

# CALIFORNIA SEX OFFENDER MANAGEMENT BOARD

## Year End Report (2014)

February 2015



# The State of California Sex Offender Management Board Year End Report

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February 3, 2015

Report Prepared By:  
California Sex Offender Management Board (CASOMB)  
and  
State Authorized Risk Assessment Tools for Sex Offenders  
(SARATSO) Review Committee

**THE STATE OF CALIFORNIA SEX OFFENDER MANAGEMENT BOARD**  
**REPORT TO GOVERNOR, LEGISLATURE AND OTHER STAKEHOLDERS**  
**February 3, 2015**

The beginning of 2015 is an opportune time to provide an update and overview of activities, plans and recommendations of the California Sex Offender Management Board (CASOMB) and the State Authorized Risk Assessment Tool for Sex Offenders Committee (SARATSO).

The picture of sex offender management in the state is a complex one with many moving parts. This Report touches on many of those components. It is anticipated, however, that actions by the Executive, Legislative and Judicial branches of California government over the coming months will cause new issues to emerge and new policy decisions to come forward.

In response to the initial 2008 mandate, CASOMB constructed an extensive assessment of the current status of California with respect to multiple aspects of sex offender management. At that time a great deal of data was collected and reported. It was also determined and reported that certain important data sets were not readily available. In some important ways, the same situation presents itself now, six years later. Important data is available – some of which is provided in this report - but there are significant data gaps which, despite efforts toward resolution, continue to hinder CASOMB efforts to present a more complete picture of the state of sex offender management in California.

In this year-end review, relevant available data known to CASOMB will be reported, gaps in the availability of desirable data will be noted and selected topics related to recent events or emergent concerns will be discussed. Organizationally, the Report will be divided into three parts. PART ONE will review the current state of sex offender demographics and management in California. PART TWO will address a number of challenges with current or anticipated consequences for sex offender management in California. PART THREE will provide a brief list of selected recommendations which are seen by CASOMB to have the highest current priority.

## **PART ONE: SEX OFFENDER MANAGEMENT IN CALIFORNIA**

1. Numbers and Distribution of California Sex Offenders
2. Recidivism of Registered Sex Offenders
3. Containment Model in California
  - a. Victim-Related Considerations in Sex Offender Management
  - b. Supervision of Sex Offenders
  - c. Specialized Sex Offender Treatment
  - d. The Use of Polygraph in Containment
4. Housing for Sex Offenders
5. Sex Offender Registration, Notification and Post-Supervision Management
6. SARATSO Committee Updates

## **PART TWO: RECENT AND RELEVANT LEGAL CHALLENGES IN CALIFORNIA**

1. Challenges to the Containment Model
2. Status of Polygraph Testing
3. Clarification of Scope of Chelsea's Law
4. Residency Restrictions May Apply to All Registrants
5. Decision Regarding Residence Restrictions – Upholding Stay
6. Decision Regarding Unconstitutionality of Local Ordinances
7. Office of the Inspector General Report

## **PART THREE: RECOMMENDATIONS**

1. Tiered Sex Offender Registry
2. Containment Model for PRCS
3. Funding of Containment Model for PRCS
4. Amend state law on blanket residency restrictions
5. Avoid enactment of blanket exclusion zones

### **VALUABLE NEW INFORMATION RESOURCE Sex Offender Management and Planning Initiative (SOMAPI)**

CASOMB has always been fully committed to basing its statements upon the best available scientific research and the guidance of recognized experts. This extensive publication issued in Fall of 2014 offers the most recent comprehensive review of research related to sex offender management and related policies and practices. The Report itself emerged from the extensive efforts of a group of international experts convened by and funded through the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART), Office of Justice Programs, U.S. Department of Justice.

*Perpetrators of sex crimes are often seen as needing special management practices. As a result, jurisdictions across the country have implemented laws and policies that focus specifically on sex offenders, often with extensive public support. At the same time, the criminal justice community has increasingly recognized that crime control and prevention strategies - including those targeting sex offenders - are far more likely to work when they are based on scientific evidence.*

<http://www.smart.gov/SOMAPI/index.html>

# PART ONE

## SEX OFFENDER MANAGEMENT IN CALIFORNIA

### 1. Snapshot of Numbers and Distribution of California Sex Offenders

As mentioned, important data sets are consistently unavailable. There are significant data gaps which, despite efforts toward resolution, continue to leave major holes in determining the distribution of sex offenders throughout the state. To gain an accurate picture of the number of sex offenders supervised by each individual county system is next to impossible without manual calculations or a statewide data repository. CASOMB had hoped to present a more complete picture of the state of sex offender management in California, but as can be seen in this comparison chart of 2008 and 2015, many unknowns remain.

	January 2008	January 2015
Registered	67,710	74,956
Listed on Megan's Law Website	Unknown	58,296
<b>IN CUSTODY</b>		
In Custody in State Prisons	22,474	22,225
In Custody in County Jails	Unknown	Unknown
In Custody in Civil Commitment	655	895
<b>IN COMMUNITY</b>		
On State Parole	8,019	6,148
On County Probation	Unknown	Unknown
On Post-Release Community Supervision	N/A	Unknown
On Federal Probation	243	Unknown
Other – Conditional Release	Unknown	33

### 2. Recidivism of Registered Sex Offenders

Since the mission of CASOMB is to reduce the recidivism of registered sex offenders and make recommendations about the best avenues to that goal, reflecting on what is known about sex offender recidivism is essential. Recent research increasingly supports the understanding that not all convicted sex offenders are alike and not all are at significant risk of reoffending for the remainder of their lives. Instead, the research indicates two things:

**FIRST:** Sex offenders are very different from one another with respect to their risk of reoffending. Some are higher risk while others are lower risk.

**SECOND:** The risk of reoffending for any particular offender continues to diminish the longer he or she is living in the community and does not reoffend.

California has begun to develop solid systems and structures which take into account these realities. Using actuarial instruments thoughtfully selected by the SARATSO Committee as directed by state law, it is becoming increasingly possible to gather the needed information which will guide those who need to distinguish between higher risk and relatively lower risk offenders. Such distinctions can guide policies and practices.

The “Risk Principle” is considered crucial in effective management of criminal justice populations, including sex offenders; any policy which does not follow the “Risk Principle” but treats all offenders as if they were alike is poor policy. It is almost certain to be ineffective at reaching its goal while generating a great deal of needless effort, wasting financial and manpower resources and perpetuating public confusion.

The “Risk Principle” directs systems to first identify and distinguish the various re-offense risk levels of the offenders under management and then devote the largest portion of resources toward effective interventions with those who pose the highest risk.

Data from the first five years of a 10-year recidivism study sponsored by the SARATSO Committee and the California Department of Justice was published in 2014 and shows the Static-99R is working very well as used with the diverse ethnic and cultural population of sex offenders registered in California (Hanson, R. K., et al., *The Field Validity of Static-99/R Sex Offender Risk Assessment Tool in California*, [Journal of Threat Assessment and Management, No. 2, at 102-117, 2014]).

The Static-99R is the official risk assessment instrument adopted in California to measure risk of sexual re-offense based on static, unchanging criminal history factors. **The Static-99R was found to be very accurate in predicting who would reoffend, accurately predicting which offenders would commit a new sex offense in about 82% of cases.** High risk offenders had a sexual recidivism rate of over 29%, while low risk offenders had a recidivism rate of only 1.6%. The study will continue for an additional five years to further measure and refine the data on sex offender recidivism in California.

#### **SOMAPI: RESEARCH ON SEX OFFENDER RECIDIVISM**

The largest single study of sex offender recidivism conducted to date found a sexual recidivism rate of 5.3 percent for the entire sample of sex offenders based on an arrest during the 3-year follow-up period. Sex offenders had a lower overall re-arrest rate than non-sex offenders, but their sex crime re-arrest rate was four times higher.

A set of studies that followed offenders at 5-year intervals up to 20 years found the 15-year re-arrest rate for offenders who had a prior conviction for sex offending was nearly twice that of first-time offenders. However, offenders who were not rearrested for sex offending within the first 5 years were progressively less likely to sexually recidivate the longer they remained offense-free.

[http://www.smart.gov/SOMAPI/sec1/ch5\\_recidivism.html](http://www.smart.gov/SOMAPI/sec1/ch5_recidivism.html)

### 3. The Containment Model in California

Anyone working in the sex offender management field would readily endorse the common-sense and field-tested vision that it is better for those professionals of different disciplines who provide various components of the management system to communicate with each other and to collaborate in sharing information. This partnership also ensures that their separate interventions complement each other and do not work at cross purposes. California has selected a model for such collaboration - commonly called the Containment Model. The Containment Model is widely accepted throughout the United States and Canada as an effective tool in reducing the risk of sexual reoffending and is now the standard in California.

The Containment approach can only be applied fully to registered sex offenders who are currently under criminal justice supervision by an agency such as the California Department of Corrections and Rehabilitation (CDCR) Parole Division or by County Probation departments. Since the highest period of risk is during the initial period after return to the community from incarceration, putting a great deal of emphasis on the use of Containment and directing higher levels of attention to those determined to be at highest risk of reoffending is, according to the "Risk Principle", the wisest use of resources.

Additionally, AB 1844, known as the Chelsea King Child Predator Prevention Act, was signed into law by the Governor in 2010 and made several changes to the Penal Code regarding sex offender management. One significant change now requires that each registered sex offender on parole or county probation be managed under the Containment Model. Though there is flexibility in local application, the essence of Containment is that it include a victim-centered approach to policy and practice, supervision (State Parole or County Probation), specialized treatment provided by certified mental health professionals, and polygraph evaluations provided by certified polygraph examiners. The vision is when these partners are collaborating, the sex offender will be "contained", thereby reducing the risk of sexual reoffending (Penal Code §§ 290.09, 1203.067, 3008, and 9003.)

- a) **Victim Related Considerations in Sex Offender Management:** Sexual Assault Victim Advocates are largely recognized for their role in advocacy, helping victims to heal, informing policy and working on systemic change. Professionals of various disciplines are known for their work to prevent future offenses by supervising and treating known perpetrators of sexual violence as well as for their contributions to the development of policy. However, what is not largely recognized is how these two groups connect or share a common goal - the prevention of sexual violence.

CASOMB believes that in order to advance the state's sexual assault prevention efforts, it is essential that coordination and collaboration between those working with victims and those working with offenders be strengthened, and that the needs of victims, and the overarching goal of victim and community safety remain at the forefront. The shared vision helps to inform and provide:

- Day-to-day offender management
- Policy development
- Improvements at the often complex systems level
- Professional training, community education and networking

The healing of victims is critical. Such healing requires appropriate resources to be made available. However, the State General Fund contributes only \$45,000 to sexual violence programs designed to foster such healing. The National Intimate Partner and Sexual Violence Survey (NISVS) conducted by the Centers for Disease Control and Prevention (CDC) shows that in California there are over 2 million people who are survivors of rape and 8 million survivors of other forms of sexual violence. Due to the small amount of funding provided by the state, victim service/rape crisis center programs cannot meet the needs of all survivors in the state.

In order to treat those affected and improve access, coordination and prevention efforts in the state, there is a need for increased funding and resources. Strengthened communication and coordination between victim advocates and those working in sex offender management will enhance true victim-centered approaches to treatment, prevention and policy directions.

**b) Supervision of Sex Offenders:** As discussed elsewhere in this report, Containment is a broader category which includes more than just supervision. But because the criminal justice professional responsible for supervising each sex offender in the community is considered the “lead” person on the Containment Team, much of this Report’s reflections on the Containment Model and its implementation in California will be discussed in this section.

The implementation of Chelsea’s Law and the mandatory use of the Containment Model in California have been the focus of much effort in California in the last several years. Creating a comparatively new system and approach for such a large population of offenders is a significant challenge. Although CASOMB has been unable to gather sufficient data to make definitive statements about many aspects of the implementation, some realities are clear to interested observers. Because the process and the outcome to date have been quite different as applied to those under CDCR Parole supervision and those under the supervision of the adult Probation Departments in the state’s 58 counties, the following discussion will address each situation in turn.

Containment Implementation for Registrants under CDCR Parole Supervision: As it has learned about and observed the implementation of Containment and the complicated systems needed to bring the policy to the real world, CASOMB has been very positively impressed by the success of the CDCR in accomplishing this task. CASOMB hereby recognizes the remarkable efforts by CDCR in establishing contracted sex offender treatment programs statewide for paroled sex offenders, as well as the full implementation of the Containment Model as outlined in the Division of

Adult Parole Operations' new "Sex Offender Management Program" (SOMP). Some of the key components of the SOMP include:

- The use of SARATSO approved dynamic and violence risk instruments along with the Static 99R in assessing overall risk
- Proper application of the "Risk Principle" through tiered supervision based upon measured offender risk level
- Management of an extensive system to provide CASOMB-certified sex offender specific treatment to all sex offenders
- Incorporation of Post-Conviction Sex Offender Testing (PCSOT) using the Polygraph

Collaboration and communication among the various entities involved according to the Containment Model is a core principle of SOMP. The model strives to implement all of these elements under an overarching victim advocacy and community safety framework. The SOMP model incorporates many recommendations made by CASOMB and meets statutory requirements outlined in Chelsea's Law. The Board commends the rapid and apparently effective work accomplished by CDCR in its continued efforts to enhance public safety through the engagement of all paroled sex offenders in the Containment Model.

Containment Implementation for Registrants under County Probation Supervision:

Based on the limited information available to CASOMB, it appears that implementation of the Containment Model among the county probation departments continues to be inconsistent and challenging. While some probation departments have substantially implemented the Containment Model, others are still struggling to do so.

CASOMB recognizes the new responsibilities assigned to county probation departments as a result of criminal justice realignment have stretched resources and may have diverted administrative attention from sex offender management issues, causing a shift in staffing and resources away from sex offender management, possibly to the detriment of community safety. Several major obstacles to the implementation appear to be a lack of funding and access to treatment and polygraph services. Some rural counties cite a lack of qualified treatment providers and polygraph services for their small population of sex offenders.

While private-sector CASOMB certified treatment resources are available in some of the larger counties, funding for the services remains a problem for many offenders. However, without better information about the number of probationers who should be engaged in treatment, CASOMB cannot speak with certainty about whether appropriate services can be accessed in any particular county by all who need them. The lack of funding to defray these costs to probationers means that an unknown number of sex offenders, including many who most need it, are not being supervised under the Containment Model. CASOMB intends to continue its efforts to obtain

better information about what is actually occurring with respect to the execution of Containment at the level of California's county probation systems.

Participation in the Containment Model is not required by law for sex offenders who now fall under Post Release Community Supervision (PRCS) from prison since they are technically neither "on Parole" nor "on Probation." However, they are being supervised by the county – which at this point falls on the probation departments. Overall, participation by offenders on probation is hindered by lack of state funding for this mandate. The percentage of offenders on probation who are not being monitored under the Containment Model due to inability to pay for risk assessments, polygraph examinations, and treatment is unknown, but believed to be significant.

### **SOMAPI: COLLABORATION, CONTAINMENT AND SUPERVISION OF SEX OFFENDERS**

Questions about the effectiveness of intensive supervision in the absence of treatment have led to the development of intensive supervision programs with a treatment orientation. A specific example is the containment approach, which includes collaboration on specialized supervision of sexual offenders provided by trained supervision personnel, sex-offense-specific treatment, and polygraph assessment. Unlike many other sex management strategies that have been implemented over the years, English, Pullen, and Jones (1996) developed the containment approach based on their study of best practices in place across the country. SOMAPI forum participants recommended that jurisdictions use specialized supervision with a rehabilitation orientation as one component of an overall sex offender management strategy.

[http://www.smart.gov/SOMAPI/sec1/ch8\\_strategies.html](http://www.smart.gov/SOMAPI/sec1/ch8_strategies.html)

- c) Specialized Sex Offender Treatment:** As the implementation of the portions of Chelsea's Law which require all registered sex offenders on parole or probation to be supervised under the Containment Model and be required to enter and complete a CASOMB-Certified Treatment Program has progressed in California, one anticipated challenge has arisen regarding the availability of qualified professionals and programs able to provide the specialized services needed. Specialization is essential and must include sufficient experience and training to do this work, training which is not always readily available. Because of the comparatively limited demand for such services prior to Chelsea's Law, ramping up the response to such a massive need throughout the state within such a short time has resulted in more demand than supply when it comes to meeting the state's needs. Although there are thousands of mental health professionals of various types in California, there is limited interest in working with the sex offender population.

In its ongoing efforts to develop and operate a certification system for programs and providers in California, CASOMB has sought a course which would assure a significant level of competence among those providing the needed services, while not raising the bar so high as to needlessly constrict the entry of new qualified individuals

into the field. In addition, professionals who do have interest in this specialized field find the limited ability of probationers to bear the costs of specialized treatment makes it impossible to continue to provide services for little pay. As of January 13, 2015, there were 118 CASOMB-certified programs and 465 certified providers.

Although the numbers of certified programs and providers continue to grow, CASOMB sees no easy path to balancing the demands for well-delivered sex offender treatment services in California. Additionally, with no usable database or a statewide system of data collection about registered sex offenders on supervision, it is impossible to determine the number of sex offenders monitored by probation or parole who would be expected to be in treatment, are in treatment, or are on waiting lists for treatment.

In-custody treatment planning by CDCR: Before completing the review of sex offender treatment in California, CASOMB needs to acknowledge its awareness that CDCR is developing a pilot program to provide specialized treatment to the sex offenders in the state's prison system. CASOMB supports this effort, recognizing until such a program is implemented California will remain one of a small number of states which does not have any type of formal sex offender treatment program in its prison system. While research supports the decision to prioritize community-based treatment after release from prison, a combination of both approaches is seen as a more effective model.

#### **SOMAPI: SUMMARY - DOES SEX OFFENDER TREATMENT WORK?**

This review examined the evidence on treatment effectiveness during the past 10 years. The evidence suggests that certain therapeutic interventions for sex offenders can and do work. Specifically, cognitive-behavioral/relapse prevention approaches have been identified as being effective at reducing sexual recidivism which in turn can translate into fewer victims, less individual and community harm, and a positive return on taxpayer investment.

[http://www.smart.gov/SOMAPI/sec1/ch7\\_treatment.html](http://www.smart.gov/SOMAPI/sec1/ch7_treatment.html)

- d) The Use of Polygraph in Containment:** The polygraph examiner is recognized as an important member of the Containment Model collaboration team and is included in what represents a collaborative approach to sex offender management. California state law requires the use of Post-Conviction Polygraph Testing (PCSOT). There are three basic types of PCSOT polygraphs utilized by the Containment team: 1) a sexual history polygraph, 2) an instant offense polygraph, and 3) a maintenance polygraph. The type of polygraph exam required is not specified by statute; rather it is left to the discretion of the Containment team (supervising officer, treatment provider, and polygraph examiner). (See Penal Code §§ 290.09, 1203.067, 3008, and 9003.).

### **SOMAPI: POLYGRAPH – POST-CONVICTION SEX OFFENDER TESTING (PCSOT)**

If polygraph testing is used in the management of sex offenders, it should be implemented as one component of an overall sex offender management strategy. Polygraph disclosure information may be useful for assessment of risk factors and identification of treatment needs, but in some jurisdictions such information may not be used for prosecution or supervision revocation.

[http://www.smart.gov/SOMAPI/sec1/ch8\\_strategies.html](http://www.smart.gov/SOMAPI/sec1/ch8_strategies.html)

#### **4. Housing for Sex Offenders**

Every thoughtful consideration of sex offender management practices takes into account the need for lifestyle stabilization and the importance of reliable housing in the service of risk reduction and community safety. Having an alarmingly large number of transient sex offenders in California does not make communities safer.

- Number of 290 registrants who register as transient – 6,692 (AS OF 1/15/15)
- Number of parolees who are homeless and transient – 1,382 (AS OF 1/30/15)
- Number of probationers who are homeless and transient - unknown

CASOMB has looked carefully into these issues and has repeatedly stated that the promulgation of conditions which actually create homelessness and transience among registered sex offenders while producing no discernible benefit to community safety is counterproductive and continues to be the single most problematic aspect of sex offender management policy in California. CASOMB continues to recommend the elimination of one-size-fits-all restrictions on where registered sex offenders may live.

#### **5. Sex Offender Registration**

California has required sex offenders to register with their local law enforcement agencies since 1947. Currently, there are over 100,000 registered sex offenders in California. They are classified solely by the offense they committed even though considerable research shows an “offense-based” classification system is not nearly as effective as is a “risk-based” system. This means that under current law, some high risk offenders are not posted on the public Megan’s Law website, while some low risk offenders are posted for life.

For example, someone who was arrested for felony child molestation four different times, but convicted instead only of misdemeanor sexual battery, would not be posted on the public web site even though the person scored high risk on the state’s official risk assessment instrument. In contrast, someone who was convicted 35 years ago, at age 18, of having voluntary sexual contact with a girlfriend five years younger, who has never reoffended and has no other criminal record, would be posted with the offender’s full address on the web site for life even though he

is at very low risk to reoffend today. The following chart shows the unintended consequences of California's registration laws:

**Dates of Conviction Summarized by Decade**

<b>Decade of Conviction</b>	<b>Number of New Registrants Added to Registry (Adjusted)</b>
<b>1940's</b>	<b>25</b>
<b>1950's</b>	<b>628</b>
<b>1960's</b>	<b>1,112</b>
<b>1970's</b>	<b>1,978</b>
<b>1980's</b>	<b>9,333</b>
<b>1990's</b>	<b>29,189</b>
<b>2000's</b>	<b>37,122</b>
<b>2010-2014*</b>	<b>21,967</b>
<b>TOTAL as of 1-15-15**</b>	<b>101,354</b>

\* Period = 50% of the decade. Total for Decade projected to more than double.

\*\*The data is based on records in the California Sex and Arson Registry (CSAR) as of 1/8/2015. It counts each registrant currently in California. It excludes subjects who are: 1) deported; 2) out of state; 3) terminated or; 4) deceased. Registrants who have more than one date of conviction are counted based on the date of the most recent registrable offense.

Time for a Change: Under the current system, many local registering agencies are challenged just keeping up with registration paperwork. It takes an hour or more to process each registrant, the majority of whom are low risk offenders. As a result, law enforcement cannot monitor higher risk offenders more intensively in the community due to the sheer numbers now in the registry.

Some of the consequences of lengthy and unnecessary registration requirements actually destabilize the lives of registrants and those – such as families – whose lives are often substantially impacted. Such consequences are thought to raise levels of known risk factors while providing no discernible benefit in terms of community safety.

CASOMB has become convinced that California policy makers need to rethink the registration laws and the time has come, after nearly 70 years of use, to make some major changes in the state's registration system. The effectiveness of sex offender registration policies and practices has also been the subject of national focus recently, with a variety of jurisdictions addressing the importance of updating registration practices to reflect new research and evidence based approaches. Modifying registration practices will, CASOMB believes, improve public safety in California by focusing effort and resources on more dangerous offenders.

CASOMB has repeatedly recommended overhauling the registration system for sex offenders in the state and has drafted and unanimously agreed to sponsor a model bill to reform our broken registration system for the 2015 legislative session. The proposed new system would take into account the following key considerations:

- The “Risk Principle” should be adhered to so that the resources are directed toward those who pose the highest risk of reoffending.
- A tiered system of registration should be adopted so that the length and level of registration matches the risk level of the offender.
- High risk offenders are required to register for life.
- The Megan’s Law web site would display specified higher risk offenders.

CASOMB has long urged the Legislature to follow the approach used in 46 other states and require *lifetime* sex offender registration only for specified higher risk offenders, while moving lower risk offenders into 10 and 20-year registration tiers. (See Tiering Background Paper, *A Better Path to Community Safety* (2014) found at [www.casomb.org](http://www.casomb.org), Reports tab.) Additionally, the “Risk Principle” would take strong issue with any policies which assume that all convicted sex offenders remain at significant risk for their entire lives and therefore, should all be required to register for life – the evidence does not support this.

#### **SOMAPI: RESEARCH ON THE EFFECTIVENESS OF RESIDENCE RESTRICTIONS**

Sex offender residence restrictions that limit where convicted sex offenders may legally live have become more popular across the country. Currently, 30 states and many more municipalities have residence restriction laws. There is no empirical support for the effectiveness of residence restrictions. In fact, a number of negative unintended consequences have been empirically identified, including the displacement and clustering of sex offenders into other areas, particularly rural areas. **The expansion of this policy is not recommended.**

[http://www.smart.gov/SOMAPI/sec1/ch8\\_strategies.html](http://www.smart.gov/SOMAPI/sec1/ch8_strategies.html)

## **6. SARATSO Committee Updates**

This past year has been a busy one for the SARATSO Committee. In 2014, the SARATSO Committee began rolling out the state’s new dynamic risk assessment instruments, the STABLE-2007 and ACUTE-2007. The Committee hired experts from Oregon and Florida who began training sex offender treatment providers across the state, with the goal of completing the switch to these instruments by the end of 2014. The Committee also arranged for the author of these instruments, Dr. R. Karl Hanson, to train a group of nine California certified treatment providers in fall 2014 to become certified instructors for this instrument. In future, California will have its own local certified trainers who can train and certify treatment professionals to score these risk instruments.

Budget obstacles continue to be one of the biggest challenges to full and effective implementation of risk assessment of sex offenders in California. Currently, the SARATSO Committee has no database into which to enter data crucial to tracking compliance with scorer certification requirements and risk assessment score submission by probation, parole and certified treatment providers.

In 2014 the SARATSO Committee and CASOMB (who continue share a joint budget) earmarked \$50,000 to use for the research and development of a database to assist the Committee in its management of the state risk assessment system and to assist CASOMB in its processing and tracking of certified treatment providers and programs. However, development of a proposal and review of the alternatives has been a lengthy process. The goal is to contract for and realize the development of such a database in 2015.

Another stumbling block to assessing use of risk assessment tools in California is lack of funding for audits and compliance oversight. In 2014 the SARATSO Committee conducted an informal audit of probation departments to determine the compliance rate of each department in scoring the Static-99R presentencing. In future and when funding becomes available, the SARATSO Committee would like to conduct in-person visits for more systematic and effective audits of stakeholders charged with scoring and submitting risk assessment scores, including Probation, Parole, and certified sex offender treatment professionals.

The SARATSO Committee's budget was enhanced by the Department of Finance in 2014 by the addition of two 2-year limited term staff for SARATSO and CASOMB. This increased staffing from two to four, enabling us to better oversee and train the hundreds of certified scorers on the state's five risk assessment instruments. There were 15 trainings in 2014 on SARATSO risk assessment instruments. The SARATSO Committee wishes to thank the California Probation Officers of California for assistance in sponsoring additional trainings for probation officers on the risk assessment instruments.

## **PART TWO**

### **RECENT AND RELEVANT LEGAL CHALLENGES IN CALIFORNIA**

As mentioned earlier, the Chelsea King Child Predator Prevention Act made many changes to the California Penal Code as it relates to sex offender management. Of particular importance was the formal authorization of the Containment Model including the requirement that after July 1, 2012, the terms of probation or parole for all registered sex offenders under probation or parole supervision in the community participate in and complete an approved sex offender management program, including sex offender-specific treatment and polygraph examinations.

#### **1. Challenges to the Containment Model**

Sex offenders have filed legal challenges to the requirement that they waive Fifth Amendment rights in order to participate in the Containment Model programs. To enable treatment providers and supervising officers to manage risk during supervision, the law requires offenders to waive any privilege against self-incrimination and agree to participate in polygraph examinations. The results of the polygraph are not admissible in criminal proceedings, but are used to assess progress in treatment and ongoing risk of re-offense and compliance with conditions of parole or probation. While the courts have upheld the polygraph requirement, they are split on the issue of whether the Fifth Amendment waiver is constitutionally valid, and the issue is pending in the California Supreme Court. (*People v. Friday*, case number S218288, *People v. Garcia*, case number 218197, and *People v. Klatt*, case number S218755.)

Offenders have also challenged the requirement that they waive any psychotherapist-patient privilege, which enables communication about risk among the sex offender management professional, probation officer or parole agent, and polygraph examiner. So far these challenges have been rejected by the courts. Without communication about ongoing risk, the collaborative Containment team approach would cease to function.

#### **2. Status of Polygraph Testing**

California law requires the offender to waive his or her Fifth Amendment rights in order to participate in treatment programs under the Containment Model. However, use of the polygraph in sex offender management has been followed by challenges and court decisions regarding its legality. For example, some cases raise the question of whether requiring an offender to disclose information which may later be used against him in some manner violates the constitutional ban against compelled self-incrimination.

As mentioned earlier, the California Supreme Court has agreed to review three cases raising the question of whether an offender may be required to waive his or her right against self-incrimination. All three cases upheld use of the polygraph as part of the Containment Model. The only issue is whether the Fifth Amendment waiver is constitutional. Review on this narrow issue was granted in July 2014. A court opinion typically issues two or more years after grant of review by the California Supreme Court.

In light of the unsettled law in this area, it is vital that a complete “Informed Consent” statement be signed by any polygraph subject. CASOMB has developed three model informational forms designed to obtain offender consent for sexual history polygraphs, for instant offense polygraphs, or for maintenance polygraphs. CASOMB has also published recommendations for polygraph use.

### **3. Clarification of Scope of Chelsea’s Law**

The Containment Model, a collaborative approach formally adopted in 2010 in California to manage sex offenders on parole or probation, is being closely monitored by the CASOMB. The intent of Chelsea’s Law (A.B. 1844, effective 9-9-10) was that all sex offenders on supervision for a sex offense would participate in CASOMB-certified sex offender management programs, regardless of whether the offender’s sex offense was committed before or after enactment of the law. However, an offender challenged his participation in the treatment program in 2013, arguing that the law did not apply to him because his sex offense occurred prior to enactment of Chelsea’s Law in 2010. (*People v. Douglas M.* (2013) 220 Cal.App.4th 1068.)

The appellate court found it was not clear whether the law applied retroactively. As a result, in 2014 the Legislature clarified that the law was meant to apply to all sex offenders, not just those whose offenses occurred after Chelsea’s Law took effect. (A.B. 2411, effective 9-26-14; Bonta.) The amendments ensure that dangerous and high risk offenders who spent long terms in prison will not escape monitoring and treatment under the Containment Model upon release just because their offenses occurred prior to enactment of the law in 2010.

A.B. 2411’s amendments to the Containment Model were intended by the Legislature to “clarify that the supervision requirements for sex offenders on probation or parole which were enacted in 2010 as part of Chelsea’s Law – generally known as the ‘Containment Model’ – apply to these offenders without regard to when their crime or crimes were committed.” (Sen. Com. on Public Safety, Bill Analysis of Assembly Bill No. 2411 (2013-2014 Reg. Sess.) June 24, 2014.) Sex offender-specific treatment, dynamic and violence risk assessments, and polygraph examinations further this legislative intent. The aim is to promote the success of the offender and keep the community safe by reducing the risk of sexual re-offense.

### **4. Residency Restrictions May Apply to All Registrants**

In December, 2014, the California Supreme Court heard oral argument on a constitutional challenge to the state residency restriction for sex offenders (Jessica’s Law, enacted in 2006 as part of Proposition 83). (*People v. Mosley*, case number S187965.) Penal Code § 3003.5, which bars registered sex offenders from living within 2,000 feet of a school or park where children congregate had been placed in the section of the Penal Code codifying parole restrictions and therefore, it was argued, applied only to individuals under state parole supervision.

If, as seems likely, the Court holds that the law applies to all sex offenders released from custody since the law was enacted on November 7, 2006, instead of just to sex offenders who are on parole, the law could be enforced against the majority of sex offenders in California. Prior to the enforcement of the residency restriction against parolees in 2007, transients made up only 1% of the registry. Today, nearly 10% of registrants (many of whom are parolees and therefore restricted by the current application) are transient.

If this law is found to apply to all sex offenders, the number of transient sex offenders, could quickly increase **from 10% of the registry to over half of the registry; approximately 36,000 registrants living in California communities.** As noted elsewhere in this report, being transient is viewed as a risk factor for re-offense, just as residential stability is seen as a risk reducing condition. Additionally, transients violate the registration laws at a higher rate than offenders with registered residence addresses. It is very difficult for law enforcement to locate transient sex offenders when a new sex crime is committed in the community, defeating the purpose of registration.

## **5. Decision Regarding Residence Restrictions – Upholding Stay**

In 2015 the California Supreme Court will also decide a challenge to the state residency restriction as applied in San Diego County (*In re William Taylor*, case number S206143). The lower courts ruled the residency restriction was unconstitutional as applied in San Diego County due to a severe shortage of affordable housing outside of the restricted zones extending 2,000 feet from any school or park. CASOMB continues to recommend that the Legislature amend the state law on residency restrictions to apply it on a case by case basis, depending on the risk level and type of offender.

## **6. Decision Regarding Unconstitutionality of Local Ordinances**

In 2014 an appellate court determined that local ordinances governing where sex offenders can go in the community are unconstitutional because the state has “occupied” the field of sex offender management by enacting a comprehensive scheme for the registration, management and control of sex offenders in the state. The California Supreme Court declined to review this decision, which is, therefore, final. (*People v. Godinez* (2014) 222 Cal. App.4th 1168.)

CASOMB has discussed whether to recommend a model ordinance on where sex offenders can go in the community. However, no research shows that exclusion zones are helpful in preventing re-offense. Restrictions about where the offender can go in a community are routinely imposed as part of the individual parole and probation conditions because they can be fashioned to relate to the particular offender. State laws already preclude registered sex offenders from being on school campuses and from working with children under defined circumstances. (Penal Code §§ 626.81, 290.95.) There is no evidence that broader restrictions will be effective, or will not be counter-productive by preventing offenders from obtaining appropriate employment.

CASOMB takes the position that any law precluding sex offenders from being in particular places (“exclusion zones”) must be tailored to the individual, including a consideration of the

risk level of the offender in order to be effective and need to have reasonable distances and protected places along with consistency in implementation statewide. Correlating the tiered registry and exclusion zones would assist law enforcement in monitoring those individuals most likely to reoffend and would increase options for housing and employment in the interest of developing offender stability in order to prevent recidivism.

## **7. Office of the Inspector General Report**

The State of California's Office of the Inspector General (OIG) issued a report dated October, 2014, in response to a request from the California State Senate Rules Committee: Assessment of Electronic Monitoring of Sex Offenders on Parole and the Impact of Residency Restrictions. (<http://www.oig.ca.gov/pages/reports.php>)

The five questions to which responses were requested have been questions of great interest to CASOMB as well and several are on topics to which CASOMB has previously devoted a considerable amount of attention.

Those questions include:

- How have the residency requirements of Jessica's Law impacted the number of homeless or transient sex offender state parolees in California's communities?
- How has the transiency of sex offender state parolees impacted the ability of parole agents to effectively monitor and supervise them?

The remaining three questions, also of interest to CASOMB, focus on the use of Global Positioning System (GPS) tracking of parolees. In general, the conclusion and findings and recommendations of the OIG Report are congruent with previous and current positions of CASOMB. The Report notes that some - though not all - of the CASOMB recommendations have yet to be acted on.

## PART THREE

### SUMMARY OF CASOMB RECOMMENDATIONS TO IMPROVE COMMUNITY SAFETY BY REDUCING THE RISK OF SEXUAL RECIDIVISM

As CASOMB continues to track the status of sex offender management in California, many areas would benefit from major or minor improvements. However, certain policies and practices deserve the highest priority. Most of them repeat previous CASOMB recommendations, some of which remain on the list since the initial CASOMB Recommendations statement in 2010 ([www.casomb.org](http://www.casomb.org)).

CASOMB urges decision makers to take steps to implement the following recommendations in order to make the systems for sex offender management in California rational and consistent and designed to improve the safety of California citizens and communities.

- 1. Enact a tiered sex offender registry so that length of registration and extent of community notification relate to the risk level and dangerousness of the offender, to enable law enforcement to identify and concentrate resources on dangerous offenders.***
- 2. Require participation in the Containment Model for sex offenders released to community supervision (PRCS).***
- 3. Provide state funding for sex offenders on probation and sex offenders on PRCS to ensure that all registered sex offenders under supervision participate in the Containment Model.***
- 4. Amend state law on residency restrictions to apply such restrictions on a case by case basis, depending on the risk level and type of offender.***
- 5. Avoid enactment of exclusion zones that apply to all registrants because no evidence shows they are effective in reducing sexual re-offending, and they may be counter-productive.***