

A Report to the
Department of Regulatory Agencies
for Consideration in the Sunset Review
of the Sex Offender Management Board

Compiled by:
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Submitted: March, 2009

The Sex Offender Management Board (SOMB) was created by the Colorado legislature in 1993. The SOMB is statutorily charged with evaluation, treatment and monitoring of those in the criminal justice system charged and convicted of sexual offenses as defined by statute. More specifically the SOMB is statutorily required to develop a system and continuum of programs for the treatment of sex offenders and to develop criteria for measuring sex offenders' progress in treatment.

As required by statute, the SOMB will be repealed on July 1, 2010. The Sunset Review mechanism is in place through the Department of Regulatory Agencies (DORA) which will aid a specified legislative committee in deciding whether the SOMB should be allowed to be repealed, allowed to continue in its present form, or be allowed to continue existence but with statutory changes.

In the interest of full disclosure, this report to DORA was compiled by the author listed on the cover page, but was created by several inmates at the Fremont Correctional Facility. All of us are sex offenders and all of us have dealt first hand with the failures of the SOMB to adequately manage the Sex Offender Treatment and Monitoring Program (SOTMP). Our experiences come solely from the prison system and the comments in this work will be based on those experiences. DORA will be receiving many reports from other inmates, most of which will focus on the failures of the treatment program in the prison system. This report will not rehash all of that. Instead, what this report will attempt to illustrate is how the SOMB's failure to perform its statutory requirements has allowed the prison treatment system to wallow in failure for an astonishing number of years.

It is my hope and the hope of others that DORA will read this report with the sincerity in which it is written. This is not an appeal to drastically change existing laws or even to dismantle the SOMB because of their failures. It is not politically practical to think that the legislature is going to let the SOMB be repealed and I would not advocate that. What I do hope is that this report and the reports of others will clearly illustrate that the SOMB needs to be directed to follow the statutory mandates already in place. These mandates require that the SOMB do exactly as their title implies: manage. Any and all failures of the SOTMP must fall directly in the lap of the SOMB which has consistently denied purview over treatment programs despite precise statutory language giving them clear authority. Without the exercise of this authority, of course the SOTMP will fail miserably at their stated task. They have absolutely no agency to be accountable to. Again, it is my hope that DORA recognizes the failure of the SOMB to actually manage and will conclude that the SOMB requires legislative intervention to change what is obviously an agency mired in its own current existence.

There are nine central statutory criteria which DORA looks at when compiling a sunset review report. I will approach these criteria in order, indicating each by number and will address multipart criterion in separate segments.

1. Regulation by the SOMB is necessary to protect the public health, safety, and welfare. There will always be sex offenders and a system must be in place to determine which of those offenders present the biggest threat to public safety and what level of treatment is appropriate for each offender.

Where the prison population is concerned, conditions are changing which require at least more EFFECTIVE regulation. The prison sex offender population is growing rapidly as a result of the 1998 Sex Offender Lifetime Supervision Act ('98 Act) combined with the parole board's reluctance to parole sex offenders. Even those offenders with parole recommendations from the sex offender treatment team who have completed their prison treatment are rarely granted parole. Amongst other factors, this is an indication that the members of the parole board have little faith in the treatment program being effective.

As the prison sex offender population increases, resources per offender for treatment will obviously decrease. Along with that, the overall cost of imprisoning the sex offender population is increasing. According to Et Alia Paralegal Services Third Annual Report to the Colorado General Assembly, it will cost the Department of Corrections (DOC) \$214 million to house sex offenders sentenced under the '98 Act over the next five years. Without more effective management and more interaction with the parole board to increase the number of parolees, this problem will grow exponentially. As a management board, the SOMB could and should take a more proactive stance to improve treatment and promote the factual data that treated offenders are at very low risk to reoffend.

With the increase in the sex offender population in prison, the SOMB must develop guidelines for classifying which offenders are the most dangerous. To this point the SOTMP classifies all offenders as equal with equal treatment needs. While sex offenders, or any criminal offender for that matter, will share certain characteristics, lumping all sex offenders together into one large category seems counterintuitive. The SOMB minutes from their October 17, 2008 meeting show that the SOMB is at last discussing the implementation of a high/low risk assessment for offenders. This would seem to be an element so basic to determining an offender's needs that it seems amazing that the board has been in existence for 16 years without implementing such a tool.

A strong argument can be made that more regulation by the SOMB in the form of more effective management. What is needed is an enforcement mechanism. Just as the SOTMP is not held accountable by the SOMB, the SOMB is held accountable only by statutes they have chosen to ignore. Conditions have

certainly arisen that require the SOMB to be more accountable themselves and to ask for accountability from the programs that they are statutorily charged with regulating. With the SOTMP's and the parole board's failure to exercise their discretion in releasing sex offenders, with no risk assessment or release criteria specifically for sex offenders under the '98 Act, and with the economic outlook bleak for the foreseeable future, institutional changes are no longer an option. Real, effective management and an adherence to statutes must be the result of this review. Current conditions no longer allow for business as usual.

2. Regulation by the SOMB is necessary. The purpose of this report is to illustrate that the SOMB is not exercising enough of its regulatory mandate according to statute. There are no other regulatory mechanisms readily available, so alternatives are out of the question.

Agency rules are designed to enhance the public interest and are within the scope of legislative intent. It is in the exercise of the management function in enforcing these rules and regulations where the SOMB fails. This is shown in more detail in the response to criterion number four in this report where we look at specific statutory duties.

3 The SOMB does not operate to its full capability in serving the public interest. The statutes exist that require this, but the Board fails as a management entity. The most glaring of these failures is the SOMB's denial of purview over the prison treatment program (or any other program for that matter). See attached emails between anonymous source and Cathy Rodriguez, Adult Standards Coordinator (highlighted portion, page five). The highlighted portion is Ms. Rodriguez' response that the SOMB does not have "...purview over systems..." See further analysis in criterion number four where statutory duties of the SOMB are presented.

It is reasonable to assume that budgetary restraints will only become more of a factor. With the expanding sex offender population in the DOC coupled with grim economic forecasts, it is safe to say that resources will only become harder to come by. One is led to question how and where resources have been utilized when you learn that the SOMB is just now developing the high/low risk criteria (see response to criterion number one). Further, the October 17 SOMB minutes reveal that the White Paper has only recently been submitted to the Governor's office. According to Colorado Revised Statute 16-11.7-103(j) this should have been done in 2003. Granted, there could be other factors involved in this delay, but limited resources or misused resources are more than likely a factor indicating that resources are not being utilized productively.

Further and perhaps more serious personnel matters include the makeup of the Board itself. Two examples are Peggy Heil and

Jeff Jenks. Peggy Heil is SOTMP Director. Jeff Jenks is one of the approved polygraphers used by the SOTMP. It would seem to be a blatant conflict of interest to have people working under SOMB authority (according to statute, if not practiced in reality) who are also part of the management body. And I would like to point out that these are only two examples of individuals in this dual role. The SOMB currently has other members who are in positions under the Board's authority while they are also sitting members of the Board.

4. The SOMB's biggest failure is in carrying out its statutory duties effectively and efficiently. Colorado Revised Statute 16-11.7-103 outlines the duties of the SOMB. To highlight:

"The Board shall develop and implement guidelines and standards for a SYSTEM OF PROGRAMS for the treatment of sex offenders...in such a manner that the PROGRAMS provide a continuing monitoring process as well as A CONTINUUM OF TREATMENT PROGRAMS for each offender...as the offender progresses through the criminal justice system...also such PROGRAMS shall be developed in such a manner that, to the extent possible, the PROGRAMS may be accessed by all offenders in the criminal justice system."
16-11.7-103(4)(a). (Emphasis added)

"The Board shall research and analyze the effectiveness of the evaluation, identification, and TREATMENT PROCEDURES AND PROGRAMS..."
16-11.7-103(4)(d)(I). (Emphasis added)

It is clear from these excerpts from statute that the SOMB is charged with developing programs and managing their ongoing functions. As this report shows in criterion number three and in the attached emails, the Adult Standards Coordinator claims that the SOMB has no purview over programs. This has been the standard response for years to concerns regarding the SOTMP. The statute is unambiguous in its intent that the SOMB actually serve as a managing instrument vis-a-vis the SOTMP and any other sex offender treatment program in the state. If this report accomplishes nothing else, it is imperative that this issue be addressed. The SOTMP's well-known failures are a direct result of the SOMB's complete reluctance to follow legislative mandate.

5. Whether the Board adequately represents the public interest is certainly debatable at least from a conflict of interest standpoint as pointed out in criterion number three.

One question that should be raised is whether or not the offenders themselves are a segment of the public interest and whether or not they are represented. I would argue that they should be considered part of the public interest and that they are not

adequately represented. Currently a representative from the legal defense community is the only voice the offender has in the decision-making process. Does that really represent the offender? I would go as far as suggesting that statutory changes be made to include representation on the Board by a sex offender living in the community.

Some family members have stated that the SOMB discourages public participation by seating themselves in a round table arrangement, thus ostracizing the community. The SOMB also neglects to use a public address system to allow their comments to be more easily heard. I know of one public participant who is hearing impaired who has requested accomodation in the form of some sort of audio enhancement, but that person has been refused.

6. More efficient management and the following of statutory mandate by the SOMB could lessen the economic impact. Et Alia Paralegal Service's Third Annual Report to the Colorado General Assembly shows that the increasing population of imprisoned offenders under the '98 Act will cost taxpayers \$214 million over the next five years. If the SOMB continues with its hands-off approach, in clear contrast with legislative intent, it is safe to assume that the SOTMP's failures will continue.

The SOMB must be held more accountable to follow statutory requirements and they must make a more concerted proactive effort to work with the parole board to ensure that positive turnover in the form of progressing offenders through treatment and gaining parole is achieved. As the SOTMP operates now, almost all of the offender turnover is negative in the form of termination from the program leading to warehousing of inmates and increased economic burden.

From the perspective of those inside the criminal justice system it seems as though the SOMB is very restrictive of competition. For instance, offenders can only go to Teaching Humane Existence, Independence House, or Community Corrections if progressed through the prison system or directly sentenced to a halfway house treatment program.

Another example of restricted competition is found in who gets approval to be placed on the approved adult provider list. Any prospective treatment provider must comply with SOMB approved treatment modalities such as humanisitic-based group therapy. This is despite solid evidence supporting great success in other modalities such as one-on-one therapy. It is counter-intuitive to think that all offenders must be treated the same yet this is exactly the SOMB's approach. It is the recommendation of this report that serious consideration be given to allowing the offender to choose anyone from a new provider list which should include any licensed therapist with sex offender-specific training.

Additionally, the SOMB severely restricts competition in its approval of polygraph providers. While accomodating the SOMB's agenda of conducting treatment on a pass/fail basis, many offenders and family members feel this is a tactic to enforce the SOTMP's stated goal of containment (prison). We feel that to ensure accurate assessments and to minimize the potential for disingenuous results, more competition in the selection of polygraph providers should be brought about.

7. Prison inmates have discovered time and time again that complaints brought to the SOMB are not resolved. This is due, again, to their misguided denial of purview over prison treatment programs, a point which has been addressed numerous times in this report. This points out another glaring conflict of interest in that there are active Board members who are acting in a supervisory capacity over therapists against whom complaints may be brought. Attached you will find communications from inmate Eric Soeken with the SOMB in which his complaints were brushed off under the guise of lack of purview.

The SOMB states that it only has purview over individual therapists. Incidentally, the therapists they claim to have purview over is limited even further by the SOMB's claiming to have purview only over therapists on the adult provider list. In the group treatment setting this has fostered a good cop/bad cop mentality among the therapists who are approved and those who are not. Typically the one who is not qualified as an adult provider is the one who metes out discipline and issues terminations from the program. This tactic places the therapist beyond reproach since the SOMB admittedly will not even begin to investigate a therapist not on the adult provider list.

This is but one example of a Board that adheres to its own interpretation of its duties in a very self-serving fashion. The SOMB must respond to all complaints, public and otherwise, regarding its functions and purview over the system of programs as described in criteriion number four.

8. In the prison treatment program there is an obvious shortage of male candidates and an apparent shortage of therapists in general. This is supported by the fact that prison treatment programs are always out of accordance with the SOMB's own standards and guidelines requiring two therapists per group of no more than 12 offenders and it is recommended that one therapist be male. The majority of groups are conducted by two women therapists and ALL groups have over 12 participants. It should be noted that many qualified male therapists are working in the SOTMP, but most tend to administrative and other duties as opposed to actually being involved in treatment.

Furthermore, as mentioned in criterion seven, many therapists or treatment providers are unlicensed and unqualified to provide treatment and instead are attending college simultaneously

earning their degree. While this allows students to use prison inmates as proverbial "lab rats" to accumulate clinical hours, it greatly diminishes the quality and effectiveness of treatment in such a specialized field as sex offense-specific treatment.

While we cannot comment on the encouragement of affirmative action, we have observed that from the more than 40 SOTMP staff members at this facility, only one is Black and only one is Spanish speaking. The waitlist for the Spanish speaking Phase I is many years long and those offenders needing this group are warehoused at taxpayer expense.

9. The authors of this report would like to suggest six administrative changes that we feel would greatly enhance the SOMB's effectiveness and would have a great effect on the programs they are statutorily charged with managing.

1. First and foremost the SOMB must be given a stern and pointed mandate that they most certainly do have purview over treatment programs. Even a casual reading of Colorado Revised Statute 16-11.7-103 reveals that not only does the SOMB have purview, they have the responsibility to manage sex offender treatment programs and they are ultimately the ones who must be held accountable for the failures of these programs. It is our suggestion that a mechanism be created that requires accountability by the SOMB to an oversight body such as a designated legislative committee. The SOMB has been wholly unaccountable to this point. It is hard to believe that they will suddenly become accountable without such a mechanism in place.

2. Develop an actuarial risk assessment to determine who is a low-risk and who is medium or high-risk offenders. As stated in criterion number one, it is difficult to imagine how treatment providers have assessed offenders to this point without such a basic assessment tool in place.

Along with a risk assessment tool, a parole release tool for offenders sentenced under the '98 Act should be developed. As it stands now, an offender's parole chances are based mostly on the perceptions of the parole board member who is conducting the parole hearing. Parole criteria do exist now, but with the very low number (between one and three percent) of offenders actually being paroled it is apparent that something more concrete needs to be in place. Even offenders who have met all parole criteria and who have a recommendation for parole from the treatment staff are regularly denied parole.

3. Update the treatment modality and provide more sex offender-specific treatment. In the prison SOTMP Phase I, there is a fairly heavy reliance on Eastern philosophy, Buddhism, and

even treatment material geared toward treating teen girls with borderline personality and attachment disorders. Much of the video treatment tools are decades-old, emotionally-charged news magazine pieces and films. Much has changed in the way sex offender treatment is administered, yet the SOMB does not require treatment programs to use current treatment methods and materials.

4. Require the SOMB to place more emphasis on working with the DOC and private entities to create more bed space for sex offenders in halfway houses. Currently only six beds exist in ComCor (community corrections) for sex offenders. It is in these settings where offenders pay for most of their treatment that tremendous cost savings could occur and should therefore be utilized to a much greater extent.

5. Provide due process hearings for individuals who are terminated from community corrections programs as is now required for terminations within the prison system. And while a due process hearings system does exist in the prison system it is greatly flawed.

Perhaps I better than anyone can comment on the due process hearings in the prison system as it was a civil rights case in which I was the plaintiff that brought about the existence of these hearings through a court order. See *Beebe v. Stommell* No. 02-cv-01993-WYD-BNB (D.Colo. 11/13/2006). In that ruling, Judge Wiley Daniel's order clearly states that hearings are to be conducted by non-DOC employees who are not part of the treatment team yet the SOTMP uses therapists as "impartial" panelists who decide whether or not to uphold an offender's termination recommended by one of their colleagues. Is it any wonder why terminations are always upheld?

6. Require the SOMB to remove subjective, non-scientific treatment tools from the standards and guidelines, specifically the polygraph and the plethysmograph. It is well known that neither of these instruments are accurate. It is easy to understand why the SOMB and the SOTMP would appreciate such tools when you see the quote by Kim English, Research Director for the Colorado of Criminal Justice, who states, "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..." (See Kim English, The Containment Approach: An Aggressive Strategy for the Community Management of Adult Sex Offenders, 4 Psychol. Pub. Poly & L. 218, 227, 234 n.14 [June, 1998]). It is hard to believe that this is the mentality behind the SOMB and the SOTMP, but from the very poor results of both organizations it is obvious that they do not operate on a results-based agenda. Bringing in more objective, scientifically-proven treatment tools would be a key first step toward repairing their horrendous track record.

MAY 23 2008

COLORADO SEX OFFENDER MANAGEMENT BOARD
COMPLAINT FORM

Department of Public Safety, Division of Criminal Justice
 700 Kipling Street, Suite 3000, Denver, CO 80215
 Phone: 303-239-4526 Fax: 303-239-4491

Your receipt of this form means that you wish to file a formal complaint with the Sex Offender Management Board. Please complete this form to make sure the Board has all relevant information. Upon receipt of this completed form, your complaint will be reviewed according to the Standards and Guidelines for the Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders.

COMPLAINANT NAME (S):		
Eric Lynn Soeken		
ADDRESS:		
FCF1 Box 999 #134322		
CITY:	STATE:	ZIP:
Canon City	Colorado	81215-0999
PHONE:		
SERVICE PROVIDER (A listed provider must be named. Please fill out a separate form for each provider being grieved):		
SOTMB		
ADDRESS:		
Box 999		
CITY:	STATE:	ZIP:
Canon City	Colorado	81215-0999
PHONE:		

NATURE OF COMPLAINT (Continue on a separate sheet if needed. Please feel free to include attachments supporting your complaint.):

This complaint is against the SOMTP at the Fremont Correctional Facility. Under Section 18-1.3.1004

(3) C.R.S. states each sex offender sentenced pursuant to this section shall be required as part of the sentence to undergo treatment to the extent appropriate pursuant to section 16-11.7-105 C.R.S.

I was deemed to be in too much denial to take treatment because I disclosed I was in the middle of a reconsideration hearing in the district court during the interview with therapist Christina Ortiz and Carey Lavaux. They also stated that because I said I wanted to be in treatment to also have an opportunity to be released from prison on parole was no reason to be in treatment. Since treatment was the legislatures intent to be done during and prior to the minimum prison sentence time this treatment facility violates this inmates ability to receive treatment by deeming an inmate in denial for frivolous reasons. Since being in treatment outside of prison at I.G.T.S. in Greeley, Colorado I understand denial and the fact that every sex offender is in some state of denial but still is required to take treatment as part of their sentence.

(continued on attached sheet)

(continued from page 1)

Having a process at this facility that keeps offenders from mandatory treatment would not seem to comply with the State S.O.M.B. and the legislatures intent of the treatment part of an offenders sentence.

I have filed grievances step 1-3 to exhaust my prison remedy in which to receive the treatment required to no avail, I am still not in treatment. Per my first parole hearing the treatment board here wrote in my file I refused treatment which I was not aware was their stance until the parole hearing. This created a very awkward situation as I had to explain what was really going on. This false reporting considerably diminished the reputation of me in front of the parole board which is the determining factor of my possible release from incarceration.

MAY 23 2008

WITH WHICH OF THE STANDARDS IS THE SERVICE PROVIDER NOT IN COMPLIANCE? (a specific Standard or Standards must be cited)

After writing the S.O.M.B I have yet to receive a current copy of the standards and guidelines in order to know what parts of the complaint violates the current guidelines.

WHAT IS YOUR HOPE FOR A SOLUTION?

It is my hope that The Fremont Correctional Facilities sex offender treatment program undergoes a thorough investigation of its practices and treatment provided as to promote the statutory mandated treatment under C.R.S. 18-1.3-1004 in order to ensure the publics safety and the inmates' proper rehabilitation has taken place. Furthermore, that this facilities treatment program isn't refusing treatment to those whose sentence it is a mandatory part of

Thank you for addressing your concerns to the Board. After the complaint has been fully addressed through the Board's complaint procedure, you will be notified in writing of the Board's decision and any action taken as a result of this complaint.

SIGNATURE: Eric Lynn Soehren without prejudice DATE: 05/16/08

COLORADO SEX OFFENDER MANAGEMENT BOARD

Department of Public Safety
Division of Criminal Justice
700 Kipling St., Suite 1000
Denver, CO 80215
(303) 239-4442
Fax (303) 239-4491

June 3, 2008

Mr. Eric L. Soeken
DOC #134322
FCF, CH 1
PO Box 999
Canon City, CO 81215-0999

Dear Mr. Soeken,

The staff of the Sex Offender Management Board (SOMB) is in receipt of your letter, received May 23, 2008, regarding alleged violations of the *Standards and Guidelines for the Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders* (hereafter Standards) against the Department of Corrections.

I have enclosed your original materials for your future use.

Please note:

1. The Sex Offender Management Board is only authorized to review complaints against individual approved SOMB providers, not agencies.
2. The complaint must cite the Standard that you are alleging was violated.

I have additionally enclosed the Standards as you requested. If you have questions, please contact the staff at 303-239-4526.

Sincerely,

Staff
Sex Offender Management Board
csr



Eric L. Soeken
Box 999
Canon City, Colorado
81215-0999

Department of Public Safety
Division of Criminal Justice
700 Kipling Street, Suite 1000
Denver, Colorado
80215-5865

June 16, 2008

Dear SOMB Staff,

I am replying to the letter received from SOMB Staff regarding a complaint against two CDOC "SOTMP" providers and the entity that dictates their treatment policies and guidelines. In reference to the "Please Note" section from your letter that states "The Sex Offender Management Board is only authorized to review complaints against individual SOMB providers, not agencies.", I would like to reference the Colorado Revised Statutes Article 16-11.7-106. This article has very clear language about who CDOC and the sex offenders there in can and shall not contract with in reference to "individuals and entities" in which your language refers to "agencies".

It is my understanding of the above article that Colorado Department of Corrections contracts or employs the entity "Sex Offender Treatment and Management Program" who employs or contracts individuals known as providers. Since the entity or agency dictates the providers conduct, treatment, and pre-screenings here in CDOC and is not following the Section 16-11.7-103 (4)(b) by preventing offenders from entering treatment per their own criteria the providers therefore are not following the Standards of which your Board has established. I find it disturbing that in your capacities, established by Legislation to monitor sex offender treatment by entities and individual providers, to maintain consistent treatment to offenders whether they are supervised on parole, probation, or even incarcerated you state you are not authorized to look into complaints about the entity S.O.M.P. whose sole purpose is to provide treatment to whom by your very Standards reference 4.200 "For Successful progress in treatment in Prison, the SOMB does have authority over the SOTMP and should pursue complaints by offenders in order to maintain consistent treatment to make sure the public safety is maintained.

The two providers I mentioned in my complaint did not follow Standards 3.510 and are also not following the Section 16-11.7-103 (4)(b) by preventing me and other offenders from having access to statutory mandated treatment per our sentence. Their statements that I demonstrated significant level of denial, after telling them I was still involved with legal proceedings, they removed me from the waitlist for treatment and further noted to the parole board that I refused treatment. Consequently I was denied parole and put on the denial list and started losing 4 days of earned time. Under the Standards Section 3.510 for stages of denial they believed I was at the level 3 but did not follow the guidelines of that level and prevented me from treatment. I am not the only offender this happens to and strongly ask that the SOTMP's entrance guidelines be checked against the Standards set by your staff and also the Colorado Statutes 16-11.7-103 (4)(b). I have exhausted all CDCR remedies pursuant to grievance process to no avail and still being denied treatment as SOTMP staff keep pushing me away and refuse to communicate with me.

If the SOMB cannot exercise such authority to investigate the treatment and SOTMP's disregard for the Standards established by the SOMB and State Statutes can you please inform me as to my options to remedy the injustice of the CDCR's freedom to contact with an entity that continues to not conform to the Standards provided by this States own Sex Offender Management Board to control and maintain consistency of treatment for the public's safety and also to prevent offenders from being subjected to Non-SOMB standard treatment practices that prevents continuous treatment pursuant to 16-11.7-103 (4)(b).

Sincerely,

Eric L. Socken

Eric L. Socken