranger to the offender or a person with whom the offender established or promoted a relationship primarily for the purpose of sexual victimization; and
4. Based upon the results of the most current revision of the Sexually Violent Predator Risk Assessment Screening Instrument, which includes an assessment for the presence of a mental abnormality, developed by the Division of Criminal Justice in consultation with and approved by the Sex Offender Management Board established pursuant to section 16-11.7-102 (1), C.R.S., is likely to subsequently commit one or more of the offenses specified above under the circumstances specified above.

CHANGES TO THE SVP ASSESSMENT SCREENING INSTRUMENT

Only two legislative changes resulted in substantive changes to the SVP instrument. In May 2006 the specific crimes that qualified a sex offender for an SVP assessment were expanded to include inchoate crimes. In August 2007 the instrument was modified to provide probation officers and DOC staff with direction on how to complete an assessment if the offender refuses to participate in the interview and a new section, Part 3C, was added. A score of 3 or more on this 6-item risk scale increases the probability that an offender will score in the high risk group to reoffend.

DATA REPORTING

The required information is reported below by the Department of Corrections and the Division of Probation Services within the State Judicial Department. The preceding 12-month period is defined as calendar year 2008 (January 1, 2008 through December 31, 2008), unless otherwise denoted, and the population figures are reported as of December 31, 2008, representing the population at the time of the report.

DEPARTMENT OF CORRECTIONS RESPONSE

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

Report Requirement Item	Required Data	Department of Corrections Response
(a)	Number of offenders evaluated in calendar year 2008	392
(b)	Number of sexually violent offenders identified in calendar year 2008	26
(c)	Total number of sexually violent predators as of December 31, 2008:	
	Prison	378
	Community Corrections Transition	0
	Total Incarcerated Population	378
	Supervised on Parole (Level of Supervision):	
	ISP/Maximum	24
Out of State Parolee	4	
(c)	In Custody:	
	County Jail/CMRC	6
	INS Deportation/Detainer Out of State	10
	Absconders	1
(c)	Total Parole Population	45
(d)	Average Length of Sentence:	
	Incarcerated Population (378 offenders*)	24.0 years
	Parole Population (45 offenders)	2.1 years
(e)	Calendar Year 2008 Discharges:	
	from parole	6
	from prison	13

*Excludes one offender with a life with no parole sentence.

The Division of Adult Parole, Community Corrections and YOS is responsible to supervise SVP offenders in all division programs (i.e., residential community corrections, intensive supervision program for inmates, regular parole and intensive supervision program for parolees). Regardless of the program, SVPs are the most intensely supervised offenders and are managed according to the standards established by the Sex Offender Management Board pursuant to C.R.S. 16-11.7-101 through 106. Using a designed level system, each SVP is required to make daily telephone contact, attend weekly office visits with their parole officer and adhere to mandatory curfews. Community Parole Officers are required to conduct home visits, employment verifications, and staffing with approved treatment providers. Curfews are managed with electronic monitoring to include GPS, home detention and the electronic paging system. Residential program placement, following

acceptance by local community boards, may also be a condition of parole. All SVP offenders remain classified as "maximum" supervision throughout their period of parole supervision.

PROBATION RESPONSE

Using E-Clipse, the State Judicial Department's case management information system, staff at the Division of Probation Services selected data associated with offenders convicted of one of the following SVP qualifying offenses (including attempts, solicitations, or conspiracies as well as deferred judgment and sentences) for calendar year 2008 for review in preparation of this report.

- Felony sexual assault, in violation of section 18-3-402, C.R.S., or sexual assault in the first degree, in violation of section 18-3-402, C.R.S. as it existed prior to July 1, 2000; Misdemeanor sexual assault, in violation of 18-3-402(1)(e). ("At the time of the commission of the act, the victim is at least fifteen years of age but less than seventeen years of age and the actor is at least ten years older than the victim and is not the spouse of the victim.")
- Felony sexual assault in the second degree, in violation of section 18-3-403; C.R.S. as it existed prior to July 1, 2000;
- Felony unlawful sexual contact, in violation of section 18-3-404(1.5) or (2), C.R.S., or felony sexual assault in the third degree, in violation of section 18-3-404(1.5) or (2), C.R.S. as it existed prior to July 1, 2000;
- Felony sexual assault on a child, in violation on section 18-3-405; or
- Sexual assault on a child by one in a position of trust, in violation of section 18-3-405.3.

Report Requirement Item	Required Data	State Judicial Response										
(a)	Number of offenders evaluated in Calendar Year 2008 ¹	870										
(b)	Number of sexually violent predators identified in Calendar Year 2008 <table border="1" data-bbox="418 506 1010 583"> <tr> <td>Sentenced to DOC</td> <td>64</td> </tr> <tr> <td>Sentenced to Probation</td> <td>13</td> </tr> </table>	Sentenced to DOC	64	Sentenced to Probation	13	77						
Sentenced to DOC	64											
Sentenced to Probation	13											
(f)	Total number of sexually violent predators with a sentence to probation as of December 31, 2008 ² Level of Supervision: <table border="1" data-bbox="418 804 1010 1213"> <tr> <td>Sex Offender Intensive Supervision Probation (SOISP) Level of Supervision</td> <td>9</td> </tr> <tr> <td>Administrative SOISP Level (Currently serving a DOC or Jail concurrent sentence)</td> <td>17</td> </tr> <tr> <td>Regular Probation Administrative Level (Out of State)</td> <td>1</td> </tr> <tr> <td>Non-SOISP Supervision Level</td> <td>1</td> </tr> <tr> <td>Revocation Pending (under SOISP supervision)</td> <td>2</td> </tr> </table>	Sex Offender Intensive Supervision Probation (SOISP) Level of Supervision	9	Administrative SOISP Level (Currently serving a DOC or Jail concurrent sentence)	17	Regular Probation Administrative Level (Out of State)	1	Non-SOISP Supervision Level	1	Revocation Pending (under SOISP supervision)	2	30
Sex Offender Intensive Supervision Probation (SOISP) Level of Supervision	9											
Administrative SOISP Level (Currently serving a DOC or Jail concurrent sentence)	17											
Regular Probation Administrative Level (Out of State)	1											
Non-SOISP Supervision Level	1											
Revocation Pending (under SOISP supervision)	2											
(g)	Number of sexually violent predators discharged from probation during the previous 12 months (Sentenced to the DOC)	5										

Between January 1, 2008 through December 31, 2008, 870 adults convicted of one of the five (5) qualifying sexually violent predator crimes received an SVP evaluation/assessment. Of those offenders assessed, the court made a finding of SVP for 77 offenders.

¹ Number of offenders referred for evaluation includes those cases that are referred to the Probation Department for a presentence investigation report.

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

As of December 31, 2008, a cumulative total of 30 adult sex offenders have been identified as a sexually violent predator and have received a probation sentence.

In CY 2008, 64 adult sex offenders were sentenced to DOC and 13 were granted probation with a concurrent jail or DOC sentence as a condition of probation.

There have been 5 offenders identified as sexually violent predators discharged from probation in CY 2008. Of these, 2 offenders were revoked for a new felony; 1 offender was revoked for a technical probation violation; and 2 offenders were revoked for a new misdemeanor offense.

The sex offender intensive supervision program (SOISP) is designed to provide the highest level of supervision to adult sex offenders who are placed on probation. Sex offending behavior is a life-long problem in which the goal is not “curing” the offender, but rather management or control of the assaultive behavior. The goal of intensive supervision for sex offenders is to minimize the risk to the public to the greatest extent possible. The State of Colorado has adopted a model of containment in the supervision and management of sex offenders. Depending on the offender, elements of containment may include severely restricted activities, daily contact with an offender, curfew checks, home visitation, employment visitation and monitoring, drug and alcohol screening, and/or sex offense specific treatment to include the use of polygraph testing. SOISP consists of three phases, each with specific criteria that must be met prior to a reduction in the level of supervision.

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

SUMMARY

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

APPENDIX A

Colorado Sexually Violent Predator Assessment Screening Instrument (SVPASI)