

CHAPTER 347

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 16-1345

BY REPRESENTATIVE(S) Kagan, Court, Becker K., Hamner, Kraft-Tharp, Lee, Lontine, Melton, Roupe, Ryden;
also SENATOR(S) Cooke, Aguilar, Crowder, Kerr, Roberts.

AN ACT

CONCERNING THE CONTINUATION OF THE SEX OFFENDER MANAGEMENT BOARD, AND, IN CONNECTION THEREWITH, IMPLEMENTING THE RECOMMENDATIONS OF THE 2015 SUNSET REPORT ISSUED BY THE DEPARTMENT OF REGULATORY AGENCIES.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 16-11.7-103, **amend** (4) (a), (4) (b), (4) (h), (4) (i), (4) (j), and (6) (a) as follows:

16-11.7-103. Sex offender management board - creation - duties - repeal.
(4) Duties of the board. The board shall carry out the following duties:

(a) Standards for identification and evaluation of adult sex offenders. (I) The board shall develop, prescribe, and revise, as appropriate, a standard procedure to evaluate and identify adult sex offenders, including adult sex offenders with developmental disabilities. The procedures shall provide for an evaluation and identification of the adult sex offender and recommend management, monitoring, and treatment based upon existing research ~~demonstrating that sexually offending behavior is often repetitive and that~~ AND SHALL INCORPORATE THE CONCEPTS OF THE RISK-NEED-RESPONSIVITY OR ANOTHER EVIDENCE-BASED CORRECTIONAL MODEL. There is currently no way to ensure that adult sex offenders with the propensity to commit sexual offenses will not reoffend. Because there are adult sex offenders who can learn to manage unhealthy patterns and learn behaviors that can lessen their risk to society in the course of ongoing treatment, management, and monitoring, the board shall develop a procedure for evaluating and identifying, on a case-by-case basis, reliably lower-risk sex offenders WHOSE RISK TO SEXUALLY REOFFEND MAY NOT BE FURTHER REDUCED BY PARTICIPATION IN TREATMENT AS DESCRIBED IN PARAGRAPH (b) OF THIS SUBSECTION (4). The board shall develop and implement methods of intervention for adult sex offenders, which methods have as a priority

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

the physical and psychological safety of victims and potential victims and which are appropriate to the assessed needs of the particular offender, so long as there is no reduction in the safety of victims and potential victims.

(II) (A) ONCE THE BOARD HAS APPROVED REVISED PORTIONS OF THE STANDARDS, THE BOARD SHALL MAKE EVERY EFFORT TO PUBLISH THE APPROVED PORTIONS. THE BOARD SHALL COMPLETE A REVISION OF THE STANDARDS TO IDENTIFY AND EVALUATE ADULT SEX OFFENDERS BY JULY 1, 2017. IF THE BOARD DETERMINES THAT IT WILL BE UNABLE TO COMPLETE THE REVISION OF THE STANDARDS BY JULY 1, 2017, THE BOARD SHALL REPORT TO THE JUDICIARY COMMITTEES OF THE GENERAL ASSEMBLY, OR ANY SUCCESSOR COMMITTEES, A PROJECTED COMPLETION DATE AS PART OF ITS ANNUAL REPORT PRESENTED PURSUANT TO SECTION 16-11.7-109 (2) IN JANUARY 2017. THE REVISED STANDARDS MUST BE CONSISTENT WITH THE RECOMMENDATIONS PROVIDED TO THE BOARD IN THE 2014 INDEPENDENT EVALUATION OF THE BOARD'S STANDARDS AND GUIDELINES FUNDED BY THE GENERAL ASSEMBLY IN 2013; EXCEPT THAT, IF THE STANDARDS ARE NOT CONSISTENT WITH THE 2014 INDEPENDENT EVALUATION, IN ITS ANNUAL REPORT TO THE JUDICIARY COMMITTEES OF THE GENERAL ASSEMBLY, OR ANY SUCCESSOR COMMITTEES, PURSUANT TO SECTION 16-11.7-109 (2), THE BOARD SHALL DESCRIBE ANY INCONSISTENCIES AND EXPLAIN THE EVIDENCE-BASED REASONS FOR THE INCONSISTENCIES.

(B) THIS SUBPARAGRAPH (II) IS REPEALED, EFFECTIVE JULY 1, 2018.

(b) **Guidelines and standards for treatment of adult offenders.** (I) The board shall develop, implement, and revise, as appropriate, guidelines and standards to treat adult sex offenders, including adult sex offenders with developmental disabilities, INCORPORATING IN THE GUIDELINES AND STANDARDS THE CONCEPTS OF THE RISK-NEED-RESPONSIVITY OR ANOTHER EVIDENCE-BASED CORRECTIONAL MODEL, which guidelines and standards can be used in the treatment of offenders who are placed on probation, incarcerated with the department of corrections, placed on parole, or placed in community corrections. Programs implemented pursuant to the guidelines and standards developed pursuant to this paragraph (b) shall be as flexible as possible so that the programs may be accessed by each adult sex offender to prevent the offender from harming victims and potential victims. Programs shall include a continuing monitoring process and a continuum of treatment options available to an adult sex offender as he or she proceeds through the criminal justice system. Treatment options shall be determined by a current risk assessment and evaluation and may include, but need not be limited to, group counseling, individual counseling, family counseling, outpatient treatment, inpatient treatment, shared living arrangements, or treatment in a therapeutic community. Programs implemented pursuant to the guidelines and standards developed pursuant to this paragraph (b) shall, to the extent possible, be accessible to all adult sex offenders in the criminal justice system, including those offenders with mental illness and co-occurring disorders. The procedures for evaluation, identification, treatment, and monitoring developed pursuant to this subsection (4) shall be implemented only to the extent that moneys are available in the sex offender surcharge fund created in section 18-21-103 (3), C.R.S.

(II) TO REVISE THE GUIDELINES AND STANDARDS DEVELOPED PURSUANT TO THIS PARAGRAPH (b), THE BOARD SHALL ESTABLISH A COMMITTEE TO MAKE

RECOMMENDATIONS TO THE BOARD. AT LEAST EIGHTY PERCENT OF THE MEMBERS OF THE COMMITTEE MUST BE APPROVED TREATMENT PROVIDERS.

(III) (A) ONCE THE BOARD HAS APPROVED REVISED PORTIONS OF THE STANDARDS, THE BOARD SHALL MAKE EVERY EFFORT TO PUBLISH THE APPROVED PORTIONS. THE BOARD SHALL COMPLETE A REVISION OF THE GUIDELINES AND STANDARDS TO TREAT ADULT SEX OFFENDERS BY JULY 1, 2017. IF THE BOARD DETERMINES THAT IT WILL BE UNABLE TO COMPLETE THE REVISION OF THE STANDARDS BY JULY 1, 2017, THE BOARD SHALL REPORT TO THE JUDICIARY COMMITTEES OF THE GENERAL ASSEMBLY, OR ANY SUCCESSOR COMMITTEES, A PROJECTED COMPLETION DATE AS PART OF ITS ANNUAL REPORT PRESENTED PURSUANT TO SECTION 16-11.7-109(2) IN JANUARY 2017. THE REVISED GUIDELINES AND STANDARDS MUST BE CONSISTENT WITH THE RECOMMENDATIONS PROVIDED TO THE BOARD IN THE 2014 INDEPENDENT EVALUATION OF THE BOARD'S STANDARDS AND GUIDELINES FUNDED BY THE GENERAL ASSEMBLY IN 2013; EXCEPT THAT, IF THE STANDARDS ARE NOT CONSISTENT WITH THE 2014 INDEPENDENT EVALUATION, IN ITS ANNUAL REPORT TO THE GENERAL ASSEMBLY PURSUANT TO SECTION 16-11.7-109(2), THE BOARD SHALL DESCRIBE ANY INCONSISTENCIES AND EXPLAIN THE EVIDENCE-BASED REASONS FOR THE INCONSISTENCIES.

(B) THIS SUBPARAGRAPH (III) IS REPEALED, EFFECTIVE JULY 1, 2018.

(h) **Data collection from treatment providers.** (I) If the department of public safety acquires sufficient funding, the board may request that individuals or entities providing sex-offender-specific evaluation, treatment, or polygraph services that conform with standards developed by the board pursuant to paragraph (b) of this subsection (4) submit to the board data and information as determined by the board at the time that funding becomes available. This data and information may be used by the board to evaluate the effectiveness of the guidelines and standards developed pursuant to this article; to evaluate the effectiveness of individuals or entities providing sex-offender-specific evaluation, treatment, or polygraph services; or for any other purposes consistent with the provisions of this article.

(II) THE BOARD SHALL DEVELOP A DATA COLLECTION PLAN, INCLUDING ASSOCIATED COSTS, IN CONSULTATION WITH THE RESEARCH AND EVALUATION PROFESSIONALS ON THE BOARD AND WITHIN THE DEPARTMENT OF PUBLIC SAFETY. THE BOARD SHALL REPORT ON THE DATA COLLECTION PLAN TO THE JUDICIARY COMMITTEES OF THE GENERAL ASSEMBLY, OR ANY SUCCESSOR COMMITTEES, AS PART OF ITS ANNUAL REPORT PRESENTED PURSUANT TO SECTION 16-11.7-109(2) IN JANUARY 2017. BY JULY 1, 2017, THE BOARD SHALL REVISE THE GUIDELINES AND STANDARDS FOR APPROVED PROVIDERS DEVELOPED PURSUANT TO PARAGRAPHS (b) AND (j) OF THIS SUBSECTION (4) TO REQUIRE EVALUATORS, TREATMENT PROVIDERS, AND POLYGRAPH EXAMINERS TO COLLECT DATA PURSUANT TO THE DATA COLLECTION PLAN. IF THE BOARD DETERMINES THAT IT WILL BE UNABLE TO COMPLETE THE REVISION OF THE GUIDELINES AND STANDARDS BY JULY 1, 2017, THE BOARD SHALL REPORT TO THE JUDICIARY COMMITTEES OF THE GENERAL ASSEMBLY, OR ANY SUCCESSOR COMMITTEES, A PROJECTED COMPLETION DATE AS PART OF ITS ANNUAL REPORT PRESENTED PURSUANT TO SECTION 16-11.7-109(2) IN JANUARY 2017.

(i) **Standards for identification and evaluation of juvenile offenders.** The

board shall develop, prescribe, and revise, as appropriate, a standard procedure to evaluate and identify juveniles who have committed sexual offenses, including juveniles with developmental disabilities. The procedure shall provide for an evaluation and identification of the juvenile offender and recommend behavior management, monitoring, treatment, and compliance AND SHALL INCORPORATE THE CONCEPTS OF THE RISK-NEED-RESPONSIVITY OR ANOTHER EVIDENCE-BASED CORRECTIONAL MODEL based upon the knowledge that all unlawful sexual behavior poses a risk to the community and that certain juveniles may have the capacity to change their behavior with appropriate intervention and treatment. The board shall develop and implement methods of intervention for juveniles who have committed sexual offenses, which methods have as a priority the physical and psychological safety of victims and potential victims and that are appropriate to the needs of the particular juvenile offender, so long as there is no reduction in the safety of victims and potential victims.

(j) (I) **Guidelines and standards for treatment of juvenile offenders.** The board shall develop, implement, and revise, as appropriate, guidelines and standards to treat juveniles who have committed sexual offenses, including juveniles with developmental disabilities, INCORPORATING IN THE GUIDELINES AND STANDARDS THE CONCEPTS OF THE RISK-NEED-RESPONSIVITY OR ANOTHER EVIDENCE-BASED CORRECTIONAL MODEL, which guidelines and standards may be used for juvenile offenders who are placed on probation, committed to the department of human services, placed on parole, or placed in out-of-home placement. Programs implemented pursuant to the guidelines and standards developed pursuant to this paragraph (j) shall be as flexible as possible so that the programs may be accessed by each juvenile offender to prevent him or her from harming victims and potential victims. Programs shall provide a continuing monitoring process and a continuum of treatment options available to a juvenile offender as he or she proceeds through the juvenile justice system. Treatment options may include, but need not be limited to, group counseling, individual counseling, family counseling, outpatient treatment, inpatient treatment, shared living arrangements, and treatment in a therapeutic community. Programs implemented pursuant to the guidelines and standards developed pursuant to this paragraph (j) shall be, to the extent possible, accessible to all juveniles who have committed sexual offenses and who are in the juvenile justice system, including juveniles with mental illness or co-occurring disorders.

(II) TO REVISE THE GUIDELINES AND STANDARDS DEVELOPED PURSUANT TO THIS PARAGRAPH (j), THE BOARD SHALL ESTABLISH A COMMITTEE TO MAKE RECOMMENDATIONS TO THE BOARD. AT LEAST EIGHTY PERCENT OF THE MEMBERS OF THE COMMITTEE MUST BE APPROVED TREATMENT PROVIDERS.

(6) **Repeal.** (a) This section is repealed, effective September 1, ~~2016~~ 2020.

SECTION 2. In Colorado Revised Statutes, **amend** 16-11.7-105 as follows:

16-11.7-105. Sentencing of sex offenders - treatment based upon evaluation and identification required. (1) Each adult sex offender and juvenile who has committed a sexual offense sentenced by the court for an offense committed on or after January 1, 1994, shall be required, as a part of any sentence to probation, commitment to the department of human services, sentence to community corrections, incarceration with the department of corrections, placement on parole,

or out-of-home placement to undergo treatment to the extent appropriate to such offender based upon the recommendations of the evaluation and identification made pursuant to section 16-11.7-104 or based upon any subsequent recommendations by the department of corrections, the judicial department, the department of human services, or the division of criminal justice in the department of public safety, whichever is appropriate. The treatment and monitoring shall be provided by an approved provider pursuant to section 16-11.7-106, and the offender shall pay for the treatment to the extent the offender is financially able to do so.

(2) FOR OFFENDERS WHO BEGIN COMMUNITY SUPERVISION ON OR AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (2), THE SUPERVISING AGENCY OF EACH ADULT SEX OFFENDER AND JUVENILE WHO HAS COMMITTED A SEXUAL OFFENSE SHALL PROVIDE THE OFFENDER WITH A CHOICE OF TWO APPROPRIATE TREATMENT PROVIDER AGENCIES STAFFED BY APPROVED PROVIDERS UNLESS THE SUPERVISING AGENCY DOCUMENTS IN THE FILE THAT, BASED UPON THE NATURE OF THE PROGRAM OFFERED, THE NEEDS OF THE OFFENDER, OR THE PROXIMITY OF THE APPROPRIATE TREATMENT PROVIDER AGENCY, FEWER THAN TWO SUCH AGENCIES CAN MEET THE SPECIFIC NEEDS OF THE OFFENDER, ENSURE THE SAFETY OF THE PUBLIC, AND PROVIDE THE SUPERVISING AGENCY WITH REASONABLE ACCESS TO THE TREATMENT PROVIDER AGENCY AND THE OFFENDER DURING THE COURSE OF TREATMENT. ONCE SELECTED, THE TREATMENT PROVIDER AGENCY MAY NOT BE CHANGED BY THE OFFENDER WITHOUT THE APPROVAL OF THE COMMUNITY SUPERVISION TEAM, THE MULTIDISCIPLINARY TEAM, OR THE COURT.

SECTION 3. In Colorado Revised Statutes, 16-11.7-106, **repeal and reenact, with amendments,** (7) as follows:

16-11.7-106. Sex offender evaluation, treatment, and polygraph services - contracts with providers - placement on provider list - grievances - fund created. (7) (a) THE BOARD SHALL NOTIFY THE DEPARTMENT OF REGULATORY AGENCIES OF THE RECEIPT OF ANY COMPLAINTS OR GRIEVANCES AGAINST AN INDIVIDUAL WHO PROVIDES SEX-OFFENDER-SPECIFIC TREATMENT OR EVALUATION SERVICES PURSUANT TO THIS ARTICLE AND ADVISE THE DEPARTMENT OF ANY DISCIPLINARY ACTION TAKEN PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (7). THE DEPARTMENT OF REGULATORY AGENCIES OR THE APPROPRIATE BOARD, PURSUANT TO ARTICLE 43 OF TITLE 12, C.R.S., AND REFERRED TO IN THIS SUBSECTION (7) AS THE "DORA BOARD", SHALL NOTIFY THE BOARD OF THE RECEIPT OF ANY COMPLAINT OR GRIEVANCE AGAINST A PROVIDER WHO PROVIDES SEX-OFFENDER-SPECIFIC TREATMENT OR EVALUATION SERVICES PURSUANT TO THIS ARTICLE, IF THE COMPLAINT OR GRIEVANCE WAS NOT REFERRED BY THE BOARD, AND ADVISE THE BOARD OF ANY DISCIPLINARY ACTION TAKEN AGAINST THE INDIVIDUAL PURSUANT TO ANY PROFESSIONAL LICENSING ACT.

(b) THE BOARD SHALL REVIEW AND INVESTIGATE ALL COMPLAINTS AND GRIEVANCES CONCERNING COMPLIANCE WITH ITS STANDARDS AGAINST INDIVIDUALS WHO PROVIDE SEX-OFFENDER-SPECIFIC TREATMENT, EVALUATION, OR POLYGRAPH SERVICES PURSUANT TO THIS ARTICLE. NOTWITHSTANDING ANY ACTION TAKEN BY THE DEPARTMENT OF REGULATORY AGENCIES OF THE DORA BOARD, THE BOARD MAY TAKE APPROPRIATE DISCIPLINARY ACTION, AS PERMITTED BY LAW, AGAINST AN INDIVIDUAL WHO PROVIDES SEX-OFFENDER-SPECIFIC TREATMENT, EVALUATION, OR POLYGRAPH SERVICES PURSUANT TO THIS ARTICLE. THE DISCIPLINARY ACTION MAY

INCLUDE, BUT NEED NOT BE LIMITED TO, THE REMOVAL OF THE INDIVIDUAL'S NAME FROM THE LIST OF PERSONS WHO MAY PROVIDE SEX OFFENDER EVALUATION, TREATMENT, OR POLYGRAPH SERVICES PURSUANT TO THIS ARTICLE.

(c) (I) NOTHING IN THIS SUBSECTION (7) LIMITS THE RIGHTS OR RESPONSIBILITIES OF THE DEPARTMENT OF REGULATORY AGENCIES OR THE DORA BOARD WITH RESPECT TO THE INVESTIGATION AND RESOLUTION OF COMPLAINTS PURSUANT TO ARTICLE 43 OF TITLE 12, C.R.S.

(II) NOTHING IN THIS SUBSECTION (7) LIMITS THE RIGHTS OR RESPONSIBILITIES OF THE BOARD WITH RESPECT TO THE ADDITION OR REMOVAL OF AN INDIVIDUAL'S NAME FROM THE LIST OF PERSONS WHO MAY PROVIDE SEX OFFENDER EVALUATION, TREATMENT, OR POLYGRAPH SERVICES PURSUANT TO THIS ARTICLE.

SECTION 4. In Colorado Revised Statutes, 24-34-104, **repeal** (47.5) (f); and **add** (51.5) (j) as follows:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (47.5) The following agencies, functions, or both, shall terminate on September 1, 2016:

(f) ~~The sex offender management board created in section 16-11.7-103, C.R.S.;~~

(51.5) The following agencies, functions, or both, terminate on September 1, 2020:

(j) THE SEX OFFENDER MANAGEMENT BOARD CREATED IN SECTION 16-11.7-103, C.R.S.

SECTION 5. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 10, 2016, if adjournment sine die is on May 11, 2016); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2016 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: June 10, 2016