MARYLAND
SEXUAL OFFENDER ADVISORY BOARD

Report to the Governor and the Maryland General Assembly

2011

December 31, 2011

The Honorable Martin O'Malley
Governor of Maryland
100 State Circle
Annapolis, Maryland 21401

Governor O'Malley:

The Maryland Sexual Offender Advisory Board has been working throughout the past year reviewing national and international research, reports, evaluations, as well as policies and procedures associated with the management of sexual offenders. We seek the goal of ensuring that Maryland's approach remains consistent with the best current research and the most effective practices in the nation.

This year the Nation has been stunned, yet again, by a highly publicized and deeply disturbing story of sexual child abuse. The narrative that is being told by the Penn State community is, however, very different from other sensational stories of abduction, sexual assault, and murder that very often captivate the media and engender a legislative response. The horrors that have happened at Penn State serve to illustrate what we know to be a truth underlying the structures that offenders construct in order to perpetrate abuse. We know that many victims know their abusers. We know that offenders seek out victims who are vulnerable. We know that offenders use positions of power, authority, and guardianship to access victims. We must look clearly at sexual abuse for what it is – morally, ethically and fundamentally reprehensible. Our attempt to control sexual abuse has been mostly reactionary. We must seek out ways to prevent sexual abuse from ever happening.

One in four girls and one in five boys are victims of sexual abuse before the age of 18. This is a crisis of immense proportion. Sexual abuse has many long-term costs not the least of which is the cost of healthcare for victims who have turned to drugs and alcohol or other self-harming behaviors. Among these increasing costs are: lost time at school and a future inability to maintain relationships resulting in child neglect and physical abuse. Sexual abuse can cause, without appropriate intervention, a lifetime of self-destructive and anti-social behavior. It is incumbent upon us to ensure that we fully fund victim service organizations, as well as adult and child protection programs. We must also look for ways to recognize signs that an individual is a sexual abuser and stop the behavior.

This year the Board has definitively focused on:

1) developing an effective approach to ensure that mental healthcare providers who work with sexual offenders have the all of the knowledge, resources, and tools available to them in order work collaboratively with criminal justice agencies, reduce recidivism, and prevent future sexual abuse;

2) understanding the broad range of sexual offenses encompassed in the current Criminal Law Statute and their impact on sentencing, registration, and public perception; and

3) attempting to gather and synthesize information that demonstrates the complexity involved in understanding the intricate systems governing the care of the vulnerable, aging, and incapacitated in healthcare facilities.

The Sexual Offender Advisory Board will continue to meet during the year ahead to review available research, to investigate promising developments, to propose necessary modifications to existing practices, to establish appropriate standards, and – most importantly – to continually monitor the effectiveness of our ongoing efforts to protect our communities from the devastating effects of sexual abuse.

Sincerely,

J. Joseph Curran, Jr.
Sexual Offender Advisory Board, Chair

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Executive Summary

Over the course of 2011 The Maryland Sexual Offender Advisory Board met four times to listen to reports by the subcommittees, discuss the topics presented, and voted on the subjects presented in this report. This year the Board had three active subcommittees. These subcommittees were tasked with presenting recommendations to the Board on the treatment and assessment of sexual offenders, criminal law revision, and safety issues in nursing home and assisted living facilities.

Subcommittee Activity

In 2011 the Assessment and Treatment Subcommittee met a total of 10 times to develop a set of criteria for treatment providers who want to treat convicted sexual offenders and to create an effective approach to ensure that mental healthcare providers who work with sexual offenders have all of the knowledge, resources, and tools necessary to work collaboratively with criminal justice agencies, reduce recidivism, and prevent future sexual abuse.

Over the course of the past year the Criminal Law Revision Subcommittee met 4 times and reviewed the broad range of sexual offenses encompassed in the current Criminal Law Statute and their impact on sentencing, registration, and public perception.

Throughout 2010 and 2011 the Nursing Home and Assisted Living Facility Subcommittee worked to bring together the essential stakeholders involved in understanding the complex systems governing the care of individuals living in healthcare facilities and to find areas where safeguards could be put in place to protect residents and staff from sexual offenders. In 2011 the subcommittee met 4 times.

Some of the Board's recommendations could have significant fiscal impact; some, upon further inspection, may not be operationally feasible. The Board will continue to refine the recommendations in this report throughout 2012, with the aim of promoting the successful implementation of the Board's recommendations.

Accomplishments

The Board’s primary accomplishment has been the increased interagency coordination among the public and private stakeholders responsible for the management of sexual offenders and the restoration of victims. Members of the Board have provided, over the course of the year, advice

to Maryland's General Assembly members seeking information on topics of particular importance to sexual offender management.

The Maryland State Police, Maryland Sex Offender Registry Unit, and the Maryland Division of Parole and Probation have been working with local law enforcement to collect the DNA of registered sexual offenders who have not previously been required to give DNA or who have moved to Maryland from another state that did not require DNA collection as a condition of registration. By March 2012 the Sex Offender Registry Unit anticipates that more than 1,500 samples will have been collected from registrants who have not previously given a DNA sample to the Maryland Crime Laboratory.

In the summer of 2011 the Maryland Sex Offender Registry and the Department of Juvenile Services (DJS) completed training for DJS case managers in all counties on the process of registering juveniles in the public and non-public registry. Local sex offender registration units have agreed to take the juvenile fingerprints for DJS employees, until such time that DJS is able to submit fingerprints for the purpose of registration. DJS, the Registry and several treatment providers participated in a training organized by the courts on the treatment, assessment and management of juveniles who have committed sexual offenses.

On July 19, 2011 the Secretary of the Department of Public Safety and Correctional Services received a letter (Appendix A p. 53) from the Federal Office of Sex Offender Sentencing, Management, Apprehension, Registration, and Tracking (SMART) indicating that Maryland was determined to be in substantial compliance with Title 1 of the Federal Adam Walsh Act (AWA) or as it is more commonly known the Sex Offender Registration and Notification Act (SORNA). Becoming compliant with AWA has allowed Maryland to more accurately track and register convicted sex offenders, and to increase information sharing among the jurisdictions. Additionally, compliance with SORNA prevented a 10% reduction in the federal Byrne Grant monies that Maryland receives to support law enforcement activities.

Future Activities

The Board will continue its work in 2012 by focusing on: implementing the Sexual Offender Treatment Approved Provider List; creating an Office of Professional Services to maintain the list and develop training appropriate for specialized treatment providers; establishing a process for termination of Lifetime Supervision for violent sex offenders; reviewing the implementation of the new sex offender registration laws; and investigating emerging techniques to improve how sexual offenders are managed in Maryland.

Chairman:	**J. Joseph Curran, Jr.** *Citizen Representative*
Ex-Officio:	**Gary D. Maynard,** Secretary Department of Public Safety and Correctional Services
	Sam Abed, Secretary Department of Juvenile Services
	Dr. Joshua Sharfstein, Secretary Department of Health and Mental Hygiene
	Kristen Mahoney, Executive Director Governor's Office of Crime Control and Prevention
	Colonel Marcus L. Brown, Superintendent Maryland State Police
	David Blumberg, Chairman Maryland Parole Commission
	Dr. Brian Hepburn, Executive Director Mental Hygiene Administration
	Patricia Vale, Director Division of Parole and Probation
	Carole Shelton, Director Criminal Justice Information System—Central Repository
Governor's Appointees:	**Laura Estupinan-Kane, Ph.D.** *Sexual Offender Treatment Provider*
	Dr. Annette L. Hanson *Citizen Representative*
	Michele J. Hughes, Exec. Director, Life Crisis Center, Inc. *Victim's Advocacy Representative*
	David Walsh-Little, Assistant Public Defender, Baltimore *Criminal Defense Lawyer*
	Chief Arthur R. Smith, Hagerstown Police Department *Law Enforcement Officer*
	Karla Smith, Asst. State's Attorney, Montgomery County *State's Attorney*
	Catherine Meyers, Executive Director Center for Children, Inc. *Child Advocacy Center Representative*

SPECIALIZED SEXUAL OFFENDER TREATMENT

General Assembly's Charge to the Board Regarding Certification of Specialized Sex Offender Treatment Providers

The Annotated Code of Maryland Public Safety Article, §1-404(g)(6) states, "The Board shall develop standards for the certification of sexual offender treatment providers based on current and evolving evidence-based practices and make recommendations for a statewide certification process".

Overview

People who commit sexual offenses have a variety of behavioral disturbances. Many have a personality disorder, often antisocial personality disorder[1]. Others may be diagnosed with a sexual disorder, or paraphilia[2]. Some have both, while others have none. All sexual offenders are candidates for behavioral management. A subset may benefit from mental health services as well.

Specialized treatment is an important part of a comprehensive model of sex offender management. The ultimate goals of treatment is to motivate and enable the individual who has sexually offended to develop the ability to self-regulate his or her behavior and by doing so increasing public safety. Collaboration among treatment providers, parole and probation agents, polygraph examiners, family members and victim advocates is of prime importance to the successful treatment and supervision of individuals who have committed sexual offenses.

Whether sexual offender treatment works continues to be the subject of debate.

[1] Personality Disorders are defined by an individual's maladaptive behaviors that differ from societal norms and expectations; and these behavioral patterns are typically associated with severe disturbances in cognition, emotional arousal and response, impulse control, and ability to relate or empathize with others such as Antisocial Personality Disorder. Personality disorders are noted on Axis II in the DSM-IV-TR (text revision, 2000) of the American Psychiatric Association.

[2] Paraphilia is a medical or behavioral science term for what is also referred to as: sexual deviation, sexual anomaly, sexual perversion or a disorder of sexual preference such as pedophilia. It is the repeated, intense sexual arousal to unconventional (socially deviant) stimuli. Paraphilias are currently recognized as one of the categories of Axis I Sexual and Gender Identity Disorders in the DSM-IV-TR (Diagnostic and Statistical Manual of Mental Disorders – text revision, 2000) of the American Psychiatric Association.

A review of the research on the topic finds two consistent results: treatment significantly reduces recidivism, on average by approximately 30%, and best practice treatments significantly outperform treatments that are not informed by best practices. A large meta-analysis done by Hanson, et al. (2002)[3] found a 12.3% reoffense rate for those who received "any treatment," a 9.9% rate for those who received "current treatments," and a 17.4% rate for those who received no treatment. These findings are consistent with those of Losel and Schmucker (2005)[4] (11.1% versus 17.5%). More recently, Hanson et al. (2009)[5] found a 10.9% reoffense rate for those who received treatment versus a 19.2% rate for those who did not, and more notably, found that programs that used the Risk-Need-Responsivity (RNR)[6] best practice approach showed the greatest reductions in recidivism (and that reductions in recidivism increased in direct proportion to the degree a program implemented all aspects of the RNR approach). The "risk" principle says that the greatest resources and efforts should be directed toward those individuals with the highest risk of reoffending. The "need" principle holds that the focus of intervention should be on the characteristics of the offender shown to be associated with the greatest propensity to reoffend and that have the greatest potential to be changed. The "responsivity" principle states that interventions must be delivered in ways that best match the learning capacities of the offenders. That is, in addition to assessments of "risk,"

Treatment significantly reduces recidivism, on average by approximately 30%, and best practice treatments significantly outperform treatments that are not informed by best practices, producing even larger reductions in recidivism.

[3] Hanson, R. K., Gordon, A., Harris, A. J. R., Marques, J. K., Murphy, W., Quinsey, V. L., & Seto, M. C. (2002). First report of the Collaborative Outcome Data Project on the effectiveness of psychological treatment of sex offenders. Sexual Abuse: A Journal of Research and Treatment, 14, 169-194.

[4] Lösel, F., & Schmucker, M. (2005). The effectiveness of treatment for sexual offenders: A comprehensive meta-analysis. Journal of Experimental Criminology, 1, 117-146.

[5] Hanson, R.K., Bourgon, G., Helmus, L., & Hodgson, S. A meta-analysis of the effectiveness of treatment for sexual offenders: Risk, Need, and Responsivity (2009-01). Public Safety Canada.

[6] Andrews, D.A. & Bonta, J. (2010). The psychology of criminal conduct (5th Edition). Cincinnati OH: Anderson Publishing

successful sex offender management approaches must include an assessment of offender "needs" and the identification of strategies that can maximize an offender's "responsivity" to behavior change. Sex offender treatment professionals contribute importantly to this process. Accordingly, treatment improves public safety, and best practice treatments maximize that benefit.

A Summary of Maryland's Current Policies and Procedures

In Maryland, other than licensure by one of the Professional Boards (e.g. Board of Social Work Examiners, Board of Examiners of Psychologists), there is currently no special certification process for mental health providers who seek to treat individuals who have committed sexual offenses.

The Maryland Division of Parole and Probation (DPP) has established minimum criteria that mental health professionals must meet to be eligible for contracts to treat individuals convicted of a sexual offense who are under the agency's supervision. Currently, there are approximately two hundred and fifty (250) adults who have committed sexual offenses receiving specialized treatment from the four providers with whom the DPP contracts. Other individuals who have committed sexual offenses receive treatment from providers with whom the DPP has no formal relationship. DPP's criteria were reviewed by the Sexual Offender Advisory Board's (SOAB) Assessment and Treatment Subcommittee and determined to represent national best practices. The minimum criteria were used as a baseline for the creation of a framework for specialized sex offender treatment statewide.

Likewise the Maryland Department of Juvenile Services (DJS) has outlined recommended qualifications for those providing direct services to youth who have offended sexually. Since the fall of 2003, the Maryland DJS has had a Sex Offender Task Force (SOTF) which started informally and evolved into a DJS sanctioned task force in 2005. The Task Force worked to promote best practices among clinicians and case managers who work with children and adolescents, with the understanding that

children and adolescents with sexual behavior problems are very different than adults. Children and adolescents with sexual behavior problems represent a broad spectrum that includes youth with developmental delays or disabilities, naive experimenters, and youth with mental health treatment needs. Most children and adolescents who receive treatment do not go on to become sexual offenders. The Task Force generated two reports[7] and each report contained specific recommendations as to how to improve services for youth who have sexually offended. The Task Force, in collaboration with national experts, developed specific credentialing criteria for sex offender treatment providers in order to ensure that any clinician working with youth who have offended sexually is highly skilled and knowledgeable about this population. The Task Force's Training Committee worked to create and support quality training. This included a partnership with the Behavioral Health Leadership Institute resulting in the development of a training program for service providers and specialized DJS case managers. The training program included a yearly conference and a year-long mentoring component for service providers. The intent of the program was to train existing providers and DJS case managers as well as to increase the pool of available service providers. The program remained active until funding was no longer available. As of October 2011 there were 337 youth who committed sexual offenses receiving treatment and supervision under the auspices of the DJS. Eight residential and sixteen nonresidential providers are currently rendering services to those youths.

Practices in Other States for Certifying or Qualifying Providers

In response to the Legislature's request that the Board develop a process for certification of providers working with individuals who have committed sexual offenses, the Board compiled an overview of the relevant practices in place in other states. As was reported in 2010, the review indicated that several states have some type of mandated oversight of providers or are in the process of creating a method of oversight. In other states, as in Maryland, specifications for providers are delineated in contracts for services put forth by various state agencies. By way of summary, the

[7]Maryland Department of Juvenile Services Task Force Report on Juvenile Sex Offenders, June 2, 2005 and October 2007.

following information presents some of the practices used in other states for certifying or qualifying providers. The list is meant to be illustrative as opposed to exhaustive; readers are cautioned that changes may have been made since the Board's review.

Alaska Administrative Code Title 22, Chapter 30, establishes the Sex Offender Treatment Committee under the Department of Corrections. An individual who wishes to provide sex offender treatment to a sex offender who is under the department's jurisdiction first must obtain, and then maintain, approval from the department under this chapter in order for the treated sex offender to be considered in compliance with a sex offender treatment requirement imposed by the court, the parole board, or the department. Department approval of such a provider is required regardless of who pays for the sex offender's treatment and regardless of whether the treatment takes place in a correctional facility or is community-based.

California California Penal Code Section 9003 (a), which states that on or before July 1, 2011, The California Sex Offender Management Board shall develop and update standards for the certification of sex offender management professionals. All those professionals who provide sex offender management programs and risk assessments, pursuant to Section 290.09, shall be certified by the board according to these standards. The standards shall be published on the board's Internet Web site. Professionals may apply to the Board for certification on or after August 1, 2011. The California Penal Code also states that all sex offender treatment providers and programs wishing to contract with state agencies must be certified by the Board not later than July 1, 2012.

Colorado In 1992, the Colorado General Assembly passed legislation (Section 16-11.7-101 through Section 16-11.7-107 C.R.S.) which created a Sex Offender Management Board to develop standards for the assessment, evaluation, treatment and behavioral monitoring of adult sex offenders. State statute (Section 16-11.7-107 C.R.S.) prohibits the Department of Corrections, the Judicial Department, the Division of Criminal Justice of the Department of Public Safety, or the Department of Human

Services from employing or contracting with, or allowing a convicted sex offender to employ or contract with providers unless they meet these standards. The Standards and Guidelines for Assessment, Evaluation, Treatment, and Behavioral Monitoring of Adult Sex Offenders were created in 1996. In 2002, Colorado published The Standards and Guidelines for the Evaluation, Assessment, Treatment and Supervision of Juveniles Who Have Committed Sexual Offenses. These standards were revised in 2008.

Idaho Effective July 1, 2011, the Sexual Offender Classification Board has been replaced by a new Sexual Offender Management Board. This change was brought about through SB1154a during Idaho's 2011 legislative session. In addition to maintaining responsibility for setting pre-sentence sexual offender evaluation standards and psychosexual evaluator certification, the new board is charged with setting standards for sexual offender treatment, and certification of treatment providers and polygraphers who conduct polygraphs on sexual offenders. Standards set by the SOMB will apply to adult and juvenile sexual offenders**.**

Illinois Administrative Code Title 20, Chapter VII, Part 1900 creates a Sexual Offender Management Board (SOMB) under the auspices of the Attorney General's Office. Providers are approved via application to the SOMB.

Kentucky Statutes KRS 17.564; 501 KAR 6:220 established a Sex Offender Risk Assessment Advisory Board. The Board designates "approved providers" based on adherence to a set of treatment standards contained in the statute.

Oregon ORS 675.375 (Certification of clinical sex offender therapist or associate sex offender therapist) establishes the titles certified clinical sex offender therapist and certified associate sex offender therapist. This does not prohibit others from providing services to treat sex offenders. However, only those certified under ORS 675.360 to 675.410 shall represent the designated titles to the public. Adult and juvenile parole and probation authorities and the Oregon Health Authority may restrict their referrals to

those providers who are certified.

Pennsylvania In 1995, the Pennsylvania Legislature passed Act 42 (42 Ps. C.S.A., Subchapter H, as amended) creating the Sexual Offenders Assessment Board (SOAB). Among its duties, this Board has been charged with the responsibility for the development of standards for the evaluation, treatment and monitoring of persons found by the courts to be sexually violent predators. State law also requires that Sexually Violent Predators attend at least monthly counseling sessions in a program approved by the SOAB. The Board designates approved treatment providers for sexually violent predators based on adherence to a set of published treatment standards. The Board maintains a Sex Offender Treatment Provider Listing which is available via its website. The SOAB created Sexually Violent Predator Treatment and Management Standards to provide a basis for the systematic assessment, treatment and management of sexually violent predators, by requiring best practice, sex-offender specific assessment and treatment interventions that are integrated into and coordinated with the offender supervision provided by probation and parole, correctional and other criminal justice authorities. The primary goals of these standards are the enhancement of public safety and victim protection. State law requires that the SOAB be comprised of psychiatrists, psychologists, and criminal justice professionals, who are experts in the evaluation and treatment of sexual offenders. The SOAB members are appointed to four-year terms by the Governor.

During the most recent reporting period, the SOAB had a total panel complement of seventy-six (76) members. The SOAB is administered by an Executive Director, and supported by an administrative staff and a team of investigators. The SOAB is housed under the Pennsylvania Board of Probation and Parole by statute for support services.

Tennessee Code Annotated Title 39, Chapter 13 established the Tennessee Sex Offender Treatment Board which maintains a list of approved providers. In 1995, the Tennessee General Assembly created the Sex Offender Treatment Board in the Department of Correction. The General Assembly declared, in TCA 39-13-702 (a), that

the "...comprehensive evaluation, identification, treatment and continued monitoring of sex offenders who are subject to the supervision of the criminal justice system are necessary in order to work toward the elimination of recidivism of such offenders." Historically, the Board's work emphasized development of a statewide system of professionals specializing in sex offender treatment. The Board was also charged with these activities:

- Developing and prescribing a standardized procedure for the evaluation and identification of sex offenders
- Developing and implementing methods of intervention
- Developing guidelines and standards for a system of programs for the treatment of sex offenders placed on probation, incarcerated in the Department of Correction, placed on parole, or placed in community corrections.
- Researching and analyzing program effectiveness
- Developing and prescribing an offender tracking system
- Developing a system for monitoring offender behavior.

Texas Administrative Code Title 22, Part 36, Chapter 810, Subchapter A, Rule 810 established the Council on Sex Offender Treatment under the Texas Department of Health. Per rule, “a person shall not provide sex offender treatment or act as a sex offender treatment provider unless the person is licensed by the council. A person may not claim to be a sex offender treatment provider or use the title or an abbreviation that implies the person is a sex offender treatment provider unless the person is licensed under this chapter. The council shall maintain a list of licensees who meet the council's licensure criteria to assess and treat adult sex offenders and/or juveniles with sexual behavior problems. “

Virginia Regulations established by The Virginia Board of Psychology (18 VAC 125-30 -10) govern Certified Sex Offender Treatment Providers (CSOTP). “Certified sex offender treatment provider” means a person who is certified to provide treatment to sex offenders and who provides such services in accordance with state law. Virginia law states that “No person, including licensees of the Boards of Counseling; Medicine;

Nursing; Psychology; or Social Work, shall claim to be a certified sex offender treatment provider unless he has been so certified. No person who is exempt from licensure under [Virginia Law] shall hold himself out as a provider of sex offender treatment services unless he is certified as a sex offender treatment provider by the Board of Psychology."

Washington According to state law, no person shall represent himself or herself as a "certified sex offender treatment provider" or "certified affiliate sex offender treatment provider" without first applying for and receiving a certificate pursuant to (RCW 18.155.030). Per RCW 18.155.070 a certificate shall be issued to any applicant who has successfully completed an educational program or alternate training approved by the Secretary of Health, who meets the experience requirement established by the Secretary, and who meets other requirements as may be established by the Secretary that impact the competence of the sex offender treatment provider. Providers must pass an examination administered or approved by the Secretary. Currently, applicants must pass (90% or better) a written exam that has 150 questions regarding assessment, evaluation, treatment, monitoring, theory, research, standards of practice, ethics, victimology, and jurisprudence issues.

In addition an applicant must not:

- have engaged in unprofessional conduct or be unable to practice with reasonable skill and safety as a result of a physical or mental impairment; or
- have been convicted of a sex offense, as defined in RCW 9.94A.030 or convicted in any other jurisdiction of an offense that under the laws of this state would be classified as a sex offense as defined in RCW 9.94A.030

Only a certified sex offender treatment provider, or certified affiliate sex offender treatment provider who has completed at least fifty percent of the required hours under the supervision of a certified sex offender treatment provider, may perform or provide the following services:

- Evaluations conducted for the purposes of and pursuant to RCW 9.94A.670 and

13.40.160;

- of convicted level III sex offenders who are sentenced and ordered into treatment pursuant to chapter 9.94A RCW and adjudicated level III juvenile sex offenders who are ordered into treatment pursuant to chapter 13.40 RCW;
- Treatment of sexually violent predators who are conditionally released to a less restrictive alternative pursuant to chapter 71.09 RCW.

Certified sex offender treatment providers and certified affiliate sex offender treatment providers may provide treatment of convicted level I and level II sex offenders who are sentenced and ordered into treatment pursuant to chapter 9.94A RCW and adjudicated juvenile level I and level II sex offenders who are sentenced and ordered into treatment pursuant to chapter 13.40 RCW.

Discussion and Recommendations

The Board recommends that the fundamental principles of offender rehabilitation (Risk-Need-Responsivity) guide Maryland's sex offender management strategies and that Maryland focus on approaches that demonstrate success and recognize the importance of qualified, trained professionals working collaboratively. Mental health professionals who provide treatment services for individuals who have committed sexual offenses need specialized training, education and experience.

The Board discussed the pros and cons of implementing a different process for monitoring, training and approving providers rendering services to individuals who have committed sexual offenses who are under auspices of a state agency and/or the courts. The overarching concern is that taxpayers and community members at large be assured that individuals who have committed sexual offenses receive optimal services in order to enhance public safety. However it is recognized that enhanced regulation that is too onerous could potentially decrease the supply of providers and thereby limit consumer choice and increase the cost of services. The Board considered several

8 State of Colorado Department of Regulatory Agencies. Office of Policy, Research and Regulatory Reform 2009 Sunset Review: Sex Offender Management Board, October 15, 2009

different levels of potential oversight including licensure, certification and registration[8]. Each level has its strengths and weakness.

Licensure is the most restrictive form of regulation, yet it provides the greatest level of public protection. Licensure requires the completion of a prescribed educational program and the passage of an examination that is designed to measure a minimal level of competency. Typically only those individuals who are properly licensed may use a particular title(s) and engage in a particular practice. Said requirements can be barriers to entry but also afford the highest level of consumer protection in that they ensure that only those who are deemed competent may practice. The public is alerted to those who may practice by the title used.

Certification offers a level of consumer protection similar to licensure but the barriers to entry are generally lower. The required educational program may be more vocational in nature and an examination may or may not be required. Certification programs may involve a non-governmental entity that establishes training requirements and administers an examination. Certification also usually entails title protection and practice exclusivity.

Registration (or the creation of an approved listing) can serve to protect the public with minimal barriers to entry. Typically, registration requires individuals to satisfy certain requirements often via the use of a disclosure form and they, in turn, are placed on the pertinent registry or list. Registration can entail title protection and practice exclusivity and thus serves to notify the public of which individuals are engaging in the relevant practice. Barriers to entry in registration are relatively low.

The Board concluded that developing a registration process would be the least restrictive level of oversight and serve to protect public safety. The Board is particularly concerned that a more stringent level of oversight could potentially limit services in general, and particularly in rural areas of the state wherein service providers are often already at a minimum. Previous efforts to create such a registry

resulted in “The Sex Offender Treatment Provider Directory For Maryland” which was completed in the summer of 2003 under the auspices of The Attorney General’s and Lt. Governor’s Family Violence Council in coordination with The Division of Parole and Probation and the Department of Health and Mental Hygiene. The providers listed in the directory voluntarily completed questionnaires regarding their educational background, training and experience, and affiliations in professional organizations and voluntarily agreed that their information could be included in the directory. This information was not verified by any entity and providers were not required to sign attestations of any kind. The Directory was created to serve as an information resource so that users could make informed decisions about where to refer sex offenders. This informational resource was not updated after initial publication.

The Board’s Assessment and Treatment Subcommittee reviewed the criteria for approving providers established by Maryland Division of Parole and Probation (DPP) and the Maryland Department of Juvenile Services (DJS) as well as the criteria in place in several other states. The reviewed criteria were used as a baseline for the creation of a proposed framework for the approval and training of sex offender treatment providers statewide. The Board recommends the establishment of an Office of Professional Services to oversee the implementation of best practices in the evaluation and treatment of individuals who have committed sexual offenses, which would include the creation of an approved provider list.

As proposed, the Office of Professional Services (OPS) would be overseen by a Director who would also serve as permanent staff to the Sexual Offender Advisory Board. The OPS would consist of two Units, the Clinical Evaluation & Credentialing Unit and the Training, Grants & Program Evaluation Unit.

The Clinical Evaluation & Credentialing Unit would ideally be headed by a licensed mental health professional with experience in the evaluation and treatment of individuals who have committed sexual offenders as well as in the coordination of services for the sexual offender population within the Department of Public Safety and

Correctional Services. The responsibilities of the Clinical Evaluation & Credentialing Unit would include:

- Creating and Maintaining an Approved Provider List: The OPS would maintain a list of licensed professionals who meet the education and experience qualifications required by the OPS. Interested providers would apply to be placed on the Approved Provider List (APL). The Board proposes that the education and experience qualifications noted in Chart A (p. 21) initially serve as the minimally necessary requirements for placement on the Approved Provider List. A full description of the requirements can be found in Appendix B (p. 63)[9].

- Ongoing collaboration with professional organizations, state agencies and others to establish professional standards for the treatment and evaluation of adults and juveniles and to assure that services provided upon court order or under the auspices of any state agency reflect these standards.

- Monitoring Providers to ensure adherence to the standards for treatment and evaluation developed by the OPS. Such would include randomly auditing providers. Providers would be removed from the APL for substantial noncompliance (but would be given the opportunity to remediate deficiencies if appropriate). If a provider is believed to be in to be in potential violation of Licensing Regulations, a complaint would be forwarded to the appropriate licensing Board for review and appropriate action.

- Monitoring Providers to ensure adherence to continuing education requirements. To qualify for a two year renewal period providers would be required to submit proof of having completed continuing education in the areas outlined in the requirements.

[8] Criteria in part modeled after: California Sex Offender Management Board Sex Offender Treatment Provider Requirements June 2011; Colorado Sex Offender Management Board - The Standards and Guidelines for the Assessment, Evaluation, Treatment, and Behavioral Monitoring of Adult Sex Offenders ; and The Colorado Sex Offender Management Board - Standards and Guidelines for the Evaluation, Assessment, Treatment and Supervision of Juveniles Who Have Committed Sexual Offenses Revised March 2008.

Chart A: Summary of Approved Provider Education & Experience Qualifications

REQUIREMENT	INDEPENDENT PROVIDER	ASSOCIATE PROVIDER
Education Required For Initial Placement On Approved Provider List	Education level as required for licensure	Master's Degree Or Above In Mental Health Field
Licensure Required For Initial Placement On Approved Provider List	Must be licensed for independent provision of mental health services	Licensed Or Exempt Status Allowing For Provision Of Mental Health Services Under Supervision
Specialized Experience Required For Initial Placement On Approved Provider List	TREATMENT PROVIDER One thousand (1000) hours of treatment (at least half face-to-face} during the five (5) years prior to application, **OR** Two thousand (2000) hours over professional lifetime In either case, at least half with the population specified EVALUATOR Forty (40) evaluations during the five (5) years prior to application, at least half with the population specified	No Minimum Specialized Experience Required For Initial Placement On Approved Provider List As Treatment Provider And/Or Evaluator In Associate Provider Status Under Supervision of Approved Independent Provider
Specialized Training Required For Initial Placement On Approved Provider List	Sixty (60) hours during the five years prior to application	No Minimum Specialized Training Required For Initial Placement On Approved Provider List As Treatment Provider And/Or Evaluator In Associate Provider Status Under Supervision Of Approved Independent Provider
Supervision Required For Initial Placement On Approved Provider List	None required	Must Work Under An Approved Independent Provider One (1) Hour Of Supervision For Every Twenty (20) Hours Of Service Provided
Allowed Activities	May Provide Evaluation And Treatment Without Supervision	May Provide Evaluation And/Or Treatment Services Only Under The Supervision OF An Approved Independent Provider
Specialized Experience Required For Retention On Approved Provider List	Two Hundred (200) Hours Of Treatment And/Or Eight (8) Evaluations During The Two Years Preceding Renewal	Eighty (80) Hours Of Treatment And/Or Four (4) Evaluations During The Two Years Preceding Renewal
Specialized Training Required For Retention On Approved Provider List	Thirty (30) Hours Of Applicable Continuing Education/Training During The Two Years Preceding Renewal	Thirty (30) Hours Of Applicable Continuing Education/Training During The Two Years Preceding Renewal
Supervision Required For Retention On Approved Provider List	None	One (1) Hour Of Supervision Required For Every Twenty (20) Hours Of Service Provided

At the time of application for inclusion on the Approved Provider List, the practitioner must specify whether he or she is seeking approval as a juvenile and/or adult evaluator and/or treatment provider.

- Creating and Maintaining a Training System in order to provide continued education for those monitoring, assessing and treating individuals who have committed sexual offenses.

- Developing a system for tracking the delivery of treatment and evaluation services by region and agency in order to determine the extent of needs within the state. The OPS would collaborate with the appropriate agencies to track treatment outcomes and assess program effectiveness.

- Completion of comprehensive risk evaluations as needed to determine termination from Lifetime Sexual Offender Supervision as defined in the Criminal Procedure Article, § 11-724, Annotated Code of Maryland.

The responsibilities of the Training, Grants & Program Evaluation Unit would include:

- Planning and providing at least semi-annual trainings by local and national experts at minimal or no cost to statewide licensed mental health professionals
- Applying for and administering training grants and any relevant legislative appropriations
- Collaborating with the state's mental health professional organizations and other relevant organizations to sponsor in-service training and continuing education workshops
- Serving as an informational resource for academic institutions regarding standards of practice and treatment components for sex offender programs

While the Board understands that the funds necessary to establish the Sexual Offender Advisory Board's Office of Professional Standards (OPS) may be limited, it is convinced that the OPS would not only enhance the State's efforts to reduce sexual abuse by known sexual abusers, but it would also promote primary prevention efforts focused on reducing the number of future abusers. Five positions are needed to create a fully functioning office. The office needs one program manager, one psychologist,

two administrators, and one clerical support position. The Board estimates a cost of 350,000 to 400,000 dollars to pay salaries and equipment costs.

There are multiple agencies that could potentially house such an office. The Board in considering where to house the Office took into account four points:

- The professional boards associated with the Department of Health and Mental Hygiene (DHMH) are traditionally charged with oversight of mental and medical healthcare providers;
- The DHMH Office of Forensic Services provides some oversight of services for individuals with criminal justice involvement;
- The Department of Public Safety and Correctional Services serves the vast majority of the known sexual offender population either in custody, under supervision, or registered; and
- The Governor's Office of Crime Control and Prevention (GOCCP) performs grant management functions and coordinates public safety training opportunities.

Further consideration of each of these agencies raised unique issues to each.

Professional Boards. Professional boards manage professional certification and licensure and discipline healthcare providers for failing to adhere to the laws and rules governing treatment.

However, There are two reasons why housing the Office in DHMH may not be entirely appropriate. The first is that the Board has not recommended the kind of "certification" of providers that the professional boards oversee, but rather an "approved provider list". While the goal of the Board is to professionalize and specialize the skills of individuals who provide treatment to sexual offenders, the Board recognizes that an additional and burdensome certification may limit the number of treatment providers willing to obtain additional education. The costs certification,

continuing education credits (CEUs), and certified medical credits (CMEs) associated with qualifying to treat an extremely challenging population could be a significant deterrent to many treatment providers. This could limit the number of providers and could greatly reduce the State's ability to engage in primary prevention efforts.

DHMH - Office of Forensic Services. While DHMH serves individuals in the criminal justice system, the type of service and the nature of the population is fundamentally different from what is contemplated by the administrators of the State Mental Hospitals. It is clear that many sexual offenders are not diagnosed with a mental illness and many are not maintained within a traditional inpatient treatment setting. Treatment of sex offenders is generally court mandated as opposed to a self-directed voluntarily initiated process in which an individual seeks to develop self-awareness. We note that the Board has previously recommended that the State not implement civil commitment within a treatment setting because it is unduly expensive and does not, over the long run, produce the reduced recidivism that the public seeks; In a similar vein, the Board notes that the specialized sex offender collaborative containment approach emphasizes the importance of collaboration between treatment and the supervising agency. The collaborative approach does not appear to work outside of a setting that can provide immediate repercussions for criminal behavior. Treatment of sex offenders is generally court-mandated in the interest of public safety as opposed to a self-directed process of therapy that aims at relief of psychic pain and greater self-control. Enforced sex offender treatment must be able to impose immediate consequences for failure to control behavior—sexual and otherwise. Imposing strong sanctions for failure to adhere to the specialized conditions as outlined by the court and treatment requirements outlined by a provider is clearly not within the power of DHMH.

GOCCP. The Governor's Office of Crime Control and Prevention (GOCCP) is an agency that is widely respected for its training activities and its grant management protocols. It is also traditionally seen as an oversight office for both crime control and

crime prevention activities. While on that basis the proposed office might fit into GOCCP, but the Board recognizes that GOCCP provides no direct services to offenders, victims, or professionals. The Board also recognizes that GOCCP does not have the specific knowledge of either treatment or offender management protocols, nor does it engage in the day-to-day working relationships with the criminal justice community necessary to effectively implement the office.

DPSCS. The Department of Public Safety and Correctional Services (DPSCS), on the other hand, appears to be a good choice for housing the Board's Office of Professional Services (OPS). DPSCS exerts substantial control over all of the known sexual offenders in the State who are under a term of probation or parole, and has necessary relationships within the criminal justice community in order to effectively communicate an offender's failure to adhere to treatment requirements and legal restrictions. It is also important to note that DPSCS is already the agency that houses the collaborative containment model for sex offender management, most notably in the COMET (Collaborative Offender Management and Enforced Treatment) teams that provide intensive supervision of convicted sex offenders. Moreover, there is within the agency substantial and high-quality expertise in sex offender risk assessment. It is also important that any agency housing the OPS have the authority, responsibility, and credibility to oversee designated treatment providers who work with sexual offenders, and DPSCS already has significant depth of experience in this area. DPSCS has the credibility with both the criminal justice community and with treatment providers to oversee such an office because it works with convicted sex offenders on a daily basis. If DPSCS were given the authority and the responsibility it could quite easily implement and develop the public and private relationships necessary to oversee such an office.

To the end of finding an administrative home for the Board's Office of Professional Services, the Chairman of the Board and the co-chairs of the Assessment and Treatment subcommittee met with both Secretaries of the Departments and the Executive Director of GOCCP to discuss the pros and cons of implementing an office

in one of the three agencies. At the meeting on December 13, 2011 the Secretary of DHMH proposed that the State consider partnering with an academic institution for the purpose developing a system to train and credential providers and treatment programs, and to perform the functions of the proposed office. Such a setting would facilitate continuing education, the incorporation of recent findings into practice, and research into whether the system of certification is working. The Assessment and Treatment Subcommittee had discussed such a partnership in its meetings, recommending to the full Board that that the OPS collaborate with one or more academic institutions for training and research activities. The Board fully supports a partnership between the OPS and an academic institution in order to train future sex offender treatment providers. The Board did not have sufficient time during the 2011 term to fully discuss the Secretary of DHMH's expanded proposal. The Secretaries and the Executive Director agreed to discuss the matter amongst themselves and respond to the Board with their recommendations.

In the interim, the Board, with the assistance of the Department of Health and Mental Hygiene licensing boards, is in the process of conducting a survey of all licensed mental health professionals to learn more about the current availability of services for those with sex related concerns. Participation in the survey is voluntary and unrelated to maintenance of licensure or certification. The Board will continue to seek input from licensed mental health professionals, members of Department of Health and Mental Hygiene licensing boards, and as other key stakeholders regarding the proposed requirements for placement on the Approved Provider List.

Criminal Law and Criminal Procedure Statute Revision

Creation of a Separate Age-Based Sexual Offense Statute

The General Assembly's Charge to the Board Concerning Criminal Law and Procedure

In the Annotated Code of Maryland Public Safety Article, § 1-401(g)(2), the General Assembly directed that: "The Board shall review the effectiveness of the State's laws and practices concerning sexual offenders, including: Sexual Offender Registration and monitoring requirements; and community notification requirements".

Summary of Maryland's Current Policies and Procedures

Maryland law currently divides sexual offenses into four (4) categories of abusive behavior:

- Vaginal Intercourse as defined in CLA, Section 3-301(g);
- Sexual Act as defined in CLA, Section 3-301(e);
- Sexual Contact as defined in CLA, Section 3-301(f); and
- Non-contact Offense (e.g. possession of child pornography, sexual solicitation of a minor, etc…).

The first three (3) abusive behaviors are further categorized as follows:

- 1st and 2nd Degree Rape;
- 1st, 2nd, 3rd, and 4th Degree Sex Offenses;
- Sexual Abuse of a Minor;
- Perverted Practices and Sodomy; and
- Continuing Course of Conduct.

Rape and the Sex Offenses are then broken down in their respective statutes by aggravating and age-based factors. An **aggravating factor** exists if the offender does any of the following:

- Commits the offense by force or the threat of force without the consent of the other;

- Employs or displays a dangerous weapon or a physical object that the victim reasonably believes is a dangerous weapon:
    - suffocates, strangles, disfigures, or inflicts serious physical injury on the victim or another in the course of committing the crime;
    - threatens, or places the victim in fear, that the victim, or an individual known to the victim, imminently will be subject to death, suffocation, strangulation, disfigurement, serious physical injury, or kidnapping;
- Commits the crime while aided and abetted by another;
- Commits the crime in connection with a burglary; or
- Commits the offense against a victim who is a mentally defective individual, a mentally incapacitated individual, or a physically helpless individual.

Furthermore, Maryland Law also considers these Age-Based circumstances to be aggravating factors:

- If the victim is under the age of 14 years, and the person performing the sexual act is at least 4 years older than the victim;
- If the victim is under the age of 14 years, and person performing the sexual contact is at least 4 years older than the victim;
- If the victim is 14 or 15 years old, and the person performing the sexual contact is at least 4 years older than the victim;
- If the victim is 14 or 15 years old, and the person performing the sexual act is at least 21 years old; or
- vaginal intercourse with another if the victim is 14 or 15 years old and the person engaging in vaginal intercourse with the victim is at least 21 years old.

It is extremely important to note that within each of these criminal offenses, any one of the three abusive behaviors may occur. For example, “vaginal intercourse” may occur in the context of a 4th Degree Sex Offense, and a “Sexual Act” may occur in the context of a 3rd Degree Sex Offense.

Essentially, aggravating factors are broken down into two types: offenses involving sexual violence and offenses involving particularly vulnerable victims. All of

the sexually violent offenses require lifetime sex offender registration as a Tier III offender. In the case of a 3rd Degree Sex Offense conviction established on age-based factors, the registration term is 25 years as a Tier II offender. For a misdemeanor 4th Degree Sex Offense conviction established on age-based factors, the registration term is 15 years as a Tier I offender.

An Overview of Other State's Laws

The diversity of sex crime laws among the States is considerable, and the laws are difficult to compare and contrast effectively. However, best practices in other states should be considered as much as possible prior to the creation of a non-violent age-based sex offense statute in Maryland. The Board has identified the following subject areas in which to compare State statutes:

Age of Consent

Across the states, the age of consent ranges from 14 to 18 years, with the median age of consent being 16. In states where the age of consent is 18 years old, the statutes tend to address "statutory rape" situations separately from other sexual offenses. In Maryland, the age of consent is 16 years old for vaginal intercourse and 14 years old for sexual contact.

Sex Crime Definitions

Each state defines sexually abusive behaviors differently. In general, however, their laws tend to mirror Federal law in some way. Federal law categorizes sex offenses as Aggravated Sexual Battery, Sexual Battery, and Sexual Contact. Maryland's definitions of sexually abusive behavior are substantially similar to Federal law. All states allow for some difference between "penetration" of the victim and "contact" with the victim. All states make allowances for violent or forcible aggravating factors. Where they differ most is specific terminology. For example, Virginia uses the term "Carnal Abuse" to describe some age-based offenses. Many other states use the

Chart B: Availability of Age-Based Non-Public and/or Risk-Based Sex Offender Registries

	Age of Consent (Strict Liability)	Age-Based Offenses	Offenders Included on the Public Registry*
Alabama	16	Yes	All Levels Except Juveniles
Alaska	16	Yes	All Levels
Arizona	18	No	Some
Arkansas	16	No	50% of Offenders
California	18	No	All Levels Except Juveniles And Certain Exclusions
Colorado	17	Yes	All Levels Except Juveniles
Connecticut	16	Yes	All Levels Except Court Approved Exceptions
D.C.	16	Yes	All Levels Except "Class C" (Level 1) Offenders
Delaware	18	Yes	Levels 2 And 3
Florida	18	Yes	All Levels
Georgia	16	Yes	Some
Hawaii	16	Yes	All Except Court Approved Exclusions
Idaho	18	Yes	All Levels
Illinois	17	No	All Levels Except Juveniles
Indiana	16	No	All Levels
Iowa	16	Yes	All Except Offenders Under The Age Of 20 Who Commit A Specific Exempted Offense
Kansas	16	No	Approximately 87% Of Offenders
Kentucky	16	Yes	All Levels
Louisiana	17	Yes	All Levels
Maine	16	Yes	All Levels
Maryland	14 Contact 16 Intercourse/Acts	Yes	All Convicted Adults And Court Ordered Juveniles
Massachusetts	16 Contact 18 Intercourse/Acts	No	Level 3 Offenders
Michigan	16	No	All Convicted Adults And Court Ordered Juveniles
Minnesota	16	Yes	All Level 3 Offenders
Mississippi	16	Yes	All Levels
Missouri	17	No	All except Kidnapping and restraint of a non-sexual Nature
Montana	16	Yes	All Levels
Nebraska	17	No	All Levels
Nevada	16	No	Levels 2 and 3
New Hampshire	16 Contact 18 Intercourse/Acts	Yes	Approximately 89% of offenders
New Jersey	16 Contact 18 Intercourse/Acts	Yes	Approximately 76% of Offenders
New Mexico	17	Yes	Some Offenders
New York	17	No	Approximately 61% of Offenders
North Carolina	16	Yes	All Levels Except Juveniles
North Dakota	18	No	All Levels except "Low" and "Moderate" risk Juveniles
Ohio	16	No	All Levels Except Juveniles
Oklahoma	16	Yes	All Levels
Oregon	18	Yes	Only "High Risk" predatory Offenders
Pennsylvania	16	Yes	All Levels except Out of State Offenders
Rhode Island	16	No	Levels 2 and 3
South Carolina	14 Contact 16 Intercourse/Acts	No	Approximately 80% of Offenders
South Dakota	16	No	All Levels
Tennessee	18	Yes	All Levels
Texas	17	No	All Levels Except Court Ordered Juvenile Exclusions
Utah	16 Contact 18 Intercourse/Acts	Yes	All Levels
Vermont	16	Yes	N/A
Virginia	18	No	All Levels Except Court Ordered Exclusions
Washington	16	Yes	All Level 2 and 3, and Noncompliant Level 1 Offenders
West Virginia	16	Yes	Approximately 95% of Offenders
Wisconsin	18	No	All Levels Except Juveniles
Wyoming	16	Yes	All Levels

* National Center for Missing & Exploited Children. *Nationwide Survey of All Sex Offender Registries*, April 2011.

term “Lewd and Lascivious” to describe an offense equivalent to Maryland’s definition of “Sexual Contact.”

Presence of “Age-Based” Sex Offense Convictions

The vast majority of states have some age-based or age-gap provision built into their sex crime statute. States that have “risk-based” sex offender registries, as opposed to “offense-based” registries, tend to have fewer age-based provisions in their laws. The age gaps between victim and offender in age-based offenses range between four years and ten years. Many states are contemplating legislative changes that would increase the age-gap between victim and offender. New research regarding the decreasing age of puberty onset among girls, as well as social developmental differences across genders, provides support for increasing the age-gap. However, gender-based power differentials still exist. In the United States, women were considered the property of men into the early 20th century. While recognition of the autonomy of women in U.S. law has increased over the past 100 years, thousands of years of oppression of women continue to influence society’s views about the “sexual availability” of women and children.

Recommendations and Discussion

The Board understands the principles underlying the current structure of sexual crimes in Maryland but also recognizes that the average person will not comprehend the nuance intrinsic to each section of the Maryland sex crimes statutes. It is clear to the Board that the Legislature intended to break, in particular, the 3rd and 4th Degree Sex Offenses down into two (2) parts: violent offenses and age-based (statutory rape) offenses.

Age-based offenses generally arise out of situations where victims, who are not legally allowed to consent to sexual activity because they are too young, do in fact, agree to engage in sexual activity with a person who is substantially older. The Board, in response to many requests, has chosen to look into age-based offenses that are

frequently referred to as "Romeo and Juliet" offenses. Anecdotal evidence suggests that in some cases the offenders are the "boyfriends" of the victims and that in some cases the convicted offenders have later married, and had children, with their victims.

There is no way to estimate the number of 3rd and 4th Degree Sex Offense convictions which involve such circumstances because no agencies within the criminal justice system have implemented methods to collect such data. This issue is further complicated by the impairment of the Court's ability to determine if the victim was mentally incapacitated, when alcohol or drug use may have been an element of the offenses.

More important than the anecdotal evidence and offender specific stories is the idea that the courts and the public, as well as many legislators, do not perceive these age-based (statutory rape) offenses in the same light as "violent" sexual offenses. A recent study by Letourneau, et al. (2010)[10] has shown that "offense-based" registries that limit or remove judicial discretion may be resulting in increased rates of plea bargains or changes in charging decision.

An informal survey of law enforcement and Assistant State's Attorneys in Maryland has determined that an increasing number of age-based offenses are being pled down to 2nd Degree Assaults and are therefore unreported as "sex offense convictions". This is particularly problematic if an offender's multiple 2nd Degree Assaults convictions hide a pattern of sexually offender behavior from, law enforcement and the courts. Additionally, the Sex Offender Registry has received more than 50 court orders to strike guilty findings in age-based offenses and to enter a stayed judgment. Many such orders are modifying original sentences - without the victim being notified or present - in order help offenders avoid the increased registration requirements under Maryland's new Sexual Offender Registration and Notification Act.

[10] Letourneau, E. J., Levenson, J.S., Bandoadhyay, D., Sinha, D., & Armstrong, K.S. (2010). Evaluating the Effectiveness of Sex Offender Registration and Notification Policies for Reducing Sexual Violence Against Women. U.S. Department of Justice.

Public opinion regarding the Sex Offender Registry Website is split into at least two factions. One faction distrusts the registry because it includes “statutory rape” cases. Another believes that all of the registrants on the public website are “sexual predators.” Out of the more than 7,700 registrants on the Sex Offender Registry Website, only 12 “sexual predators” are registered. The purpose of the Sex Offender Registry Website is to notify the public about the whereabouts of potentially dangerous sexual offenders. The dilution of the registry with individuals convicted of illegal, but essentially consensual, behavior prevents the public from focusing on individuals who are truly dangerous.

The Board suggests that the General Assembly and the Administration consider the creation of a new misdemeanor sex offense statute to encompass the age-based offenses currently included in the 3rd and 4th Degree Sex Offense statutes. The new statute, perhaps entitled, “Statutory Sex Offense,” would apply to first-time sex offenders who are more than 4 years older, but less than 10 years older, than a 14 or 15 year old victim. The Board suggests that these individuals be placed on a non-public registry as Tier I offenders. All of the same registration requirements and notifications to law enforcement could apply; however, the offender’s profile would not appear on the public registry. Second-time offenders; offenders who are more than 10 years older than the victim; offenders who have previously been convicted of any sex crime; possession, distribution, or manufacturing of child pornography; or Human Trafficking would fall under the 3rd Degree Sex statute, which is a felony with a 10 year penalty. These offenders would be placed on the public sex offender registry website. The Board believes it is also important to exclude individuals who had a custodial or familial responsibility for the victim; or those in a position of authority over the victim at the time of the offense. Offenses against children under the age of 14 would continue to be covered by the 4 year age difference in the current Sex Offense statutes and 2nd Degree Rape statute. The Board suggests that the penalty for the proposed misdemeanor offense not exceed one (1) year so that the State does not risk losing its status as "substantially compliant" with the Federal Sex Offender Registration and Notification Act.

Creation of a new “Statutory Sex Offense” statute would prevent sex offenses from being routinely pled to 2nd Degree Assaults or from resulting in Probation Before Judgment dispositions. State’s Attorneys, Public Defenders, and the Courts would have increased discretion during charging or plea bargaining when the victim was not forced, coerced, or drugged (or intoxicated) into unwanted sexual activity. On the other hand, they would have the same discretion when the defendant's behavior is extremely serious and unacceptable, and therefore warrants a “sex offense conviction.”

The new statute would also help to solve the reporting issues that occur when sex offenses are pled to non-sex offenses. By creating a misdemeanor non-violent sex offense statute, the criminal justice system will be able to track and report more consistently the number of sexual offenses that occur in Maryland. The consistent reporting of the crimes as sex offenses as opposed to assaults will lead to better informed sentencing and community supervision.

The Board also recognizes that the General Assembly may be reluctant to increase penalties or alter existing sex offense laws because “statutory rape” cases currently are lumped in with the “forcible, coerced, and incapacitated” offenses. This addition to the Sex Crimes Subtitle would make it clear that less serious sex offenses are not included in the increased restrictions and penalties placed on dangerous sexual offenders.

If such a law were to be enacted by the Legislature, the public would have a clearer understanding of the following:

- That offenders on the public website have a greater risk of re-offense, and that their crimes were serious due to use or threat of violence or a large age-gap between victim and offender; and
- That a subsequent “Statutory Sex Offense” conviction, which shows a pattern of sexually offensive behavior, results in placement on the public sex offender registry website.

SEXUAL OFFENDERS LIVING IN NURSING HOMES AND ASSISTED LIVING FACILITES

The General Assembly's Charge to the Board Concerning Health Care Facilities

In 2009 The Maryland General Assembly charged the Sexual Offender Advisory Board, as stated in the Public Safety Article, Section 1-401(g)(9) with:

1. Reviewing the policies and procedures relating to:

a. the protection of residents of nursing homes and assisted living facilities where sexual offenders reside or may reside;

b. advising residents and employees of nursing homes and assisted living facilities and family members of residents of sexual offenders who reside in the nursing home or assisted living facility;

c. sexual offenders in nursing homes or assisted living facilities; and

d. law enforcement notification to nursing homes and assisted living facilities of sexual offenders residing in the nursing home or assisted living facility;

2. Reviewing the laws of other states and jurisdictions concerning the protection of residents of nursing homes and assisted living facilities from sexual offenders;

3. Making recommendations for the protecting of residents and employees of nursing homes and assisted living facilities and the family members of residents from sexual offenders; and

4. Reviewing and reporting on the potential impact on health care providers of recommended changes in policies and procedures concerning sexual offenders in nursing homes and assisted living facilities.

Summary of Maryland's Current Policies and Procedures

A. Protection of residents of nursing homes and assisted living facilities where sexual offenders reside or may reside

LAWS

There currently exists in the Code of Maryland Annotated Regulation a "resident's bill of rights" that states that a resident has a right to be free from sexual abuse. Furthermore, residents have the right to be free from sexual abuse under COMAR 10.07.09.08.Long-term care facilities participating in Medicare or Medicaid are required to report all allegations of abuse and neglect in accordance with state laws.

Adult Protective Services - Under the law, any health practitioner, police officer, or human service worker who has reason to believe that a vulnerable adult is in danger is required to report that fact to the local Department of Social Services. Any concerned person may also make such a report.

Persons who report the need for Adult Protective Services are protected under the law. Section 14-309 of the Family Law Article, Annotated Code of Maryland, states "any person who in good faith makes or participates in making a report under this subtitle or participates in an investigation or a judicial proceeding resulting from a report under this subtitle is immune from any civil liability that would otherwise result."

POLICIES

In 2004, the Health Facilities Association of Maryland (HFAM) in conjunction with the Department of Health and Mental Hygiene (DHMH) Office of Health Care Quality created "Behavioral Management Guidelines" to help long-term healthcare providers communicate behavioral expectations to prospective and existing residents. Residents are expected to sign the agreement prior to admission. The Behavioral Management Guidelines state:

"2. NO RESIDENT SHALL VIOLATE FEDERAL, STATE OR LOCAL LAWS WHILE RESIDING AT THE NURSING FACILITY.

A. Residents [of nursing homes and assisted living facilities] are expected to treat staff, other residents with respect, dignity and privacy. Conduct must be consistent with accepted community standards, local, federal and state laws. Unacceptable conduct includes but is not limited to: sexual harassment, sexual abuse, physical abuse, verbal abuse and indecent exposure. This conduct is not permitted on or about the facility. "

B. Notifying residents and employees of nursing homes and assisted living facilities and family members of residents of the presence of sexual offenders who reside in the nursing home or assisted living facility

Maryland currently has no laws, regulations or policies that pertain to notifying employees, residents, or family members of residents of the presence of a registered sex offender living on the premises of the healthcare facility, including whether an incoming patient has a history of violence or mental illness. In addition, Maryland does not currently require any background checks prior to admission.

The Board discussed the "Privacy Rule" under the Health Insurance Portability and Accountability Act (HIPAA), which may prevent healthcare facility administrators from disclosing that a resident is a registered sex offender. It was determined in the course of the subcommittee's discussions with the DPSCS and Assistant Attorney's General Office of Health Care Quality, that sex offender registration is public information and not considered "healthcare" or "medical" information and that HIPPA includes a provision that allows states to disclose any information where there is a state law that it be disclosed.

In March 2006 the United States Government Accountability Office (GAO) released a report to the U.S. Congress entitled "Long-Term Care Facilities: Information on Residents Who Are Registered Sex Offenders or Are Paroled for Other Crimes"[11].

[11] United States Government Accountability Office. Long-Term Care Facilities: Information on Residents Who are Registered Sex Offenders or Are Paroled for Other Crimes. March 2006.

The federal Department of Health and Human Services noted in regard to the report that it would, "...help to resolve much of the uncertainty about the application of the HIPAA Privacy Rule to the disclosure of conviction information by a facility, including clarifying that information could be used for activities necessary for the safe operation of the facility or disclosures that are required by state laws."

Therefore, no provision in state or federal law prevents healthcare facility administrators from disclosing to employees, residents or families the presence of a registered sex offender in the facility.

C. Employing sexual offenders in nursing homes or assisted living facilities

The Health-General Article, §§19-1901 through 19-1912, authorizes all adult dependent care programs, including nursing homes and assisted living programs, to conduct criminal background checks or criminal history checks on all potential staff members who will have routine, direct access to dependent adults in the dependent care program.

Under COMAR 10.07.09.15 a nursing facility may not knowingly employ an individual who has been convicted of abusing or neglecting a resident or who has had a finding entered into the State Nurse Aide Registry concerning abuse or neglect of a resident or misappropriation of a resident's property. Under COMAR 10.07.14.07 the Department of Health and Mental Hygiene reserves the right to deny licensure for an assisted living program based on the owner's or manager's prior Criminal history that the Department determines may be potentially harmful to residents.

A study of residential care facilities (RCF) by Texas A & M University[12] showed, "There was very little concerted effort aimed at prevention of elder abuse in RCFs. The three most common activities were criminal background checks, healthcare personnel registries, and training for facility and staff." The report goes on to say that, "However,

[12] Hawes, C., Kimbell, A.M. Detecting, Addressing and Preventing Elder Abuse In Residential Care Facilities A Report from the Program on Aging & Long-Term Care Policy. The School of Rural Public Health, Texas A&M Health Science Center, College Station, Texas. US Department of Justice. November 2009.

even in states in which a state agency conducted the background checks, the system was flawed, according to our respondents. In one study state, a regulatory agency was responsible for conducting mandatory criminal background checks for all staff in RCFs. The same unit that investigated abuse cases also conducted these criminal records checks on staff. However, they noted that the unit of the Bureau that reviewed the records and decided on whether or not the person could be employed in an RCF did not make consistent decisions."

D. Requiring law enforcement notification to nursing homes and assisted living facilities when a sexual offender resides in the nursing home or assisted living facility

Maryland currently has no law, regulation or policy that requires law enforcement notification to healthcare facilities when one of their residents is a registered sex offender. However, a physical verification of a registrant's address as performed by law enforcement serves as an informal notice to the healthcare facility that a registered sex offender has listed that location as his or her residence.

An Overview of Other States' Laws

Arkansas: SB 386 (2005) specifies conditions for home detention, including nursing homes for incarcerated offenders who are terminally ill or incapacitated enough to require skilled nursing care. The Department of Corrections and Community Corrections is responsible for determining whether an inmate qualifies for home detention.

The legislation does not specify that nursing homes must notify residents, but the Arkansas State Code mandates that information on registered sex offenders determined to pose the highest level of risk (Level 3 and Level 4) be available to the public. Registered sex offenders are assigned to one of four levels based on an assessment by the Sex Offender Screening and Risk Assessment Program coordinated by the Department of Corrections: Level 1, Low Risk; Level 2, Moderate

Risk; Level 3, High Risk; and Level 4, Sexually Violent Predator. Registered sex offenders who refuse the assessment are assigned to Level 3.

***California**:* AB 217, passed in 2005, specifies notification procedures for offenders on probation or parole who have committed one or more designated sex crimes. The Department of Corrections and Rehabilitation, the Department of Mental Health, or other agency responsible for discharge, is responsible for notifying the long term care facility in writing when an offender is being released to reside in the facility. If accepted for placement, offenders must then register with local law enforcement and notify their parole or probation officers.

***Illinois**:* HB 4785 (2006) amended the Nursing Home Care Act to require criminal history background checks for all current and incoming residents of licensed long term care facilities. Facilities must request a background check within 24 hours of new admissions and within 60 days after the effective date of legislation for current residents. If checks are inconclusive, facilities must arrange for a fingerprint check unless waived by the Department of Public Health.

If an individual has a criminal record, the facility must immediately fax the resident's name and criminal history information to the Department of Public Health to conduct a criminal history analysis. The results must be given to the facility where the offender resides, the local police chief, and the state ombudsman. Depending upon the seriousness of the offense, a facility has the right to decline a new admission or to initiate involuntary transfer or discharge proceedings if it cannot safely manage residents who are offenders.

The Department of Public Health is responsible for the development of monitoring plans for residents with violent and sex-related convictions. Private rooms are required for sex offenders. The criminal history analysis must be placed in the resident's care plan folder. Public Health must maintain a continuing record of all resident offenders and report the number annually to the General Assembly.

Nursing home residents and family members must receive notification when

offenders are housed in a facility. Nursing homes must post a sign stating that residents, visitors, and staff have a right to ask the administrators if any residents are former offenders as defined by the law. Administrators are only required to state whether sex offenders are residents. The posting also must list the state sex offender registry website and the state Department of Corrections website which lists former offenders on parole.

The Department of Corrections must immediately notify the Department of Health about any person registered pursuant to the Sex Offenders Registration Act or the Mary Rippy Violent Crime Offenders Registration Act who is seeking placement from a Department of Corrections facility to nursing homes, residential care homes, and adult day care centers. The Department of Health must then notify the long term care facility in which the sex offender is seeking placement. The Board of Health must disseminate rules requiring long-term care facilities to determine the registration status (per the two acts above) of prospective admissions as well as current residents from the local law enforcement authority or the Department of Corrections. Once a long-term care facility is notified that a registered offender is a new admission or resident, the facility must immediately notify the Department of Health. Upon registration of any person designated as a habitual or aggravated sex offender or a violent crime offender, local law enforcement must provide the facility with the offender's personal and criminal history, including a photograph.

***Louisiana**:* In 2005, the Governor signed HB 121, a law requiring criminal background checks for all persons seeking admission to nursing homes and other long term care facilities. Facilities must provide applicants with information about CriminalWatch.com, PublicData.com, or other internet companies that provide a search of public records. Applicants must pay for the search, but it does not have to be completed before admission.

***Massachusetts**:* Chapter 303 of the Acts of 2006, Section 6, was amended in 2006 by the passage of SB 386 to prohibit the admission of Level 3 sex offenders to convalescent or nursing homes, infirmaries maintained in a town, rest homes,

charitable homes for the aged, or ICFs-MR. Level 3 sex offenders present the highest risk of recidivism, and they must willingly and knowingly self-identify their sex offender status.

***Minnesota**:* Chapter 136, Article 3, an Omnibus Public Safety Bill that became law in 2005, stipulated registration requirements for predatory offenders, including persons on parole or probation seeking admission to nursing homes, board and care homes, hospitals, and supervised living facilities, as well as residential facilities for adult foster care, adult mental health treatment, chemical dependency for adults, or persons with developmental disabilities. Predatory offenders include, but are not limited to, persons convicted of sex offenses, murder, kidnapping, armed robbery, violent domestic assault, indecent exposure, and other "crimes against the person." Applicant offenders must self disclose their status to the facility, and the law enforcement authority or corrections agent must notify the facility after their admission.

A facility may choose to screen a potential resident for a history of violent crimes or aggression prior to or at admission, but if a facility decides to admit individuals with a history of violent crime or aggression in general, it must stipulate criteria to admit or reject them. If a facility decides to screen, all applicants must be screened. If a facility decides to admit predatory offenders, it must conduct a risk assessment and develop an individualized abuse prevention plan to protect other residents. All facilities, except hospitals, must notify their residents (or the family members of residents) about the presence of predatory offenders living in the facility, if a resident is seriously debilitated. If individuals do not disclose their predatory offender status at admission, the facility can discharge them immediately. Under federal certification regulations for nursing homes, the facility must give offenders individual notice of their appeal rights, but an appeal does not delay discharge.

***Nebraska**:* LB 713, an amendment to the Sex Offender Registration Act, was passed in 2005. Law enforcement agencies must notify health care facilities serving vulnerable adults of Level 2 sex offenders, who are at moderate risk to re-offend sexually, residing in their geographic area. Legislative Bill 1199, passed in 2006, requires law

enforcement to notify facilities by telephone or the internet about the residence of Level 3 sex offenders who are at high risk of re-offending sexually.

***Oregon**:* In 2005, Oregon passed SB 106 (effective in 2006) to protect long term care residents. The statute requires the Department of Corrections to define "predatory sexual offender" and notify long term care facilities and residential care facilities about such offenders seeking admission. Corrections may provide facilities all identifying information stipulated in the department's codes.

***Rhode Island**:* SB 2415, a bill relating to the licensing of health care facilities, became law in 2006. Nursing facilities, assisted living facilities, licensed facilities for the mentally ill or developmentally disabled, and housing for the elderly shall not admit a sex offender or offender on parole or probation, unless they can comply with safety and security measures and provide or arrange for appropriate behavioral health treatment. The Department of Corrections must establish regulations regarding written notice to facilities when an offender is a resident or applying for admission. Written notice must include details about the offender's crime and contact information for the assigned probation or parole officer. Corrections must also develop regulations to assess risk of dangerousness, specify criteria to prohibit admission, of or to discharge, a resident offender, and to specify treatment plans and safety measures to protect other residents. The Department of Corrections must also create regulations to supervise and monitor resident offenders.

Licensing agencies for nursing facilities, assisted living facilities, and other facilities must establish regulations to: (1) require each facility, as part of the initial resident admission process, to review and consider notice provided to the facility concerning a resident's or potential resident's status on parole or probation and recommendations for safety and security measures, as well as treatment; and (2) set criteria based on security risks for requiring facilities to disclose a resident's probation or parole status to staff, residents, residents' legal representatives, residents' family, and the state long term care ombudsman.

***Utah**:* In 2006, the Governor signed HB 125, a bill requiring that long term care facilities be notified about the potential placement of a person with any criminal background. The Department of Corrections must provide written notice prior to the offender's admission advising of his conviction and status. The facility must provide this information to residents and their guardians ten days prior to admission and also provide this information to future residents and their family members or guardians.

***Virginia**:* The General Assembly of Virginia passed legislation in the 2006 and 2007 sessions. Senate Joint Resolution No. 120 (2006 session) directed the Virginia Crime Commission to study the monitoring of sex offenders in nursing homes and assisted living facilities and submit a report by the beginning of the 2007 session. The Crime Commission determined that very few sex offenders lived in long term care facilities, but several recommendations were made: (1) nursing homes and assisted living facilities should be required to check a prospective admission's name on the State Police website to determine if that person is a registered sex offender; (2) assisted living facilities should be added to the list of entities, which already includes nursing homes, that can request automatic sex offender updates from the State Police; (3) nursing homes and assisted living facilities should be required to sign up for automatic notification from the State Police; and (4) nursing homes and assisted living facilities should provide general notice about the sex offender registry and the state police website to all residents at admission.

The first three recommendations were incorporated into HB 2345 and an identical SB 1229 which passed in the 2007 session to amend Chapter 119 of the Code of Virginia. The fourth recommendation was incorporated into HB 2346 and an identical SB 1228, which also passed in the 2007 session to amend Chapter 120 of the Code of Virginia.

The Commission also reviewed the growing problem of resident-on-resident violence involving persons with dementia. Since this was seen as a public health issue, the Crime Commission notified the Department of Mental Health, Mental Retardation and Substance Abuse Services, and the Joint Commission on Health Care about the

Commission's findings.

Discussions and Recommendations

It is clear that nursing homes and assisted living facilities are one of the most regulated industries in America today. It is also clear that this industry exists in order to provide care for a vulnerable population that requires a great deal of protection to prevent abuse. The Board recognizes the complexity of systems governing the care of the aging and incapacitated in healthcare facilities such as nursing homes and assisted living facilities. The myriad issues that complicate efforts to improve the safety of residents include:

- **Patient on Patient Violence** – This is particularly pertinent with regard to residents who are cognitively impaired with mental illness or dementia. This population can be both victim and abuser and have virtually no mental capacity to understand or remember their actions.
- **Self-Determinism** – Many aging adults in long-term healthcare facilities remain sexually active. In many cases it may be difficult and inappropriate for staff to "police" sexual behavior among residents.
- **Behavioral Changes over Time** – At the time of admission, many patients in long-term care facilities may have greater cognitive and mobility abilities that decline as they age or as their illness progresses.

The conclusion of the 2006 GAO report entitled "Long-Term Care Facilities: Information on Residents Who Are Registered Sex Offenders or Are Paroled for Other Crimes" states that the "findings did not indicate that residents with prior convictions are more likely than other residents to commit abuse within these facilities." The 2006 report suggests that absent any evidence suggesting residents with a criminal history are more likely to commit abuse, a focus on the behavior of residents may be more appropriate than regulation based on past convictions for sexual offenses.

In Maryland, long-term healthcare facilities routinely develop care-plans for residents and conduct resident assessments. They document behavioral problems and assess resident risk before, during and after admission. Facilities appear to address resident's behavioral problems or transfer them to facilities better equipped to provide appropriate care.

Research shows that police, prosecutors, and judges may need education and training regarding the nature and consequences of elder mistreatment in residential care settings. In the report by the Texas A & M School of Rural Public Health it is stated that, "Training on how to recognize and prevent elder mistreatment is also beneficial for facility owners, operators and staff."

Anecdotally, in 2010, the *Chicago Tribune* ran several articles exposing sexual abuse in Illinois nursing homes. The articles revealed that 86 cases were investigated by police, but only one arrest had been made. The *Tribune* exposed Illinois' practice of keeping young mentally ill patients alongside the elderly. These mentally ill patients were not able to care for themselves, were on forced medication, or were sex offenders. Many reported assaults were of vulnerable older women who were attacked by men in their 30's or 40's. The Tribune also discovered a case of an elderly woman who was raped by a sex offender who should have been administered an anti-androgen to reduce aggression. State health inspectors found no evidence to suggest that the resident received the medication.

In response to the exposure, the Illinois Governor instituted a plan to overhaul the state's long term care system. This plan included separating the elderly from the mentally ill into entirely different institutions. Proponents of this plan argued that this change would be cost neutral or save money. The Governor also placed more focus on the state's nursing home mandatory reporting statute, which requires caregivers to immediately report suspected abuse. Those who are found guilty of willfully failing to report may be convicted of a Class A misdemeanor.

The practice of caring for the mentally ill alongside the aging and disabled occurs in most states and Maryland is no exception. Again anecdotally, in one particular instance, a convicted sexual offender was released to a Maryland nursing home from prison on medical parole. While under the care of the nursing home, the sex offender's health began to improve. The sex offender complained to the medical staff that he was sexually impotent and was then prescribed Viagra. This case illustrates the importance of notification to the nursing home by the correctional system. In another Maryland nursing home, a mentally ill patient with a criminal history was admitted and later raped another resident.

The National Center on Elder Abuse published *The Nursing Home Abuse Risk Prevention Profile and Checklist* in July 2005[13]. It is an exhaustive resource on the data surrounding abuse of the elderly and disabled. The Center's report focused on the three (3) risk areas frequently encountered in long-term healthcare facilities: facility, resident, and familial risks. The report states, "Numerous studies have shown that poor staffing and institutional indifference create fertile conditions for abuse. To address these facility specific risks healthcare policy makers should:

- Implement an abuse prevention policy
- Adequately screen staff
- Be mindful of staff stress and burnout
- Keep staff to patient ratio as low as possible
- Be aware of a history of deficiencies and complaints.
- Encourage a culture that works positively with patients
- Create a safe and comfortable physical environment

The Center's report states that many studies have shown that some residents are more vulnerable to abuse than others. A resident's risk level is proportional to the resident's needs.

[13] National Center on Elder Abuse, Nursing Home Abuse Risk Prevention Profile and Checklist, (2005).

The final area the Center explored regarding risk is the residents' relationships with family and staff. The report indicates that residents who receive few or infrequent visitors are more likely to be abused. Some residents may have been abused prior to placement in the nursing home. If this has occurred, then additional safeguards should be put in place to prevent further abuse.

While this report did not focus specifically on precautions for preventing sexual abuse of residents there are several steps long-term healthcare facilities can take in order to help prevent sexual assaults:

- Know the backgrounds of the individuals being admitted to the facility.
- Notify all employees of a resident's propensity to sexually offend in order to quickly stop any behavior, such as wandering, that may put other residents at risk.
- As part of the care planning process, document a resident's propensity to sexually offend so that all employees are aware that certain medications should be avoided and that seemly unimportant decisions and statements by the sex offender can be viewed and evaluated in the context of a criminal desire.
- Train employees to recognize signs of sexual abuse in residents including:
    - Physical signs of abuse such as bruising around the breasts and inner thighs, venereal disease, genital infections, genital or anal bleeding, and difficulty walking (when it was not already a problem).
    - Emotional signs of abuse such as uncharacteristic timid behavior or self imposed isolation, sudden personality changes, and odd or misplaced comments about sexual behavior.

Recommendations

With all of this in mind, the MDSOAB recommends the following actions to the Governor and the General Assembly:

Recommendation 1

Language could be included in the Criminal Procedure Article, Section 11-705, Maryland Annotated Code to require a registrant to notify a nursing home or assisted living facility during the admission process that he or she is a registered sex offender in Maryland or in any other jurisdiction. The Board suggests that admission to a healthcare facility should not be denied solely on the basis of registration status. Additionally, if at the time of admission a registrant is so incapacitated that he cannot notify the facility that he is a registered sex offender, 1) this could be considered a reasonable defense for non-compliance with the law; and 2) if he becomes physically and/or mentally able to notify the healthcare facility, the should be required to do so.

Recommendation 2

Language could also be included in the Criminal Procedure Article, Section 11-708, Maryland Annotated Code to require the supervising authority to notify a nursing home or assisted living facility that a registered sex offender is habitually residing in the healthcare facility. The Boards suggests that the supervising authority be required to notify the healthcare facility within three calendar days of becoming aware of the registrant's address change. These notifications could include:

Notification by the Department of Public Safety and Correctional Services to the nursing home or assisted living facility that an inmate who is a registered sex offender is being transferred or released to a facility;

Notification by DPSCS to the nursing home or assisted living facility that a registered sex offender under community supervision is planning to move into, or has moved into, a facility;

Notification by the Department of Health and Mental Hygiene to the nursing home or assisted living facility that a registered sex offender is being transferred or released to a facility; or

If the registrant is not in the custody or under the supervision of the DPSCS or the DHMH, the local law enforcement unit or Court responsible for registering the sex offender shall notify the nursing home or assisted living facility that the registrant is planning to move into, or has moved into, a facility;

Recommendation 3

Language could be included in the Criminal Procedure Article, Section 11-718, Maryland Annotated Code that would require nursing homes and assisted living facilities to provide a general notification to all individuals and families admitted to a healthcare facility that registered sex offenders are not prohibited by law from receiving treatment and care in nursing homes and assisted living facilities. The general notice could include information regarding how the incoming resident and the resident's family members can access the Maryland Sex Offender Registry Website for additional information and can sign up for automated notifications through VINELink.

Recommendation 4

Currently the Sexual Offender Registration and Supervision statute is advised by the Criminal Justice Advisory Board (CJAB). The CJAB is not the recognized Board responsible for determining what are the most effective practices for managing sexual offenders. The MDSOAB recommends the following changes to Criminal Procedure Article, Section 11-720, Maryland Annotated Code:

With advice from the [Criminal Justice Information Advisory Board] SEXUAL OFFENDER ADVISORY BOARD established under [§ 10-207 of this article] SECTION 1-401 OF THE PUBLIC SAFETY ARTICLE, the Secretary of the Department of Public Safety and Correctional Services shall adopt regulations to carry out this subtitle.

Recommendation 5

The Board suggests that a temporary taskforce be considered within the

Public Safety Article, §1-401 to develop regulations to assist nursing homes and assisted living facilities with the safe and effective management of sex offenders in their care. The Secretary of the Department of Health and Mental Hygiene shall adopt regulations to ensure effective management of sex offenders in nursing homes and assisted living facilities. This specifically mandated taskforce is being suggested by the Board in order to devote resources to address these complex issues that are compounded by the intricacies of providing good and affordable healthcare management. Such a taskforce and the Secretary of DHMH should be advised by the Sexual Offender Advisory Board and comprised of representatives from the Board, Department of Health and Mental Hygiene, Offices of Health Care Quality and Long Term Care; the Department of Public Safety and Correctional Services Sex Offender Registry Unit; the Department of Disabilities; the Department of Aging; the State Board of Victim Services; and organizations representing nursing homes and assisted living facilities, as well as other advocacy organizations such as the Alzheimer's Association and the Maryland Coalitional Against Sexual Assault.

The regulations could focus on: 1) general notification to residents and families that Maryland does not prohibit the admission of registered sex offenders to long-term healthcare facilities; 2) specific notification to employees working in a nursing homes and assisted living facilities of a registrant's admission; 3) creation of an appropriate framework for healthcare facility managers to determine if a prospective patient is a registered sex offender; and 4) a requirement that a registrant who is a patient has specific risk reducing precautions addressed in his or her care plan.

The taskforce might also be given the job of developing a framework for training long-term care facility staff on the how to recognize sexual abuse, how to reduce the risk of sexual abuse in their facilities, and ensuring that mandatory reporting laws are understood and followed. The taskforce could also determine the fiscal impact of these potential regulations.

Appendices

U.S. Department of Justice

Office of Justice Programs

Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking

Washington, D.C. 20531

July 19, 2011

The Honorable Gary Maynard
Secretary
Department of Public Safety
and Correctional Services
300 E. Joppa Road, Suite 1000
Towson, MD 21286-3020

Dear Secretary Maynard:

On behalf of the United States Department of Justice's Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART), I am pleased to inform you that, after a thorough review of the materials submitted, the SMART Office has determined that Maryland has substantially implemented the provisions of the Sex Offender Registration and Notification Act (SORNA), Title I of the Adam Walsh Child Protection and Safety Act of 2006. The SMART Office would like to recognize Maryland for its exceptional efforts in working to implement SORNA and to thank you and the dedicated professionals who worked so diligently on this important project.

In our previously-issued final substantial implementation review, dated February 7, 2011, we highlighted the areas where Maryland had not met SORNA requirements. Since that time, the state submitted supplemental information about Maryland's juvenile registration provisions. Based upon this supplemental information, the SMART Office has found that Maryland's registration scheme for juveniles adjudicated delinquent for sex offenses does not substantially disserve the purposes of SORNA.

We encourage Maryland to continue to work towards meeting all the provisions of SORNA and to work with SMART office personnel to maintain Maryland's status as having substantially implemented SORNA. Maryland is expected to keep the SMART Office apprised of its progress towards the continuing implementation of SORNA and the SMART Office will continue to provide any necessary technical assistance towards that end. Maryland will be required to certify continuing implementation of SORNA on an annual basis when applying for Byrne/JAG funding.

Your jurisdiction is now an essential component of the seamless web of public sex offender databases and law enforcement information sharing envisioned by SORNA. Sex offender registration and community notification is an important part of a nationwide commitment to improving the safety of our communities. We look forward to continuing to work with you as you implement SORNA.

Sincerely,

Linda M. Baldwin
Director

cc: The Honorable Martin O'Malley, Governor
Kristen Mahoney, Executive Director, GOCCP
Rhea Harris, Director of Legislative Affairs, DPSCS
Ronald Brothers, CIO, Information Technology and Communications Division
Carole Shelton, Director, Criminal Justice Information System
David Wolinski, Assistant Director, CJIS, DPSCS
Elizabeth Bartholomew, Manager, CJIS, DPSCS

U.S. Department of Justice
Office of Justice Programs
Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART)

July 19, 2011

SORNA Substantial Implementation Review
State of Maryland - Revised

The U.S. Department of Justice, Office of Justice Programs, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) would like to thank the State of Maryland for the extensive work that has gone into its effort to substantially implement Title I of the Adam Walsh Act, the Sex Offender Registration and Notification Act (SORNA). The SMART Office has completed its review of Maryland's revised and updated SORNA substantial implementation packet, and has found the State of Maryland to have substantially implemented SORNA.

In February 2011, the SMART Office determined that the Maryland Department of Public Safety and Correctional Services' (DPSCS) earlier submission did not meet substantial implementation of SORNA. On July 13, 2011, DPSCS submitted supplemental information about Maryland's registration scheme for juveniles adjudicated delinquent for sex offenses. Based upon this supplemental information, the SMART Office reconsidered its earlier determination.

The following review updates the February 2011 report issued to Maryland. Our review of the submitted materials follows the outline of the SMART Office Substantial Implementation Checklist-Revised, and contains 14 sections addressing the SORNA requirements. Under each section, we indicate whether Maryland meets SORNA requirements of that section or deviates from the requirements in some way. In instances of deviation, we specify that the departure(s) from a particular requirement does not substantially disserve the purpose of that requirement. In other words, Maryland is encouraged to work toward rectifying deviations from requirements in order to achieve full implementation of SORNA, but this is not necessary for substantial implementation purposes.

This is an exhaustive review and meant to detail every area in which the state has not met SORNA standards. We encourage you to review the information below, share it with relevant stakeholders in the state, and get back in touch with us to develop a strategy to address these remaining issues.

I. Immediate Transfer of Information

SORNA requires that when an offender initially registers and/or updates his information in a jurisdiction, that that initial registration information/updated information be immediately sent to other jurisdictions where the offender has to register, as well as to NCIC/NSOR and the jurisdiction's public sex offender registry website.

In the February 2011 SMART Office report to Maryland, it was noted that Maryland's definition of "Jurisdiction" included only States and Native American tribes and that in order to meet SORNA requirements "jurisdiction" must also include the five principal U.S. territories and the District of Columbia. However, upon subsequent review of the Code of Maryland Regulations 12.06.01.00, it is evident that Maryland's definition of "Jurisdiction" includes the following as determined under 42 U.S.C. §16911(10):

(i) A state;
(ii) The District of Columbia;
(iii) The Commonwealth of Puerto Rico;
(iv) Guam;
(v) American Samoa;
(vi) The Northern Mariana Islands;
(vii) The United States Virgin Islands; and
(viii) A federally recognized Indian Tribe

Maryland meets all of the SORNA requirements in this section.

II. Offenses that Must Be Included in the Registry

SORNA requires that certain federal, military, and foreign offenses are included in a jurisdiction's registration scheme. In addition, SORNA requires that the jurisdiction capture certain sex offenses, both offenses from its jurisdiction and from other SORNA registration jurisdictions, in its registration scheme. SORNA also requires that certain adjudications of delinquency are included in a jurisdiction's registration scheme.

While Maryland meets most of the requirements of this section, Maryland's term "convicted" includes the provision "probation before judgment," which allows the court, upon fulfillment of the conditions of probation, to discharge the defendant from probation. Discharge in this instance means that the defendant shall be without judgment of conviction. A number of Maryland's registerable offenses qualify for this provision and, thus, would be excused from the registration requirements upon discharge. This allowance deviates from the SORNA requirement. To meet this SORNA requirement, Maryland will need to include all registerable sex offenses in Criminal Procedure Article §6-220(d)(3).

This deviation does not substantially disserve the purposes of this requirement in this section.

III. Tiering of Offenses

The SMART Office has reviewed all statutes identified in the substantial implementation submission package and has identified Maryland's placement of these statutes within the SORNA three tier levels. Maryland correctly places its statutes within at least the minimum appropriate SORNA tiers, with the following exceptions:

CL § 3-307(A)(4) Sex Offense 3rd Degree: engaging in a sexual act with another if the victim is 14 or 15 years old, and the person performing the sexual act is at least 21 years old.

CL § 3-307(A)(5) Sex Offense 3rd Degree: engaging in vaginal intercourse with another if the victim is 14 or 15 years old, and the person performing the act is at least 21 years old.

Maryland classifies these offenses as Tier II (25 year registration). These offenses involve sexual acts with minors under the age of 16, thereby requiring Tier III registration (lifetime) under SORNA.

These deviations do not substantially disserve the purposes of these requirements in this section.

IV. Required Registration Information

SORNA requires that the jurisdiction collect certain pieces of information from and for each offender that it registers, and requires that the jurisdiction keep that registration information, in a digitized form, in its registry.

Maryland meets all of the SORNA requirements in this section.

V. Where Registration is Required

SORNA requires that the jurisdiction register an offender if the jurisdiction is the one in which he is convicted or incarcerated. In addition, SORNA requires that the jurisdiction register offenders who reside, work, or attend school in the jurisdiction.

Maryland meets all of the SORNA requirements in this section.

VI. Initial Registration: Generally

SORNA requires that when an offender is incarcerated within the jurisdiction, registration must occur before release from imprisonment for the registration offense. Similarly, when an offender is sentenced within the jurisdiction, but not incarcerated, SORNA requires that registration occur within three business days of sentencing. Finally, when an offender has been convicted, sentenced, or incarcerated in another jurisdiction (including federal or military court), the jurisdiction must register the offender within three business days of the offender establishing residence, employment, or school attendance within the jurisdiction. SORNA also requires that, during the initial registration process, the jurisdiction inform the offender of his registration duties and require the offender to acknowledge in writing that he understands those duties.

Maryland meets all of the SORNA requirements in this section.

VII. Initial Registration: Retroactive Classes of Offenders

SORNA requires that each registration jurisdiction have a procedure in place to recapture three categories of sex offenders: those who are currently incarcerated or under supervision, either for the predicate sex offense or for some other crime; those who are already registered or subject to a pre-existing sex offender registration requirement under the jurisdiction's law; and those who reenter the jurisdiction's criminal justice system because of a conviction for some other felony crime (whether or not it is a sex offense).

Maryland meets all of the SORNA requirements in this section.

VIII. Keeping the Registration Current

SORNA requires that when an offender resides in a jurisdiction, that sex offender must immediately appear in-person to update his or her name, residence, employment, school attendance, and termination of residence. SORNA also requires that when an offender resides in a jurisdiction, that sex offender must immediately update any changes to his or her email addresses, internet identifiers, telephone communications, vehicle information, and temporary lodging information.

When an offender works in a jurisdiction, but does not reside or attend school there, SORNA requires that the offender immediately appear in-person to update employment-related information. When an offender attends school in a jurisdiction, but does not reside or work there, SORNA requires that the offender immediately appear in-person to update school-related information.

SORNA also requires that when an offender resides in a jurisdiction but indicates to the state that he/she intends to travel outside the United States, that the offender notify the residence jurisdiction at least 21 days in advance of such travel.

In addition, SORNA requires that when an offender notifies the jurisdiction of his intent to relocate to another country to live, work or attend school, or of his intent to travel to another country, the jurisdiction must do three things: immediately notify any other jurisdiction where the offender is either registered, or is required to register, of that updated information; immediately notify the United States Marshals Service, and immediately update NCIC/NSOR.

Maryland meets all of the SORNA requirements in this section.

IX. Verification/Appearance Requirements

SORNA requires that offenders register for a duration of time, and make in-person appearances at the registering agency, based on the tier of the offense of conviction. Maryland meets most of the requirements of this section, with notable exceptions. Adult sex offenders in Maryland are required to register based upon Tier designation in accordance to SORNA requirements: Tier I offenders are required to register annually for 15 years; Tier II offenders are required to register twice-annually for 25 years; and Tier III offenders are required to register quarterly for life. However, Maryland's registration scheme for juveniles, 14 years of age or older, adjudicated delinquent for "aggravated" sex offenses deviates from SORNA requirements.

Based on information submitted to the SMART Office, in Maryland, juveniles adjudicated delinquent for "aggravated" sex offenses are required to report in-person for registration every three months.[1] This meets SORNA requirements. However, Maryland deviates from SORNA requirements in that juveniles are not required to register for life, but rather for the term of their juvenile probation. State Juvenile Courts may extend the duration of registration beyond a juvenile's probation term. The Court may, under a clear and convincing standard, find that a juvenile is at "significant risk for committing a sexually violent offense" and require a juvenile to continue registration and have their registration information posted on the State's public sex offender website for 5 years beyond the age of 21.

Maryland's procedure for updating offenders' photographs also deviates from SORNA requirements. SORNA requires that an updated photograph be collected unless appearance has not significantly changed once per year for Tier I offenders, once every six months for Tier II offenders, and once every 90 days for Tier III offenders. Maryland provides for an updated photograph at six month intervals only (regardless of offenders' Tier designation).

These deviations do not substantially disserve the purposes of these requirements in this section.

X. Registry Website Requirements

SORNA requires that each jurisdiction maintain a public sex offender registry website and publish certain registration information on that website. SORNA also requires that certain information not be displayed on a jurisdiction's public registry website.

Maryland meets all of the SORNA requirements in this section.

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[1] Juveniles adjudicated delinquent for "aggravated" sex offenses are required to submit DNA to the Maryland Crime Laboratory, fingerprints to the Criminal Justice Information System. Juvenile's DNA and fingerprints are shared with the National Criminal Justice Information System for incorporation into the national databases (meeting the requirements of section IV). These juveniles are also required to update all of their registration information within the same timeframes as Maryland's adult registrants (meeting the requirements of section VIII). Juvenile registration information is included in Maryland's CJIS database and is therefore subject to the automatic notifications to agencies responsible for employment related, and fingerprint supported, background investigations. Additionally, all law enforcement agencies and the Maryland Department of Juvenile Services have access to the non-public juvenile registration database for law enforcement purposes (meeting the requirements of section XI).

XI. Community Notification

SORNA requires that each jurisdiction disseminate certain initial and updated registration information to particular agencies within the jurisdiction. In addition, SORNA requires that each jurisdiction also disseminate certain initial and updated registration information to the community.

In the February 2011 SMART Office report to Maryland, it was noted that Maryland did not provide notification to any agency responsible for conducting employment-related background checks under section 3 of the National Child Protection Act of 1993 (42 U.S.C. 5119a). Upon subsequent review, it is evident that these entities can request the information from the Maryland Criminal Justice Information System Central Repository (administered by DPSCS) for the purposes of employment-related background checks.

Maryland meets all of the SORNA requirements in this section.

XII. Failure to Register as a Sex Offender: State Penalty

SORNA requires that each jurisdiction, other than a federally recognized Indian tribe, provide a criminal penalty that includes a maximum term of imprisonment that is greater than one year for the failure of a sex offender to comply with their registration requirements.

Maryland meets all of the SORNA requirements in this section.

XIII. When a Sex Offender Fails to Appear for Registration

SORNA requires that when a jurisdiction is notified that a sex offender intends to reside, be employed, or attend school in its jurisdiction, and that offender fails to appear for registration as required, that the jurisdiction receiving that notice inform the originating jurisdiction (the jurisdiction that provided the initial notification) that the sex offender failed to appear for registration.

Maryland meets all of the SORNA requirements in this section.

XIV. When a Jurisdiction has Information that a Sex Offender may have Absconded

SORNA requires that when a jurisdiction has information that a sex offender may have absconded, that the jurisdiction take certain actions in terms of investigating the absconder and notifying various law enforcement agencies.

Maryland meets all of the SORNA requirements in this section.

Conclusion

Maryland has put forth exceptional work and effort in adopting SORNA and enhancing its sex offender registration and notification system. However, there are several provisions identified in this report that should be addressed in order for Maryland to fully implement SORNA. Namely, the allowance of offenders who receive probation before judgment to be excused from the registration requirements and the short duration of registration requirements for juveniles adjudicated for aggravated sex offenses.

We encourage you to contact the SMART Office once you have had the opportunity to review and discuss our findings and have developed a strategy for addressing and fully adopting the remaining provisions of SORNA.

REQUIREMENTS FOR APPROVED SEXUAL OFFENDER TREATMENT PROVIDER STATUS

INTRODUCTION

Specialized treatment – with the ultimate goal of increasing public safety by motivating and enabling individuals who sexually offend to develop the ability to self-regulate their behavior – is an essential component of a comprehensive model of sexual offender management. The Maryland Sexual Offender Advisory Board's Office of Professional Services recognizes that mental health professionals who provide treatment services for individuals who have committed sexual offenses need specialized training, education and experience. The Board further recognizes that even within the broad category of sexual offender treatment, the evaluation and treatment of adult sexual offenders differs significantly from services provided to juveniles who have sexual behavior problems. A competent therapist working with either group will have acquired specialized knowledge and will have developed specialized techniques that are based on empirical evidence. Maintaining and demonstrating evidence of one's scope of practice and competence in working with individuals who have committed sexual offenses is an essential professional responsibility.

Therefore, the requirements and procedures presented here are designed to ensure that all individuals who have committed sexual offenses or exhibited sexual behavior problems receive services from appropriately trained and experienced treatment providers. The criteria presented herein are primarily for those mental health professionals who provide **sexual-offense specific** evaluation and treatment services to individuals who have committed sexual offenses and who are under the jurisdiction or supervision of the Department of Health and Mental Hygiene, the Department of Juvenile Services, or the Department of Public Safety and Correctional Services. Practitioners who fulfill these requirements (which are subject to revision by the Office of Professional Services) are eligible to become "Approved Providers" for those individuals. Inclusion on the Approved Provider List means that a provider (1) has met the education and experience requirements established by the MDSOAB's Office of Professional Services (OPS), and (2) has agreed in writing to comply with the standards of practice outlined by the OPS. Placement on the Approved Provider List does not represent either licensure or certification of the practitioner, nor does it constitute or replace the process of approval of such programs employed by any state agency. It does not imply that all practitioners listed offer the same services. While inclusion on the Approved Provider List does not create an entitlement for referrals, it is the recommendation and expectation of the Maryland Sexual Offender Advisory Board that state agencies (e.g.,

the Department of Health and Mental Hygiene, the Department of Juvenile Services, the Department of Public Safety and Correctional Services) will refrain from employing or contracting with, or allowing an individual convicted of or adjudicated for a sexual offense to employ or contract with sexual-offense specific treatment providers unless they are on the Approved Provider List.

DEFINITIONS

Evaluation: Refers to a sexual offense-specific evaluation or assessment of an individual who has committed a sexual offense that is comprised of at least a clinical interview and the use of a tool or tools designed to assess the risk of sexual recidivism and/or treatment progress. Such an evaluation may be conducted for a variety of purposes including but not limited to: sentencing and institutional release determinations, intake, treatment planning, and ongoing management decisions.

MDSOAB: Acronym for the Maryland Sexual Offender Advisory Board. It is used interchangeably with the expression “the Board.”

OPS: Acronym for the Maryland Sexual Offender Advisory Board’s Office of Professional Services. It is used interchangeably with the expression “the Office.”

Provider: Refers to an individual who offers or wishes to offer specialized assessment and treatment services as described in this document. “Provider” is used interchangeably with the term “practitioner”.

Supervision: Refers in this document to formal oversight provided to treatment professionals as delineated in the following sections. Supervision provided to comply with these approval requirements may or may not be coextensive, in any particular case, with the hours of supervision required for other purposes. In other words, the various types of supervision requirements (e.g., licensure, approval, agency-specific) may or may not be met by the supervision provided by the same supervisor in the same supervision hour.

Training: Refers to formal continuing education experiences such as those provided in academic settings, at professional conferences or through formalized, advertised training events. To be acceptable as training for purposes of approval, an educational experience must be planned, scheduled prior to its occurrence, announced in written form, and have some form of written outline demonstrating internal structure. It must be focused on one or more of the content areas listed in this document and must be presented or led by one or more persons who have the needed expertise to present the

content material. It is not necessary that it be continuing education (CE) credit approved.

PART ONE: REQUIREMENTS FOR APPROVAL APPLICABLE TO ALL TREATMENT PROVIDERS

The following requirements apply to all individuals seeking approval or renewal of approval at either the Independent or Associate Provider level.

A. Training Requirements for Initial Approval Training must directly relate to sexual offender evaluation, treatment, and management and may include but is not limited to the topics listed on the Approved Training Topics List (Appendix A). It is the intent of the Office of Professional Services to establish a professional but not unreasonable standard for identifying experiences that should be allowable as training for the purposes of inclusion on the Approved Provider List. The required training includes formal continuing education experiences such as those provided in academic settings, at professional conferences, or through formalized, advertised training events. Training may also include less formal educational experiences such as meetings or events that are planned and structured, agency staff trainings, structured meetings of organizations, and mini-conferences of various types. Online offerings may be included, however no more than 50% of accrued training may be obtained through online programming. The following are offered as examples of the types of training experiences that would be considered acceptable for approval purposes:

- Formal trainings, conference presentations, or similar experiences which clearly qualify as continuing education for license renewal purposes
- Online continuing education experiences which provide appropriate documentation
- Educational experiences offered by recognized professional organizations (e.g., the Maryland Psychiatric Association, the Maryland Psychological Association, the Association for the Treatment of Sexual Abusers).
- Intra-agency staff trainings that are announced, planned, and structured.
- Hours spent in providing presentations regarding sexual offender evaluation, treatment, or management may be counted as training hours for the presenter for a presentation conducted for the first time.

The following are offered as examples of the types of training experiences that would not be considered acceptable for approval purposes:

- Consultations or conversations with experts
- Non-formalized self-study such as reading a journal article or a book
- Providing presentations to non-professionals, such as community groups
- Reading or participating in list-serves, and blogs – even when the content is

highly relevant
- Supervision sessions, whether given or received
- Case conferences, COMET meetings, and similar events – unless organized as a formal training experience

Applicants are not required to submit documentation of their individual training experiences as a required part of the process of seeking initial approval. However, applicants must sign attestation forms under penalty of perjury, indicating that they have accumulated the required amount of training and that they are able to document the satisfaction of this requirement if such verification is requested.

B. Experience Requirements for Initial Approval Specialized experience providing services for individuals who have committed sexual offenses is required for initial approval of treatment providers. The specific experience can be obtained in a variety of settings, including institutional settings, residential treatment settings, and community-based outpatient settings. This experience can have been obtained by working with registered or non-registered individuals who have committed sexual offenses in or out of the state of Maryland. If seeking approval as a provider for adult individuals who have committed sexual offenses, at least 50% of a provider's experience must have been obtained through working with adult individuals who have committed sexual offenses. If seeking approval as a provider for juveniles who have engaged in problem sexual behavior, at least 50% of a provider's experience must have been obtained through working with juveniles who have engaged in problem sexual behavior. Applicants are not required to submit documentation of their experience as a required part of the process of seeking initial approval. However, applicants must sign attestation forms under penalty of perjury, indicating that they have accumulated the required amount of experience and that they are able to document the satisfaction of this requirement if such verification is requested.

C. Licensure Requirements for Initial Approval Any practitioner providing services as an Approved Provider at any level must have and maintain a status that authorizes that individual to provide mental health services in Maryland or in the jurisdiction where such services are offered. Such authority may be established through a license for independent practice, or through formal status as a registered Intern, a Psychology Associate, or some similar arrangement. In some cases, authorization will be associated with participation in the training program of an academic institution. Applicants are required to submit a copy of any relevant license or certification as part of the process of initial approval.

D. Criminal Record Check Applicants must submit to a criminal record check. This will be accomplished through the submission by the applicant of fingerprint data, unless

such data was previously submitted to the applicant's licensing body or another official entity within the State of Maryland. Applicants will be required to pay any costs associated with this process. Applicants may be denied placement on the Approved Provider List on the basis of the policies outlined by the Office of Professional Services relative to an applicant's criminal record.

E. Fees Applicants must pay any required application or renewal fees. Movement from Associate Provider level to Independent Provider level will be processed at no additional fee, but the original renewal date will remain the same.

F. Continued Placement on Approved Provider List Approval as a sexual-offense specific treatment provider, both for initial approval and for renewals, will be for a period of two (2) years. Approved providers must apply for continued placement on the Approved Provider List every two (2) years by the date provided by the Office of Professional Services. The Office of Professional Services will make reasonable efforts to provide advance notice of each approved provider's renewal date, but the final responsibility for tracking such renewals will remain with the provider. Providers seeking renewal of approval must demonstrate compliance with the approval renewal criteria. All approved providers must agree to random auditing by the Office of Professional Services. At the time of an audit, a provider will be required to submit two (2) samples of work product (e.g., reports, termination summaries) for review by a committee established for this purpose within the OPS. Providers may be removed from the Approved Provider List for substantial noncompliance with established standards. While providers will be given the opportunity to remediate concerns when appropriate, if the conduct in question is in potential violation of already established licensing regulations the complaint will be forwarded to the appropriate licensing board. The Office of Professional Services will not hear or adjudicate complaints involving potential violations of licensing regulations.

G. Code of Ethics An approved provider must provide all services in a manner that is consistent with the reasonably accepted standard of practice in the sexual offender provider community and according to his or her respective professional standards. The provider shall adhere to all laws, regulations and accepted standards and practices governing service delivery.

H. Letters of Reference While there is no *general* requirement that applicants submit letters of reference as part of the process of applying for inclusion on the Approved Provider List, the Office of Professional Services may, on a case-by-case basis, require that an applicant submit letters of reference or verification addressing relevant aspects of the applicant's professional background or performance.

I. Malpractice Insurance Professional malpractice insurance coverage is not required for approval but is strongly recommended.

J. Revocation, Denial, or Non-Renewal of Approval Failure to comply with the requirements for approval or renewal may result in removal from the Approved Provider List. The Office of Professional Services may refuse to accept an application for approval, refuse to renew approval, or revoke approval upon verification that a practitioner, whether an approved Independent Provider or Associate Provider has incurred one or more of the following:

A conviction for any felony or a misdemeanor involving a sexual or violent offense

The revocation, cancellation, suspension, non-renewal, or de-activation of state licensure, or the placement on probation of the practitioner by any state licensing body. Whether licensed, pre-licensed, or in a training program, the provider must be in good standing with the appropriate licensing body or training program and must report any change in status to the Office of Professional Services as soon as he or she becomes aware of it.

A determination by the Office of Professional Services that the practitioner has engaged in deceit or fraud in connection with the delivery of services, supervision, or documentation relative to the satisfaction of Approved Provider List eligibility requirements.

A determination by the Office of Professional Services that the practitioner, in any other way, does not meet the criteria for approval.

K. Appeal Process Determinations made by the Office with regard to approval may be appealed by the affected practitioner to a panel established for this purpose by the Maryland Sexual Offender Advisory Board.

L. Special Cases and Exceptions The Office may consider factors other than those delineated here in making its determination as to whether to grant or renew approved provider status.

PART TWO

REQUIREMENTS FOR APPROVAL AS AN INDEPENDENT PROVIDER

The following requirements apply to all individuals seeking inclusion on the Approved Provider List at the Independent Provider level. Independent Provider status identifies practitioners recognized as fully qualified to provide, without supervision, evaluation and treatment services for individuals who have committed sexual offenses. An Independent Provider's competence to provide any specific type of service is, of course, governed by all of the standards and regulations of his or her state mental health provider licensure and by the relevant professional Code of Ethics.

Services That May Be Provided By An Approved Independent Provider A practitioner approved at the Independent Provider level may practice independently and may provide, without supervision, evaluation, treatment and related services for individuals who have committed sexual offenses.

An approved Independent Provider may supervise individuals at the Associate Provider level who require such supervision in order to meet approval criteria. Generally, an Approved Provider may supervise no more than five (5) supervisees regardless of the number of programs in which the Independent Provider is providing supervision. In special cases, however, on the basis of geographic or other considerations, the Office of Professional Services may grant exceptions to this standard.

An Independent Provider providing supervision to an Associate Provider is not required to be on site if the supervisee is licensed or is working under the appropriate supervision of some other licensed mental health provider in accordance with state licensing laws and regulations. The supervision provided under these criteria may be the same as, and may overlap with, any supervision required for licensure or to meet the requirements of a training program. On the other hand, the supervision provided under these criteria may be completely independent of any supervision required and provided for licensure, training, or any other purposes.

B. Requirements For Initial Approval Of An Independent Provider To qualify to provide sexual offender treatment at the Independent Provider level, an individual must demonstrate that he or she meets all of the following criteria:

EDUCATION: An Independent Provider must have completed all of the educational requirements necessary to obtain licensure.

LICENSURE: An Independent Provider must have attained and must maintain a current license, issued by a licensing board of the State of Maryland, authorizing him

or her to practice independently within the mental health field. If the practitioner is treating a client outside of the state of Maryland, he or she must maintain an equivalent license issued by the jurisdiction in which the services are provided.

EXPERIENCE: An Independent Provider must have completed, within the five (5) years prior to initial approval, a minimum of one thousand (1,000) hours of clinical experience specifically in the treatment of individuals who have committed sexual offenses and/or at least forty (40) sexual offense-specific evaluations of individuals who have committed sexual offenses. At least half of these hours must have involved direct face-to-face contact with individuals who have committed sexual offenses. This experience may have been obtained while functioning either as an independently licensed mental health professional or while working under pre-licensure supervision. Practitioners who provide clinical supervision for therapists who evaluate and/or treat individuals who have committed sexual offenses may count hours of supervision directly related to such services towards this experience requirement.

The Office of Professional Services recognizes that a number of clinicians in current practice have accumulated substantial direct client experience over a period greater than five (5) years. Therefore, applicants who (1) meet a lifetime experience threshold of at least two thousand (2,000) hours of direct treatment and evaluation services provided to individuals who have committed sexual offenses, and (2) continue to maintain professional involvement in the field will be allowed to submit this lifetime experience in lieu of the one thousand (1,000) hours of experience obtained within the last five (5) years.

The Office of Professional Services may require verification that the applicant's current involvement in the field is substantially relevant to the evaluation, treatment and management of individuals who have committed sexual offenses.

The Independent Provider will be required to sign an attestation under penalty of perjury that the experience requirement has been fulfilled.

TRAINING: An Independent Provider must have accumulated, within the five (5) years prior to initial approval, a minimum of sixty (60) documented training hours related to the evaluation, treatment, and management of individuals who have committed sexual offenses. These training hours must be related to topics included on the Approved Training Topics list (Appendix A). The Independent Provider will be required to sign an attestation under penalty of perjury that this training requirement has been fulfilled.

SUPERVISION: No additional supervision requirements are imposed upon an Independent Provider. The standard expectations for any mental health professional with respect to seeking consultation and supervision as needed are applicable.

C. Requirements For Renewal Of Approval For An Independent Provider An Approved Independent Provider will remain on the Approved Provider list, unless explicitly removed for cause, for a period of two (2) years. The initial listing period may vary depending upon the renewal date determined by the Office of Professional Services but will not be less than two (2) years. To renew his or her approval status, an Independent Provider must take the following actions and/or meet the following criteria and submit – prior to the expiration of his or her approval status – documentation that these requirements have been met.

EXPERIENCE: An Independent Provider shall attest under penalty of perjury that he or she has accumulated a minimum of two hundred (200) hours of clinical experience and/or conducted eight (8) evaluations of individuals who have committed sexual offenses over the course of the previous two (2) years. An Independent Provider who provides clinical supervision for therapists who are treating individuals who have committed sexual offenses may count hours of supervision toward this experience requirement.

TRAINING: An Independent Provider must submit documentation that he or she has completed a minimum of thirty (30) hours of continuing education/training over the course of the previous two (2) years. These training hours must be related to topics included on the Approved Training Topics list (Appendix A).

SUPERVISION: No supervision requirements are imposed upon an Independent Provider.

SPECIFIC REQUIREMENTS FOR APPROVAL AS AN ASSOCIATE PROVIDER

The Associate Provider status identifies practitioners who have not yet achieved the requisite levels of training and experience in the evaluation and/or treatment of individuals who have committed sexual offenses to earn approval as an Independent Provider, and practitioners who may be in the process of obtaining this experience and training but who are not yet licensed by the state to independently deliver mental health services.

An Associate Provider's competence to provide any specific type of service is, of course, governed by all of the standards and regulations of his or her state mental health provider licensure and by the relevant professional Code of Ethics.

A. Services Which May Be Provided By An Approved Associate Provider A practitioner approved at the Associate Provider level may evaluate and treat individuals who have committed sexual offenses only while working under the supervision of an approved Independent Provider. Any written reports must be co-signed by the Associate Provider's supervisor(s).

An Independent Provider providing supervision to an Associate Provider is not required to be on site if the supervisee is licensed or is working under the appropriate supervision of some other licensed mental health provider in accordance with state licensing laws and regulations. The supervision required under these criteria may be the same as, and may overlap, such supervision as may be required for licensure or to meet the requirements of a training program. On the other hand, the supervision provided under these criteria may be independent of supervision required for any other purposes. Therefore, the various types of supervision requirements may or may not be met by the same supervisor in the same supervision session.

B. Requirements For Initial Approval Of An Associate Provider To qualify to provide sexual offender treatment at the Associate Provider level, an individual must demonstrate that he or she meets all of the following criteria:

EDUCATION: An Associate Provider must have a Master's degree or above in a behavioral science area of study recognized by a Maryland licensing board or by the licensing jurisdiction in which the individual practices.

LICENSURE: An Associate Provider must have attained and must maintain a current license, issued by a licensing board of the State of Maryland, authorizing him or her to practice independently within the mental health field. If the practitioner is treating a client outside of the state of Maryland, he or she must maintain an equivalent license issued by the jurisdiction in which the services are provided; **or**
An Associate Provider must have the required status as a trainee, intern, Psychology Associate or the equivalent to be qualified and authorized to provide mental health services, under supervision, in Maryland and in any other jurisdiction in which such services are actually provided.

EXPERIENCE: There is no specific experience requirement for initial placement on the Approved Provider List in Associate Provider status, but practitioners who are

listed as Associate Providers must agree to accumulate a minimum of eighty (80) hours of clinical experience with and/or conduct at least four (4) evaluations of individuals who have committed sexual offenses during each two (2) year period of inclusion on the Approved Provider List. These hours must be obtained while working under the supervision of an Independent Provider. At least half of these hours must involve face-to-face contact, either alone or as a co-therapist, with individuals who have committed sexual offenses. Co-therapy experience is strongly encouraged. The Associate Provider and any Independent Provider(s) providing supervision to the Associate Provider during the period under review will be required to sign an attestation under penalty of perjury that this experience requirement is in the process of being fulfilled.

TRAINING: There is no specific training requirement for initial placement on the Approved Provider List in Associate Provider status, but practitioners who are listed as Associate Providers must agree to accumulate, during each two (2) year period of inclusion on the Approved Provider List, a minimum of thirty (30) hours of continuing education/training related to the evaluation, treatment, and management of individuals who have committed sexual offenses. These training hours must be related to topics included on the Approved Training Topics list.

SUPERVISION: Any services provided by an Associate Provider to individuals who have committed sexual offenses must be provided under the direct supervision of an approved Independent Provider. An Associate Provider must receive a minimum of one (1) hour of supervision for every twenty (20) hours of direct sexual offender services. The required supervision must be face-to face (may not include teleconferencing or videoconferencing formats unless pre-approved by the Office of Professional Services), and no more than 25% of the required supervision may be provided in a group format.

If the Associate Provider is not yet licensed, he or she must continue to receive supervision as required by the applicable state licensing authority or by his or her academic training program. The supervision required under these criteria may be the same as, and may overlap, such supervision as may be required for licensure or to meet the requirements of a training program. On the other hand, the supervision provided under these criteria may be independent of supervision required for any other purposes. Therefore, the various types of supervision requirements may or may not be met by the same supervisor in the same supervision session.

C. Requirements For Renewal Of Approval For An Associate Provider An Associate Provider will remain on the Approved Provider list, unless explicitly removed for cause,

for a period of two (2) years. The initial listing period may vary depending upon the renewal date determined by the Office of Professional Services but will not be less than two (2) years.

To renew his or her approval status, an Associate Provider must take the following actions and/or meet the following criteria and submit – prior to the expiration of his or her approval status – documentation that these requirements have been met. There is no limit to the length of time an individual may remain in Associate Provider status, so long as the required renewals are completed as specified.

EXPERIENCE: An Associate Provider must accumulate a minimum of eighty (80) hours of clinical experience with and/or conduct at least four (4) evaluations of individuals who have committed sexual offenses during each two (2) year period of inclusion on the Approved Provider List. These hours must be obtained while working under the supervision of an Independent Provider. At least half of these hours must involve face-to-face contact, either alone or as a co-therapist, with individuals who have committed sexual offenses. Co-therapy experience is strongly encouraged.

The Associate Provider and any Independent Provider(s) who provided supervision to the Associate Provider during the period under review will be required to sign an attestation under penalty of perjury that this experience requirement has been fulfilled.

TRAINING: An Associate Provider must accumulate a minimum of thirty (30) hours of continuing education/training related to the evaluation, treatment, and management of individuals who have committed sexual offenses. These training hours must be related to topics included on the Approved Training Topics list (Appendix A).

The Associate Provider will be required to sign an attestation under penalty of perjury that this training requirement has been fulfilled.

SUPERVISION: An Associate Provider must receive a minimum of one (1) hour of supervision for every twenty (20) hours of direct sexual offender services. The required supervision must be face-to face (may not include teleconferencing or videoconferencing formats unless pre-approved by the Office of Professional Services), and no more than 25% of the required supervision may be provided in a group format.

If the Associate Provider is not yet licensed, he or she must continue to receive

supervision as required by the applicable state licensing authority or by his or her academic training program. The supervision required under these criteria may be the same as, and may overlap, such supervision as may be required for licensure or to meet the requirements of a training program. On the other hand, the supervision provided under these criteria may be independent of supervision required for any other purposes. Therefore, the various types of supervision requirements may or may not be met by the same supervisor in the same supervision session.

The Associate Provider and any Independent Providers who provided supervision to the Associate Provider during the period under review will be required to sign an attestation under penalty of perjury that this supervision requirement has been fulfilled.

D. Requirements For Movement Of Associate Provider To Independent Provider Status

Reclassification from Associate Provider to Independent Provider, while not required, may be initiated by the practitioner at any point after he or she has satisfied all of the requirements of the Independent Provider level. An Associate Provider wishing to move to Independent Provider status must complete and submit attestation under penalty of perjury verifying that he or she has acquired the requisite hours of training and experience. In addition, the Associate Provider must submit a statement from each approved Independent Provider who provided required supervision confirming the practitioner's experience and readiness to serve as an Independent Provider.

APPROVED TRAINING TOPICS

- Statistics on sexual offense victimization rates
- Sexual offender/offense characteristics
- Sexual offender risk assessment tools
- Sexual offender assessment procedures
- Sexual offender evaluation and treatment planning
- Sexual offender treatment and management techniques
- Risk, Needs, and Responsivity Principles
- Evaluating and reducing denial in sexual offenders
- Behavioral treatment techniques used with sexual offenders
- Cognitive behavioral techniques used with sexual offenders
- Relapse prevention with sexual offenders
- Physiological techniques (including penile plethysmography, polygraph examination, viewing measures of sexual interest)
- Legal and ethical issues regarding sexual offenders
- Special sexual offender populations (including sadistic sexual offenders, offenders with developmental disabilities, compulsive sexual offenders)
- Female sexual offenders

- Pharmacotherapy with sexual offenders
- Group therapy dynamics
- Techniques for sexual arousal treatment
- Maryland child and elder abuse reporting requirements
- Motivational interviewing
- Sexual abuse survivors/the effects of victimization
- Family reunification/visitation
- Impact of sexual offenses on society
- Assessing treatment progress
- Secondary and vicarious trauma
- Wellness and self care
  Anger management
- Alcohol and other drug abuse assessment and treatment with sexual offenders
- Human sexuality
- Socio-cultural (ethnicity, religion, socioeconomic status) factors in sexual values and behavior:
    - Varities of sexual orientation and gender identities
    - Atypical sexual behavior, hypersexuality and sexual dysfunction
    - Treatment of sexual disorders/dysfunctions
    - Understanding the effects of psychiatric disorders on sexual offending
    - Neuro-developmental impairments Traumatic brain injury
    - Clinical supervision of therapists treating sexual offenders
    - Requirements es-tablished by the Office of Professional Services
    - Other topics listed, approved, or posted by the Office of Professional Services