

SEXUALLY VIOLENT PREDATORS

ANNUAL REPORT

**A REPORT SUBMITTED TO THE
HOUSE AND SENATE JUDICIARY COMMITTEES
DUE JANUARY 15, 2020, PURSUANT TO C.R.S. 18-3-414.5(4)**



**COLORADO DEPARTMENT OF CORRECTIONS
COLORADO STATE COURT ADMINISTRATOR'S OFFICE**

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INTRODUCTION

The State Judicial Department and the Department of Corrections jointly submit this tenth annual report on sexually violent predators (SVP). 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 PREDATORS (SVP) LAWS

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:

1. Sexual Assault in the First Degree
2. Sexual Assault in the Second Degree
3. Felony Sexual Assault in the Third Degree
4. Sexual Assault on a Child
5. Sexual Assault on a Child by One in the Position of Trust

During that time the court was required by the district attorney or the probation department to confirm that the defendant was an SVP. An SVP designation resulted in the defendant being subjected to lifetime quarterly registration.

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*.

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. These changes required the court to order an SVP risk assessment for an offender convicted of one of the five enumerated offenses at the time of the presentence investigation report. The report involved making findings of fact and entering an order to determine if the defendant was an SVP. Furthermore, the General Assembly amended the statute and required the Parole Board to make specific findings regarding SVPs when reviewing parole releases. Factors including offender convictions of one of the five enumerated offenses and SVP assessment outcomes (determined by the Department of Corrections) were considered during the reviews. Finally, the General Assembly incorporated part 9 of Article 13 of Title 16, C.R.S., to require community notification as a consequence of an SVP finding.

2000

Senate Bill 97-84 was amended to reflect changes in the labeling of sexual assault statutes, including the renaming of “Third Degree Sexual Assault” to “Unlawful Sexual Contact.”

2001

The SVP statute was updated to transfer the responsibility of the SVP assessment to the probation department at the time of the presentence report. Orders to initiate the SVP assessment were no longer required by the court. Instead, the court would rule whether the defendant was an SVP. Posting of sexually violent predators on the Colorado Bureau of Investigations website was also included.

2006

The General Assembly expanded the SVP statute to incorporate attempts, solicitations, or conspiracies to commit one of the five enumerated offenses. "Convicted" was amended to include a defendant having received a deferred judgment and sentence. Timeframes for conducting SVP assessments was revised from "at the time a presentence investigation report is conducted" to "when a defendant is convicted." This change allowed the use of SVP assessments from the past six months or waives the requirement if the defendant was previously designated as an SVP. Moreover, the parole section was expanded to require the SVP assessment when considering release on parole and discharge. The legislation specifically cross-referenced the community notification statute.

2007

Report submission requirements were updated for the SVP statute. Originally the Judicial and the Department of Corrections, judiciary committees of the Senate and House of Representatives, or any successor committees submitted these reports. Changes were made to require submitted reports from the Division of Criminal Justice in the Department of Public Safety and the governor.

2008

A mittimus may not indicate whether or not a defendant is identified as an SVP by the court. HB 08-1247 and SB 18-3-414.5 allows that if the department of corrections receives a mittimus that indicates that the court did not make a specific finding of fact or enter an order regarding whether the defendant is a sexually violent predator, the department shall immediately notify the court and, if necessary, return the defendant to the custody of the sheriff for delivery to the court. It is then the responsibility of the court to make a finding or enter an order regarding whether the defendant is a sexually violent predator.

SEXUAL PREDATOR RISK ASSESSMENT SCREENING INSTRUMENT

The Colorado Sexually Violent Predator Assessment Screening Instrument was developed in 1998 by the Office of Research and Statistics in the Division of Criminal Justice.

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 18 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, C.R.S.; or
 - e) Sexual assault on a child by one in a position of trust, in violation of section 18-3-405.3, C.R.S.
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. The current revision of the risk assessment screening instrument presented valuable findings. An assessment designed to identify mental abnormalities and developed by the Division of Criminal Justice in consultation with and approved by the Sex Offender Management Board established pursuant to section 16-11.7-103(4)(c.5), C.R.S., SVPs are likely to subsequently commit one or more of the offenses listed above under the circumstances specified above.

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 (CY) 2019 (January 1, 2019, through December 31, 2019), unless otherwise denoted, and the population figures are reported as of December 31, 2019, representing the population at the time of the report.

DEPARTMENT OF CORRECTIONS RESPONSE

In CY 2019 the Department of Corrections did not conduct SVP assessments which are completed prior to incarceration. Statutorily requested data are presented in **Table 1**.

TABLE 1. Department of Corrections Response		
Requirement Item	Required Data	DOC Response
A	<i>Number of offenders evaluated in CY 2019</i>	0
B	<i>Number of sexually violent predators identified in CY 2019</i>	0
C	<i>Number of sexually violent predators as of December 31, 2019:</i>	514
	Prison	509
	Interstate Compact	3
	Community	2
	Total Incarcerated Population	514
	<i>Supervised on Parole (Level of Supervision):</i>	90
	Intensive Supervision Parole	58
	Regular Parole	14
	Out of State Parolee	18
	<i>In Custody:</i>	11
	INS Deportation/Detainer Out of State	9
	Absconders	2
Total Parole Population	101	
D	<i>Average Length of Sentence (in years):</i>	
	Incarcerated Population prison sentence*	38.9
	Parole sentence average of current parolees	7.3
E	<i>CY 2019 Discharges:</i>	23
	From parole	13
	From prison	10

*Excludes offenders with a life with no parole sentence.

The Division of Adult Parole supervises SVP offenders in all division programs. Such programs include, but are not limited to residential community corrections, intensive supervision program for inmates, regular parole, and intensive supervision program for parolees. Regardless of the program, SVPs are intensely supervised and are managed according to the standards established by the Sex Offender Management Board, under C.R.S. 16-11.7-101 through 106. Utilizing a designed level system, SVP offenders can progress to a lower level of supervision, based on risk, compliance, and the approval of the entire community supervision team. They are no longer classified as “maximum” throughout their supervision period; it is now on a case-by-case basis. Parole community re-entry services provide stabilization strategies (e.g. housing, employment, education, transportation, clothing, and tools). Community Parole Officers (CPOs) are required to conduct home visits, employment verifications, and staffing with approved treatment providers. Curfews are managed with electronic monitoring to include GPS and home detention. Residential program placement, following acceptance by local community boards, may also be a condition of parole.

DIVISION OF PROBATION SERVICES 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 sexually violent predator (SVP) qualifying offenses (including attempts, solicitations, or conspiracies, as well as deferred judgment and sentences) for calendar year (CY) 2019 for review in preparation of this report.

- a) 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.")
- b) 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;
- c) 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;
- d) Felony 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.

Pursuant to 18-3-414.5, when an offender is convicted of one of the offenses specified above, the probation department, in coordination with the evaluator completing the mental health sex offense specific evaluation, completes the sexually violent predator risk assessment, unless the evaluation and assessment were completed within the six months prior to the conviction or the defendant was previously designated an SVP. Based on the results of the assessment, the court makes specific findings of fact and enters an order concerning whether the offender is a sexually violent predator. If the offender is found to be an SVP, the offender is required to register quarterly and is subject to community notification. The offender's conviction, their SVP designation, and their demographic information are posted on the Colorado Bureau of Investigation web site. If the offender is sentenced to DOC and DOC receives a mittimus reflecting that the court did not make a specific finding of fact or enter an order regarding whether the offender is an SVP, DOC immediately notifies the court and, if necessary, returns the offender to the custody of the sheriff for delivery to the court, and the court then makes a finding or enters an order regarding whether the offender is an SVP.

TABLE 2. Division of Probation Services Response		
Requirement Item	Required Data	State Judicial Response
A	Number of offenders evaluated in CY 2019¹	343
B	Number of sexually violent predators identified in CY 2019:	54 (total)
	Sentenced to DOC	37
	Sentenced to Probation	17
	Pending at time of this report (not included in total)	2
F	Total number of sexually violent predators with a sentence to probation as of December 31, 2019²	81 (total)
	Sex Offender Intensive Supervision Probation (SOISP) Level of Supervision	19
	Administrative SOISP Level (Currently serving a DOC or Jail concurrent sentence)	19
	Regular Probation ADMN	6
	Regular Probation ADMN (Out of State)	7
	Non-SOISP Supervision Level	4
	Non-SOISP ADMN	26
	Community Corrections ADMN	0
G	Number of sexually violent predators discharged from probation during the previous 12 months:	6 (total)
	Revoked for Technical Violations	2
	Revoked for New Felony	2
	Revoked for New Misdemeanor	0
	Successful Termination	0
	Deported	1
	Death	1
	Absconded-Warrant Outstanding	0
Community Corrections Closure	0	

Through calendar year 2019, 343 adults convicted of one of the five (5) qualifying sexually violent predator crimes received an SVP evaluation/assessment (Table 2). Of those offenders assessed, the court made a finding of SVP for 54 offenders. Of these, as of December 31, 2019, a cumulative total of 17 adult sex offenders were identified as an SVP and received a probation sentence while 37 offenders were sentenced to DOC. Two cases were still pending sentencing at the time of this report and therefore the SVP status has not yet been determined by the court.

There were 6 offenders identified as SVP who discharged from probation in CY 2019. Of these, 2 probationers were revoked for technical probation violations. The technical violations consisted of absconding from probation and failure to progress in treatment. Two probationers

¹ Number of offenders referred for evaluation includes those cases that are referred to the Probation Department for a presentence investigation report (PSIR). Offenders who refuse a PSI interview, or are not otherwise available, are not included.

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.

were revoked for committing a new felony crime. One probationer was deported, and one died while on probation.

Any adult convicted of a felony sex offense who receives a sentence to probation is required to be supervised by the sex offender intensive supervision program (SOISP). SOISP is designed to provide the highest level of supervision to probationers. Probation Officers employ supervision strategies that adhere to Risk, Need, and Responsivity to assist probationers with their response to and engagement in treatment. There is no expectation that all sex offenders will respond positively to treatment or will be successful on supervision. The goal of intensive supervision for sex offenders is to minimize the risk to the public to the greatest extent possible while utilizing strengths-based techniques to enhance the probationer's intrinsic motivation to succeed. Depending on the probationer, elements of management may include severely restricted activities, daily contact with a probation officer, curfew checks, home visitation, GPS tracking, 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 behaviorally-based criteria that must be met prior to a reduction in the level of supervision. Following a period of treatment and supervision, the court may enter a modification of sentence order allowing the probationer to be supervised as a sex offender on a non-SOISP (regular probation) caseload. The probationer may, however, be subject to continued restricted activities and conditions of sex offender 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 a probationer 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 population.