

***Target Population:***

Adult sex offenders

***Problem:***

Low-risk sex offenders who are reasonably not a threat to sexually reoffend are currently exposed to the full weight of consequences and requirements as dangerous sex offenders. These consequences and requirements include indeterminate sentencing and continuous Sex Offender Management Bureau (SOMB)-mandated treatment.

Dr. Stephen Brake (leading sex-offender evaluator in Colorado) found that in 2006, 20% of the adult sex offenders he evaluated were deemed to be at low risk for sex offense recidivism.

Currently, after sentencing and months of treatment some sex offenders are found to be a low risk, yet they remain caught up in the same life-changing rehabilitation process that dangerous sex offenders are rightly in. To be clear, the majority of convicted adult sex offenders are dangerous. It is time, though, to correct our approach for low-risk sex offenders.

“The Principle” to be Reinforced:

For society to avail itself of the necessary protection afforded by heavy sentencing\* society must construct safeguards against the misapplication of the yoke of heavy sentencing.

\*(Indeterminate sentencing with strict criteria-based release from sentence, vs. time-limited sentencing.)

***Recognized Needs:***

- There exists a need for an affirmative device built into the sentencing of adult sex offenders that ensures that “The Principle” is enforced.
- Other than non-repetitive, low-risk sex offenders, adult sex offenders suffer from — and make society suffer from — a condition for which there is no known cure. When such individuals are convicted, the criminal justice system has an obligation to provide the necessary protection for society until such protection is demonstrably no longer needed.
- While Presentence Investigation risk assessments be must made, the full scope of risk is not knowable at the time of sentencing.

***Solution (“The Device”) – Reconsideration:  
The Bill***

**The Process for Reconsideration in Brief:**

1. The Colorado Sex Offender Management Board (CoSOMB) will create a structured decision protocol for making reasonably reliable determinations of eligibility for reconsideration of sentence.
2. The sex offender is sentenced with a Presentence Investigation Report containing a psychosexual evaluation stating the sex offender is low risk.
3. The sex offender engages in CoSOMB-supervised treatment.
4. By the end of 15 months of post sentence treatment there will be a reconsideration hearing, provided the offender passes all items in the protocol and the containment team recommends a release from court-ordered CoSOMB supervision.
5. There will be only one mandatory reconsideration for low-risk sex offenders.

**The Process in More Detail:**

All sex offenders who receive a psychosexual evaluation\* as part of the Pre-Sentence Investigation Report indicating that the given convicted sex offender is a low risk and is not already ruled out from eligibility, according to the structured reoffense-risk protocol must, within (15) months, be reconsidered for release from their sentence.

\*Reconsideration will be honored only if a complete psychosexual evaluation in the PSI is performed after the conviction and by a CoSOMB-approved evaluator.

Once the sex offender is sentenced, in order to be eligible for reconsideration, the sex offender must spend the next 15 months supervised by probation or parole and in treatment with an SOMB-approved therapist. The containment team must select a SOMB-approved polygraph examiner and sexual interest / arousal examiner. Additional reconsideration evaluation criteria are to be determined by CoSOMB.

If the low-risk sex offender is in prison, he should not be excluded from this reconsideration process. The mechanism and timing for the Department of Corrections to honor this reconsideration process must be arranged by the Department of Corrections.

In preparation for the mandatory reconsideration hearing, the “containment team” must conclude whether or not the sex offender should still be considered a low risk for sexually reoffending. A low-risk conclusion should result in a recommendation for release. A not-low-risk conclusion should result in a recommendation for the continuation of the existing sentence with all of the expected criteria for release associated with that sentence.

**Financial Burden of the Reconsideration:**

This “low-risk sex offender bill” will produce a considerable savings to the State.

The sex offender is expected to cover the costs associated with the reconsideration evaluation conducted by the containment team, unless he is indigent.

### ***Special Necessary Features of the Reconsideration Recommendation:***

1. The reconsideration should happen within 15 months of sentencing.
2. The reconsideration must conform to the following stipulations and limits:
  - Reconsideration does not apply to sex offenders who at any time have been considered to be not-low-risk.
  - Not identified as a sexually violent predator (SVP)
  - No use of force, coercion or manipulation; features to be determined by CoSOMB
  - No history of compulsive or repetitive sex offending
  - No prior documented juvenile or adult sex offense
  - No offense against a child under the age of 13 years
  - Not convicted in a sex-offense sting or child pornography dissemination
  - Did not commit a violent sex offense
  - (The CoSOMB should determine the relevance of domestic violence [DV] to the determination of risk for sexual reoffense).
  - Did not commit an aggravated sex offense
  - Was not in a position of trust
  - The offense can reasonably be considered consensual, various features of consent to be identified by CoSOMB
  - Must be attitudinally and behaviorally compliant with containment-team professionals so his lack of dangerousness can be accurately assessed; criteria for attitudinal and behavioral compliance to be determined by CoSOMB
  - Must register as low risk on a battery of relevant risk assessment scales to be determined by the CoSOMB
  - When the sex offender's real-life history reflects a greater risk than paper-and- pencil offender assessment tests indicate, the real-life history trumps the paper- and-pencil tests in establishing dangerousness.
  - Reconsideration carries considerable public safety responsibility, since it can result in the release of a convicted sex offender from State custody. Every effort must be made to intimately know all potentially relevant aspect of the convicted sex offender's life; specifications to this end are to be determined by the CoSOMB.
  - The offender must pass necessary computer forensic and polygraph examinations, including having a non-deceptive sexual history ; the nature and number of these examinations are to be determined by the CoSOMB.
  - The entire containment team must participate in the reconsideration and be unanimous in its decision to release the sex offender.

## ***A Relevant Side Point:***

### **Why to Use “Reconsideration” and Retain “Indeterminate Sentencing:”**

In the case of managing convicted sex offenders, indeterminate sentencing is crucial to retain because of its relationship to public safety.

#### **Factors To Be Understood:**

(It is all about the use of treatment and various assessments over time)

1. The majority of sex offenders reoffend.
2. The most important feature of recidivism research is its mammoth under- representation of the real rate of reoffense. Very often the way recidivism data are used is dangerously misleading.
3. Indeterminate sentencing focuses the sex offender, criminal justice professionals and everyone else on change versus an end date.
4. Indeterminate sentencing and associated criteria-based release or external control reduction are the only means by which society can demand proof of meaningful and enduring change.
5. Ironically, because there is no known cure, treatment is essential for public safety. Only by means of treatment can we gain and sustain sufficiently intimate knowledge of the sex offender. Only with this knowledge can there be any hope of safely managing this dangerous members of our community.
6. Psychosexual evaluations done as part of a presentence investigation report are far more likely to err in the direction of under-representing dangerousness than over representing dangerousness.
7. There is criminal justice axiom that seems to be borne out with sex offenders:

The more closely the offender is watched, the more his inappropriate behavior patterns are exposed. Hence his recognized risk level goes up, not down. Thus sex offenders who come from court into the criminal justice management system with a psychosexual evaluation stating “low risk” frequently reveal that they are not low risk.

#### ***The Point:***

The sex offender management team needs considerable intensive treatment time, the assistance of polygraph and sexual arousal evaluation examinations, and other tools of control and accountability that require substantial time to use effectively. Only in these conditions can the sex-offender containment team develop sufficient understanding of the sex offender as a complete person to adequately represent the public’s and the sex offender’s interests and make the necessary reconsideration decision.

#### ***Conclusion:***

Public safety requires indeterminate sentencing for most adult sex offenders. Reconsideration provides the right means for sorting out reasonably low-risk sex offenders.