

Effecting Change
It "ain't" easy!

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Where We Have Been

It has been a somewhat bumpy-at times bumpier than others-ride since my son committed a sexual offense approximately 18 years ago. When he was sent to prison after failing on probation due to drug and alcohol problems, I settled on the living room couch and cried for three days straight. I thought my life was ended. So started our family's story regarding immersion into all of the challenges that arise when the criminal justice system is suddenly a part of an otherwise reasonably pristine life.

Due to the diligence and commitment of other family members suffering the same fate as our family, we were able to band together and begin to effect some change in the criminal justice system, especially as it pertained to those who had committed a sexual offense! Our story is not an easy one to tell, but because we have, at times, been victorious in terms of helping to make much needed changes to a system that will eat you alive if you give it the chance, we continue to tell it.

The atmosphere was rabid in Colorado in 2002 regarding sexual offense crimes. A little girl had, a number of years before 2002, been dropped in an outdoor toilet in a park – she was found and rescued when someone happened to walk by the area and heard her crying. Other significantly disturbing stories regarding other children molested and killed surfaced as well. During the last twenty years of the 1990's, much misinformation came out regarding those who had committed a sexual offense, including a report in Psychology Today stating that 80% of those who committed a sexual offense recidivated, committing more offenses. It has been found out since then that the person who supplied that information to Psychology Today apparently pulled the figure from the air, and that the actual recidivism rate (as nearly as we can tell) is much lower than that! In fact, other than murder, it is the lowest rate of recidivism than any other criminal offense except murder. Yet, those who commit this offense are treated worse than any other element of those in the criminal justice system because of the nature of the offense – i.e. sexual – and the fact that many times children are the persons hurt when these offenses happen.

Over the years here in Colorado, Colorado CURE, Advocates for Change (AFC), a group that grew out of the original Colorado Cure Sexual Offense Issues Group (SOIG), and CSOR (Coalition for Sexual Offense Restoration) which separated from Advocates for Change to form a Federal tax exempt non-profit group, decided that something had to be done regarding the severe approach that was taken toward men and women who committed a sexual offense. Other warriors including the Colorado Criminal Defense Bar and the Colorado Public Defender's Office also worked alongside us at the Legislature and in the community to try to change the image that people had of the "stranger danger" lurking in public parks and behind bushes, and to lessen the threatening, confrontational approaches utilized in the "treatment" of individuals who had committed this type of offense. Today, we work side by side with these same entities and individuals to continue to attack the untruths about this population, remove the Lifetime Act from the law here in Colorado, shorten times of incarceration, remove the polygraph, reduce or end the practice of sending people back to prison for technical violations, and get rid of the public registry! We are all intensely interested as well, in seeing prevention begin to take some of the money that is being squandered on "over-kill" in terms of lengthy incarcerations, probation and parole

periods. All of the public safety money is going to overdo activities with the 20% of people who have committed this offense while almost none of it goes toward prevention for the 80% that are still out there unidentified.

Notable achievements include: getting the “no known cure” language removed from the Lifetime Statute, calling the attention of parole to one treatment program in which significant numbers of people were committing suicide, getting parolees removed from that program for a significant period of time and eventually helping to cause the removal of the leader and founder of that program from the sexual offense treatment field. Other noteworthy successes included working with the Joint Budget Committee of the Colorado Legislature to set aside \$200,000 for Outside Evaluations of both the Sex Offense Treatment and Monitoring Program (SOTMP) inside the Colorado Department of Corrections (CDOC), and the Sex Offender Management Board (SOMB) treatment programs in the community. The studies done by this group of internationally recognized researchers were, while professionally appropriate, correctly insightful as they looked at the sad state of affairs in Colorado regarding the largely non research based (or old research based) Standards and Guidelines of the Sex Offender Management Board!

While the Sex Offender Management Board has now made at least some of the changes to the Standards and Guidelines that were strongly suggested by the team of visiting researchers, much work remains to be done. The Board has recommended to the Senate and House Judicial Committees at the Colorado Legislature in their legislative reports for the last couple of years, that Colorado consider going to a risk-based registry system instead of the “one size fits all” system that is currently in place. Unfortunately, and perhaps for all the wrong reasons, the Legislature has not acted on the recommendation of the SOMB.

We know clearly, and much of the U.S. has known longer than Colorado has known, that risk assessments can reasonably accurately predict individual risk. Until the time of the Outside Evaluations, the “one size fits all”, everyone is equally likely to commit this kind of offense again approach, reigned unchallenged within the halls of sex offense management and treatment both inside CDOC and in the community in this state. In addition to the recommendation regarding a risk-based registry, the Board also recommended that since The Adam Walsh Act no longer requires states that want to receive money from the Federal Government toward sexual offense programming maintain an SVP or Sexually Violent Predator designation. We would very much like to see the SVP designation in Colorado, as well as its assessment that has been redone four times trying to improve its ability to identify whatever a sexually violent predator is, and causing much harm to those so designated, **go away**. John Wayne Gacy and Ted Bundy would fit any sane person’s description of a sexual violent predator – molesting, murdering, eating their victims. It is not clear that anyone designated an SVP in Colorado has done anything close to this!

The national organization NARSOL (National Association for Rational Sex Offense Laws) has grown a great deal since its inception, and works intensely to change the laws regarding sexual offending in the U.S. and to challenge the existence of a public registry for those who have sexually offended. Both Advocates for Change and CSOR are members of NARSOL, and work with this group to bust the myths and proudly relate the facts regarding registrants.

Steps We are Taking to Move Forward

Continuing the War against the Polygraph

Recent research by Iacono and Gannon calls to question the efficacy of the polygraph, both in terms of its accuracy and validity, as well as its value to the treatment process, or lack thereof, as it relates to those who have committed a sexual offense. Iacono's work is follow up on research done in 2003 which raised questions about the polygraph. His most current paper confirms what appeared to be true in 2003 with lots more evidence available at this time. He states in 2018 that the 90% accuracy rates claimed when research is done by those belonging to the American Polygraph Association falls to more like 50 to 60% accuracy when done by researchers not part of the polygraph movement. Since we know that the polygraph is a test that is utilized to squeeze additional victims out of men that have committed a sexual offense, we have to continue to question its efficacy in this arena. In Colorado, there are too many instances where men have been telling the truth and yet have had to repeat the polygraph at least three times regarding the same questions. They answered the same each time, failing the first time and second time, and passing the third time.

Gannon's meta-analysis states that treatment is more effective when certain things are present in treatment, and certain things are absent. The polygraph is one of the modalities that she says makes treatment worse, not better and should be absent from the treatment environment. While it is not 100% clear the reasons this is the case, she suggests that there is research expressing the possibility that use of this instrument erodes whatever empathic, trusting relationship may be present between the client and his therapist. There is literature that states that the empathic relationship between therapist and client in this field is significant in predicting the positive progress of treatment.

Despite the fact that the SOMB Standards and Guidelines say that certain people may not be suitable for the polygraph because of physical or cognitive challenges of different types, it is forced on almost everyone.

Making Efforts to Remove the Lifetime Act from Colorado Law

Certain offenses were chosen arbitrarily back before the Lifetime Act of 1998 became law in Colorado. The offenses chosen were assumed to represent the crimes of "the worst of the worst". What we know now is that some determinately sentenced (specific number of years) men can in some cases, be higher risk to re-offend than those indeterminately (or Lifetime) sentenced. We are also very aware that risk is individual. It is not decided based on the crimes chosen by D.A.'s, prosecutors and others in the law enforcement field to represent the people they "believe" are most at risk to re-offend.

There are not nearly enough treatment slots for all of the men waiting at CDOC to get treatment and "progress in treatment" as the statute says, to get them treated by the time they reach their bottom number. The framers of this legislation obviously did not do any work to try to figure out the affects of this law on the prison system, the outside of prison treatment system, and the men who would go years beyond their bottom number (i.e. 4 – Life) before getting into treatment.

Other states do not understand when they get our men in their state on an Interstate Compact why they have to stay in treatment so long. Someone with a 10 year parole like my son would, according to the previous Standards and Guidelines, have had to stay in treatment all ten years of their parole. The new Standards let up a bit on that, and we are seeing one of the more innovative treatment programs let people off parole earlier than the end of their parole period. Still, with the long periods of incarceration waiting to get into treatment, and the then lengthy continuation of treatment on the outside, it is pretty

clear that Colorado gets the same recidivism rates as other states, but requires its clients to stay in prison longer, and under outside treatment and supervision longer than many other states.

Holding the SOMB Accountable

Efforts this year by Advocates for Change resulted in a Legislative Audit of the Sex Offender Management Board (SOMB). Since this audit is just getting underway, we do not yet have results. For too long, the SOMB has enjoyed a “place in the sun” in the eyes of a Legislature that does not want to personally deal with sexual offending issues because of their own potential legislative mortality. In spite of moments of serious critique of the SOMB, it is clear that the Colorado Legislature feels more secure with the SOMB in place. Few states across the U.S. have an SOMB – we are one of the few. One previous Sunset Review of the Board did suggest and get changes made in a number of important areas – recent reviews have been less effectual despite the Legislature’s anger over areas of their performance that did not please them – for instance, the time it was taking to get people into and through treatment in CDOC, and the cost of polygraph examinations.

Reducing the Number of People Returning to Prison on Technical Violations (without committing a new offense)

Recent attempts to improve the relationships between parole officers and their clients have met with some success, but we have a long way to go! Too many people are returning to prison on technical violations in spite of the fact that under previous Executive Director of CDOC Rick Raemisch, an attempt was made to limit the people returning to those who committed at least 4 technical violations. It appears at times (I cannot prove this) that there is a push to get the number up to 4 in order to return people to prison. It was my privilege to sit in on revocation hearings for two men last week who were terminated from a usually progressive treatment program. Parole, based on the termination from treatment, recommended the “remainder” of the person’s lifetime if they were sentenced under the Lifetime Act, and the remainder of sentence if they were determinately sentenced. I had planned to only testify for one, as I did not know the second man was going to be there. Since he was alone, I testified for both of them, and asked for a second chance. While the hearing officer did not honor parole’s request for the remainder, he did send them both back for an 180 day turnaround. It amazes me that parole does not seem to understand what this does to the semblance of a life these clients are trying to put back together. Jobs are lost, housing is lost, and what attempts to return to a more normal life than incarceration had been made were thrown out the door.

Parole and treatment chalk this kind of behavior on their part up to “community safety”. I reminded the Director of Parole and two Assistant Directors at a recent meeting between them and two of us from the CSOR Board that we have the lowest recidivism rate among sexual offense clients of any felonies except murder. Yet the call is for harsh, stringent punishment for men who are out of location according to their ankle bracelets. Don’t get me started on the constant breakdown of ankle bracelets, or the fact that the man that murdered previous Executive Director of Prisons Tom Clements, cut his off and no-one in Parole realized it for days!

The day of these revocation hearings I had been told that there were 400 people waiting in Colorado jails to go to prison, and at the same time there were four open beds at CDOC! The irony of this situation made me re-think what I was doing that day. I tried to keep two men with technical violations from going back to prison, and in the afternoon sat with people from parole telling me that public safety was paramount, and that was why parole was tough on parolees. The Legislature is trying to get the

cost of prison down, yet the same machinery that built the prisons in the first place keeps right on churning.

Looking at Canadian, Norwegian and other Models of Treatment and Detention

A recent meeting between the new Executive Director of Prison, Dean Williams and me included discussion of other models of working with criminal justice issues. The Director, previously from the prison system in Alaska, admitted they had made a mistake by taking Native Alaskan men from their remote towns to put them in prison after a sexual offense, and then kept them in the “big city” during parole instead of returning them to their homes. This created an additional problem for these men – homelessness. Director Williams also stated that his trip to Norway had a huge effect on him, and he planned to continue to look at their style of dealing with criminal justice matters. He spoke of short periods of incarceration, and half-way houses with one overseer, as well as of occupants of the half-way house who got to go home over the weekend, and were happy to come back on Monday morning. None of the half-way house clients I work with are “happy” in any way with the half-way house experience!

Director Williams also recently attended our CSOR Quarterly Meeting, and shared a bit of his vision and what he believes is also the vision of Governor Polis, before spending most of the meeting time listening to the thoughts, frustrations and ideas expressed by the audience! He invited several people who spoke to set up meetings with him regarding a variety of sexual offense and criminal justice topics. It was refreshing.

Answering Letters from CDOC

CSOR continues to try to keep up with the plethora of letters that come from those currently incarcerated here in Colorado prisons, incarcerated nationally in Federal Prisons, and those in Civil Commitment across the country as well. These letters enable me to see the real quality of life or lack thereof present in these incarceration situations, the lack of hope that many have regarding ever getting out, the frustration of men who have finished treatment and sit in holding situations until there is acceptable housing found for them (and we are able to figure out a way to pay for that housing while they get established with a job or benefits on the outside). The SOTMP (inside treatment program) has made many improvements since the Outside Evaluations took place in 2014, but lack of space for treatment, lack of enough qualified therapists, some therapists still committed to the old “containment, one size fits all approach” continue to haunt the treatment process on the inside. I am honored to know these men, initially through their letters and sometimes when they get to the outside. My life is richer because we at CSOR are doing this work. We need many more letter ambassadors and persons on the outside willing to support those who have NO support.

Ending the Sexual Offense Registry

It has always been a question of mine why victims and the public in general feel “safer” because of the registry. There are hours every day and sometimes into the night when the person on the registry is not at home. Knowing where they are 8 -14 hours a day is little protection if someone is really out to re-offend sexually. We know from research that recidivism rates for this population are among the lowest amidst felonies. People daily put themselves in positions of danger while drinking at bars, driving across town or across the country, eating improperly; yet, the anger of a whole society is taken out on this one group of people who must REGISTER, sometimes for their whole life. Besides local and

statewide efforts at removing the registry, NARSOL, National Association for Rational Sex Offense Laws, has launched a nationwide effort to rid the United States of the sexual offense registry. Those of us working at both the state and national level on this and other challenges facing these men and women, are grateful for a national group that is working very hard to get rid of the evil of registering human beings!

There is a verse from the Bible that says “The harvest is plentiful, but the laborers are few”. We could continue on with pages more of the efforts being made to improve the situation for men and women who serve long sentences, participate in years of treatment, and then sit, at least in cases of everyone sentenced under the Lifetime Act, on the sex offense registry for the rest of their lives. Some of these men have earned Bachelors and Masters Degrees, started their own prison ministries, bought housing for men on probation or coming out of prison, come out to fulfill important jobs – there has got to be a more reasonable stopping point to the punishment of these men (and some women) who despite living ongoing productive lives, after having paid their debt, will have to register for their whole life!

We need hundreds, no thousands more workers committed to this battle to come forward and work diligently, not just for their own family member, but for others as well!