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# MARRIED TO THE PAST: THE HIDDEN SPOUSAL-RAPE EXCEPTION (AND OTHER ABSURDITIES) IN COLORADO’S SEXUALLY VIOLENT PREDATOR STATUTE

## INTRODUCTION

Colorado is unique among the states of the nation and not just for its soaring peaks, excellent snow, and fit population. Colorado is unique in its approach to determining who qualifies as a sexually violent predator (SVP) for the purposes of the state’s sex offender program.<sup>1</sup> Colorado Revised Statutes section 18-3-414.5 defines a SVP as one who, among other things, targets a victim who “was a stranger to the offender or a person with whom the offender established or promoted a relationship primarily for the purpose of sexual victimization”<sup>2</sup> (the Relationship Provision). This emphasis on the relationship between the offender and the victim is uncommon across the nation; indeed, it is only found in one other state, North Carolina.<sup>3</sup> In contrast, most states that designate offenders as SVPs do so only if the offender is psychologically predisposed to offending again in the future and has committed a specific type of crime.<sup>4</sup>

This paper argues that Colorado’s SVP statute improperly focuses on the relationship between the offender and the victim. In particular, wide-ranging research indicates that people who offend against partners are also likely to offend against strangers. Thus, Colorado’s relationship criteria ultimately serves as a meaningless screening process that operates in much the same way as the now rejected spousal-rape exception. This paper further argues that even absent a focus on this hidden spousal rape exception, the Relationship Provision itself—and the way the courts in Colorado have interpreted it—leads to absurd results.

Part I of this paper provides background regarding Colorado’s SVP statute. It discusses the way courts designated offenders as SVPs prior to a seminal case, *People v. Hunter*.<sup>5</sup> It also discusses the alternative ways that some states use to decide whether a person is an SVP or not. Part II introduces the facts of *People v. Hunter* and discusses its winding path through the courts of Colorado. Part II also analyzes the majority’s reasoning, the holding’s effect on CRS section 18-3-414.5, and the dissent.

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1. COLO. REV. STAT. § 18-3-414.5 (2014); *see also infra* Appendix I, at 42.

2. § 18-3-414.5(a)(III).

3. N.C. GEN. STAT. § 14-208.6(6) (2014).

4. *See, e.g.*, IOWA CODE § 229A.2 (2014).

5. 307 P.3d 1083 (Colo. 2013) [hereinafter *Hunter III*]. For simplicity, the Court of Appeals case of *People v. Hunter* will be called “*Hunter II*.” The Colorado Supreme Court case will be called “*Hunter III*.”

Part III evaluates *People v. Hunter*'s dramatic impact on future crimes and SVP designations. Part IV considers some arguments of why sex-offender registration statutes, including SVP registration statutes, are improper. Finally, Part V argues that Colorado's SVP statute is ineffectively written and absurd as the courts currently apply it. Part V discusses wide-ranging research that shows a person who will offend in a relationship is at a high risk of re-offending again in the future—many times against a stranger. Part V ultimately concludes that the Relationship Provision is an absurd requirement that, at best, reflects a continuation of the archaic spousal-rape exception and, at worst, hinders the very purpose of the statute—to put the public on notice of those most likely to re-offend in the future.

#### I. BACKGROUND OF SEXUALLY VIOLENT PREDATOR DESIGNATIONS

Not all states provide for the designation of offenders as SVPs. Among those that do, the majority focus on the crime committed and the mental health of the offender.<sup>6</sup> Colorado similarly requires that the offender commit a sexual offense prior to an SVP designation.<sup>7</sup>

The Colorado Legislature enacted Colorado Revised Statute section 18-3-414.5 in 1998. In enacting the statute, the Colorado legislature stated that, “persons who are convicted of offenses involving unlawful sexual behavior and who are identified as sexually violent predators pose a high enough level of risk to the community that persons in the community should receive notification concerning the identity of these sexually violent predators.”<sup>8</sup>

The statute is a protective rather than punitive statute.<sup>9</sup> The effect of the statute's classification as a protective statute is that findings of an offender's SVP status are not subject to the burden of proof common in

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6. See *infra* Appendix I at p. 42; see also *infra* note 7. It is worth noting that some statutes have stretched sex-offender statutes to punish individuals who have never committed sexual offenses. See *People v. Moi*, 801 N.Y.S.2d 780 (N.Y. Cnty. Ct. 2005); see also Ofer Raban, *Be They Fish or Not Fish: The Fishy Registration of Nonsexual Offenders*, 16 WM. & MARY BILL RTS. J. 497, 497 (2007) (discussing defendant forced to register because kidnapping required sex-offender registration even absent sex offense).

7. § 18-3-414.5(1)(a)(II).

8. COLO. REV. STAT. § 16-13-901 (2014). Interestingly, Colorado's statute does not on its face require the state to evaluate whether or not an offender has a mental abnormality that would predispose the offender to future sexual assaults. See Colo. Rev. Stat. § 18-3-414.5. This contrasts with the approach of other states, some of which require evidence of a mental abnormality. See, e.g., ARIZ. REV. STAT. ANN. § 36-3701(7) (2014) (defining “Sexually Violent Person” as one who, among other criteria, “[h]as a mental disorder that makes the person likely to engage in acts of sexual violence.”); CAL. WELF. & INST. CODE § 6600 (West 2006) (defining “Sexually violent predator” as a person who, among other criteria, “has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior.”). Nonetheless, the test is incorporated in an assessment required by the statute. See *infra* p. 25 and note 16.

9. *People v. Valencia*, 257 P.3d 1203, 1207 (Colo. App. 2011) (citing *People v. Tuffo*, 209 P.3d 1226, 1231 (Colo. App. 2009) (“The SVP statute is protective rather than punitive.”)).

criminal cases.<sup>10</sup> Instead, the state can satisfy its burden by a preponderance of the evidence.<sup>11</sup>

The power to designate an offender as an SVP resides with the trial court.<sup>12</sup> “The trial court designates an offender as an SVP when the offender: (1) was eighteen years of age or older as of the date of the offense; (2) was convicted of an enumerated offense; (3) committed the offense against a victim who was a stranger or was a person with whom the offender established or promoted a relationship primarily for the purpose of sexual victimization; and (4) is likely to recidivate.”<sup>13</sup> The risk of recidivism is determined by Colorado’s Sex Offender Management Board (SOMB).<sup>14</sup>

To determine if an offender is a high risk of recidivism, SOMB uses a screening instrument to evaluate the risk the offender presents to the community.<sup>15</sup> The instrument evaluates the offender’s background, the nature of the offender’s crime, the offender’s risk, and any mental abnormality’s the offender might possess.<sup>16</sup> If the offender scores high on the assessment scale SOMB should recommend that the court classify the offender as a sexually violent predator.<sup>17</sup> Although SOMB makes the recommendation, trial courts are not prevented from deviating from the recommendation.<sup>18</sup> SOMB’s recommendation, however, is to be given significant deference.<sup>19</sup> SOMB’s determination of the risk of recidivism, therefore, is not determinative of whether an offender will ultimately be classified as an SVP.

Assuming the age criteria is satisfied,<sup>20</sup> the two remaining criteria are the type of offense the offender committed and the relationship that exists between the offender and the victim.<sup>21</sup> A variety of crimes are capable of satisfying the offense element of Colorado Revised Statute § 18-

10. *Id.* (“Accordingly, facts supporting a trial court’s ruling need not be proven to a jury beyond a reasonable doubt. Instead, as in all sentencing matters, a court may consider any reliable evidence and is bound only by due process. Proof by a preponderance of the evidence of facts relied upon in sentencing determinations generally satisfies due process considerations.”) (internal quotations and citations omitted).

11. *Id.*

12. *See Allen v. People*, 307 P.3d 1102, 1105 (Colo. 2013).

13. *Id.*; *see also* § 18-3-414.5(1)(a)(I)-(IV).

14. *See Allen*, 307 P.3d at 1105.

15. *Id.*

16. Colorado Sex Offender Management Board, Colorado Sexually Violent Predator Assessment Screening Instrument (SVPASI) (2010), *available at* <http://www.colorado.gov/ccjdir/ORS2/pdf/docs/Risk%20Assessment/SVPASI%20form2010revision051110b.doc>.

17. *Id.*

18. *Allen*, 307 P.3d at 1104 (“[W]e hold that the trial court makes the ultimate SVP designation, but should give substantial deference to the scored Screening Instrument. A trial court that deviates from the results of the scored Screening Instrument must make specific findings on the record to demonstrate the necessity of the deviation.”).

19. *Id.*

20. § 18-3-414.5(1)(a)(I).

21. § 18-3-414.5(1)(a)(II), (III).

3-414.5.<sup>22</sup> There are not any surprises among the listed offenses: rape,<sup>23</sup> sexual assault against a child (including coercing a child to reveal his or herself),<sup>24</sup> statutory rape,<sup>25</sup> and sexual assault on a child by one in a position of trust<sup>26</sup> are all capable of satisfying the statute's crime element.

The final criterion that a court must evaluate prior to classifying an offender as an SVP is the relationship, if any, between the offender and the victim.<sup>27</sup> The offender's victim must have been "a stranger to the offender or a person with whom the offender established or promoted a relationship primarily for the purpose of sexual victimization."<sup>28</sup> This Relationship Provision is almost entirely unique among the states; in fact, most states ignore the relationship between the offender and the victim and focus purely on the crime and the offender's mental state.<sup>29</sup>

An offender "'promoted a relationship' if, excluding the offender's behavior during the commission of the sexual assault that led to his conviction, he otherwise encouraged a person with whom he had a limited relationship to enter into a broader relationship primarily for the purpose of sexual victimization."<sup>30</sup> Similarly, an offender "'established a relationship' with his victim primarily for the purpose of sexual victimization where he [or she] created, started, or began a relationship primarily for that purpose."<sup>31</sup>

Prior to *People v. Hunter*, the definition of stranger seemed obvious.<sup>32</sup> The emphasis was on whether or not the offender and his or her victim had a pre-existing relationship.<sup>33</sup> Thus, an offender who attacked a complete stranger on the street would satisfy the Relationship Provision

22. See § 18-3-414.5(1)(a)(II).

23. COLO. REV. STAT. § 18-3-402 (2014).

24. COLO. REV. STAT. § 18-3-404(1.5), (2) (2014).

25. COLO. REV. STAT. § 18-3-405 (2014). It is interesting to note that while the statute would readily designate an offender who committed statutory rape as a SVP, it would fail to do so to a violent rapist like that found in *People v. Valencia*. Information regarding the offender in *People v. Valencia* may be found later in this paper. See *infra* p. 31 & note 78. This paper does not assert that a statutory rapist who promotes a relationship with a minor should not be designated as a SVP, but it does assert that the rapist in *Valencia* is equally—if not more—deserving of that designation than the statutory rapist.

26. COLO. REV. STAT. § 18-3-405.3 (2014).

27. § 18-3-414.5(1)(a)(III).

28. *Id.*

29. See *supra* note 6; see also Appendix I at p. 42.

30. *People v. Gallegos*, 307 P.3d 1096, 1098 (Colo. 2013).

31. *Id.* at 1097-98.

32. The Colorado Court of Appeals noted:

It is not difficult to understand how section 18-3-414.5(1)(a)(III) applies when the victim is a stranger to the sex offender. Nor is it difficult to understand how it applies when, prior to an assault, an offender establishes a relationship with a stranger or an acquaintance with whom the offender has no definable relationship and does so primarily for the purpose of sexual victimization. The common element in these circumstances is evident: the predatory offender sought and found a victim from individuals with whom he or she did not have any definable relationship.

*People v. Tixier*, 207 P.3d 844, 847 (Colo. App. 2008).

33. See *id.*

of the statute and be one-step closer to designation as a SVP. This approach drastically changed in 2013 when the Colorado Supreme Court decided a case called *People v. Hunter*.

## II. *PEOPLE V. HUNTER*: INTRODUCING STRANGENESS INTO “STRANGER”

*People v. Hunter* was a disturbing case. A mother and her five-year-old daughter were at home alone.<sup>34</sup> The mother awoke to a complete stranger who struck her in the face and then sexually assaulted her.<sup>35</sup> He then forced alcohol down her daughter’s throat and sexually assaulted her as well.<sup>36</sup> Throughout the assault the offender seemed to be a stranger: he wore a disguise;<sup>37</sup> he made reference to an unknown man named “Carl”;<sup>38</sup> he attacked at night while the mother was half-asleep;<sup>39</sup> and he referenced the mother’s employment at a bank, employment which did not, in fact, exist.<sup>40</sup>

It was only after the assault that the truth came out—the attacker was a next-door neighbor who had spent time with the mother and her daughter.<sup>41</sup> His strange remarks about a bank and Carl were all a ruse in an effort to cover his identity. He knew the mother and her daughter; he had previously had dinner with the family, and on several occasions he had helped bring in the groceries.<sup>42</sup> Thus, the court was faced with a difficult decision—was the offender a stranger at the time of the attack? It wound up being a difficult question, and the case wound its way through the courts over the next several years.

### A. *Procedural History of People v. Hunter*

The trial court concluded that the offender should be designated as a SVP.<sup>43</sup> The trial court’s determination, however, was appealed. The Colorado Court of Appeals remanded the back to the trial court “because the trial court had not made specific findings as to whether either victim was a stranger to defendant or whether defendant had established or promoted a relationship with either victim primarily for the purpose of sexual victimization . . . .”<sup>44</sup>

On remand the defendant argued that he was not a stranger to the victims.<sup>45</sup> The trial court once again concluded that the relationship be-

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34. *Hunter III*, 307 P.3d at 1087.

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. *People v. Hunter*, 240 P.3d 424, 425 (Colo. App. 2009) [hereinafter *Hunter II*].

43. *Id.* at 424.

44. *Id.*

45. *Id.*

tween the offender and the victim satisfied Colorado Revised Statute section 18-3-414.5(1)(a)(III).<sup>46</sup> Specifically, the trial court found that the “defendant was a ‘stranger’ to the victims because while the assaults were occurring neither victim was aware that the perpetrator was their neighbor.”<sup>47</sup>

The offender once again appealed the trial court’s findings.<sup>48</sup> The Colorado Court of Appeals held that the trial court had misapplied the statute.<sup>49</sup> The court noted that a pre-existing relationship existed between the victims and the offender: the “[d]efendant helped the mother carry in groceries”; “both victims had dinner with the defendant in his trailer”; the “[d]efendant had a nickname of the mother”; and the “defendant stopped by the victims’ trailer to notify them that he and his wife were planning to move to Missouri.”<sup>50</sup>

The court also noted that the prosecution had stressed the relationship in its closing arguments.<sup>51</sup> The prosecution argued that the defendant’s knowledge of the victims, their living situation, and their dog allowed him to know “what he would be getting into if he entered their trailer, whereas a stranger might worry about getting shot.”<sup>52</sup> The prosecution also “argued that the reason defendant wore a mask in the course of the offense was precisely because the victims knew him.”<sup>53</sup> The court noted that if it “were to apply the common parlance meaning of ‘sexual predator’ to defendant, [it] might agree that the acts for which he was convicted were predatory.”<sup>54</sup>

The court stated, however, that the Colorado Legislature had been specific in its definition.<sup>55</sup> Because there was an underlying relationship between the offender and the victims, the court held that the relationship criteria of the SVP statute could not be satisfied and thus the defendant could not be labeled as an SVP.<sup>56</sup>

Judge Casebolt dissented from the majority’s opinion.<sup>57</sup> Judge Casebolt, emphasizing the horrifying nature of the crime,<sup>58</sup> argued that

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46. *Id.*

47. *Id.* at 424-25.

48. *Id.* at 424.

49. *Id.* at 426.

50. *Id.* at 425-26.

51. *Id.* at 426.

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.* (“However, as noted above, in drafting this statute the General Assembly supplied a precise definition of an SVP as one “[w]hose victim was a stranger to the offender.”) (alteration in original).

56. *Id.*

57. *Id.* (Casebolt, J., dissenting).

58. *Id.* (“According to the prosecution’s evidence at trial, defendant, while wearing a mask or sock over his face to conceal his identity, broke into his neighbor’s home, and, for over three hours, sexually assaulted her and her daughter (victims).”)

within the context of the assault the offender was a “stranger” within the definition of section 18-3-414.5(1)(a)(III).<sup>59</sup> Judge Casebolt further argued that regardless of whether the victim is a stranger to the offender or the offender a stranger to the victim, the “danger to the public that the offender may reoffend exists in both settings . . . .”<sup>60</sup> Failure to apply the statute this way, he argued, would potentially lead to absurd results.<sup>61</sup> This point, in particular, is analyzed further in Part V.<sup>62</sup>

*B. THE COLORADO SUPREME COURT ANALYZES PEOPLE V. HUNTER*

1) The Majority Opinion

The state appealed the Colorado Court of Appeals’ decision.<sup>63</sup> Justice Rice wrote the majority’s opinion.<sup>64</sup> The task for Colorado’s Supreme Court was one primarily of statutory construction; what, in fact, was the meaning of “stranger” under § 18-3-414.5(1)(a)(III)?

The majority began with the canons of construction and concluded it did not have to go very far.<sup>65</sup> Justice Rice concluded that the task was an easy one:

Because the word “stranger” is not ambiguous, we begin and end our analysis by considering the term’s plain meaning. In common parlance a stranger is an individual who is “a person not known or familiar to one.” Similarly, Black’s Law Dictionary defines the word stranger as “[o]ne not standing toward another in some relation implied in the context.” Given the importance of the context of any given interaction to the definition of “stranger,” we agree with Judge Casebolt’s dissent and understand “stranger” to mean the relationship is satisfied where either the victim is not known by the offender or the offender is not known by the victim, at the time of the offense. Moreover, defining “stranger” by considering the context of the parties’ relationship at the time of the offense is consistent with the community safety and notice purpose of the SVP designation because it ensures proper designation for offenders likely to reoffend in both situations: where the victim is not known by the offender or the offender is not known by the victim.<sup>66</sup>

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59. § 18-3-414.5(1)(a)(III); *Hunter II*, 240 P.3d at 427.

60. *Hunter II*, 240 P.3d at 427–28.

61. *Id.* at 427.

62. *See infra* Part V, at p. 36.

63. *Hunter III*, 307 P.3d at 1085.

64. *Id.*

65. Justice Rice, quoting Colorado case law, wrote:

“In any statutory interpretation, our task is to determine and give effect to the intent of the General Assembly.” We typically “afford the words of the statute their ordinary and common meaning and construe the statutory provisions as a whole, giving effect to the entirety of the statute.”

*See id.* at 1086 (internal citations omitted).

66. *Id.*

Thus, Justice Rice concluded that it was not necessary to go beyond the plain language of the statute.<sup>67</sup> She also stated that her interpretation was in line with SOMB's, noting:

Similarly, the Sex Offense Management Board's . . . risk assessment screening instrument . . . defines "stranger" by considering the context of the victim and offender's relationship at the time of the assault. Specifically, the Screening Instrument notes, "the victim is a stranger to the offender when [the victim has] . . . little or no familiar or personal knowledge of said offender."<sup>68</sup>

With this perspective in mind the majority concluded that the offender in *Hunter* met the definition of a "stranger" within the context of the statute.<sup>69</sup> The offender disguised his identity, made statements about "Carl" and the mother's employment at a bank (employment that the mother did not hold), and otherwise made himself a "stranger" within the context of the assault.<sup>70</sup>

## 2) Justice Coats's Concurring Opinion

Justice Coats concurred with the majority's opinion.<sup>71</sup> Justice Coats's concurring opinion was short, and its basis for concurring with the majority appeared to be solely based on the outcome of their opinion.<sup>72</sup> Justice Coats, however, had one main philosophical difference with the majority. He wrote:

Because I believe the statute's reference to "stranger" is best understood to include any sexual assault not facilitated or made possible by the offender's relationship with the victim, I would consider the requirements of subparagraph (III) satisfied by any break-in and forcible sexual assault, whether the victim could identify her assailant as someone with whom she was acquainted or not.<sup>73</sup>

Thus, Justice Coats's approach would have broadly expanded the application of Colorado's sexually violent predator statute. Justice Coats's concurring opinion agreed with the outcome of *Hunter III* but not its interpretation of "stranger."<sup>74</sup>

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67. *Id.*

68. *Id.*

69. The majority concluded:

In sum, neither victim knew Hunter was the person committing the assault. Thus, Hunter's victims were strangers at the time of the assault and he therefore meets the relationship criterion of the SVP designation. We reverse the court of appeals and reinstate the trial court's designation of hunter as an SVP.

*Id.*

70. *Id.*

71. *Id.* at 1088 (Coats, J., concurring).

72. *See id.*

73. *Id.*

74. *See id.*

### 3) The Dissenting Opinion

Justice Márquez authored a dissenting opinion and was joined by Justice Boatright.<sup>75</sup> Justice Márquez also looked to the plain meaning of “stranger” but came to a conclusion contrary to the majority:

A “stranger” is “a person not known or familiar to one . . . or “a person or thing that is unknown or with whom one is unacquainted . . . .” Thus, a person is a “stranger” if one lacks a general familiarity or acquaintance with that person. Importantly, whether a person is a “stranger” does not depend on the circumstances of a particular interaction; rather, the term reflects the general lack of a relationship between two people. An existing relationship is not altered simply because a person’s perception is impaired in some way during an encounter. In other words, a person’s temporary inability to recognize a friend or relative under certain circumstances (because it is dark, or the person’s vision is obscured, for example) does not render that friend or relative a “stranger.”<sup>76</sup>

Justice Márquez’s dissent did not dispute that the SVP designation hinged on whether or not the victim know the assailant or the assailant knew the victim.<sup>77</sup> Instead, Justice Márquez disputed that the intent of the statute was to focus on whether or not the assailant was a stranger to the victim in the context of the events.<sup>78</sup> Justice Márquez argued that the interpretation should be whether there was an underlying relationship regardless of the assault.<sup>79</sup>

Thus, the majority concluded that the context of the crime determines if someone is a stranger whereas the dissent concluded that circumstances outside of the assault were determinative of whether or not the relationship element of the SVP statute was satisfied.<sup>80</sup>

### III. THE RAMIFICATIONS OF *PEOPLE V. HUNTER*

*People v. Hunter* will have far-reaching consequences for criminal defendants in Colorado. As the majority concludes, requiring courts to perform the evaluation of “stranger” within the context of the assault will expand the reach of the SVP statute to include defendants who previously would have eluded an SVP designation. This outcome, the majority argued, would avoid absurd results. Simultaneously, the minority argued the majority’s approach would lead to absurd results. It appears that both may be correct.

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75. *Id.* (Márquez, J., dissenting).

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.* at 1089. Justice Boatright joined the dissent. *Id.*

### A. Absurdity Avoided By The Majority's Approach

The majority, quoting Judge Casebolt's dissent in *Hunter II*,<sup>81</sup> argued that its interpretation of "stranger" would avoid absurd results.<sup>82</sup> As an example of the majority's view, consider a couple, X and Y, who separate. After the separation, X assaults Y while wearing a mask. Prior to *People v. Hunter*, X might elude an SVP designation because a court could conclude that an underlying relationship existed that precluded stranger status.<sup>83</sup> Even if X displayed the traits that indicate a high risk of recidivism, a court might conclude that there was an underlying relationship between X and Y. Because of that conclusion, X would no longer satisfy the relationship element and could not be designated as an SVP. This is arguably the type of "absurd" outcome that concerned Judge Casebolt and, later, that the majority in *Hunter III* intended to avoid.<sup>84</sup> After *Hunter III*, however, a court could conclude that X was a "stranger" within the meaning of the statute.

A result like that described above seems ideal. It is arguably absurd for a masked attacker to elude a SVP designation simply because it turns out he was the victim's neighbor. Regardless of the relationship, a violent sexual offender represents a serious, ongoing threat to society.<sup>85</sup> Further, the data indicates that an offender's recidivism risk increases over time.<sup>86</sup>

### B. The Dissent's Fear Regarding Absurd Results

The dissent argued that the majority's interpretation of "stranger" would result in absurd results.<sup>87</sup> Justice Marquez noted that the intent of the statute was to "identify that subset of high risk predators who warrant community notification."<sup>88</sup> An offender that targets strangers, establishes a relationship, or promotes a relationship purely for the purpose of a sexual assault is more "predatory"—at least in the eyes of the Legislature—than one who targets someone he or she knows.<sup>89</sup>

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81. *Hunter II*, 240 P.3d at 426 (Casebolt, J., dissenting).

82. *Hunter III*, 307 P.3d at 1085.

83. Note, however, that a court would also have to conclude that X had not established or promoted the relationship for the purpose of a sexual assault. COLO. REV. STAT. § 18-3-414.5(1)(a)(III) (2014).

84. *Hunter II*, 240 P.3d at 427.

85. See Keith Soothill, *Sex Offender Recidivism*, 39 CRIME & JUST. 145, 157 (2010) (summarizing the recidivism rates of rapists and child molesters). The recidivism rate increases over time for rapists. *Id.* Ultimately, after twenty-five years 39% of all rapists will face another charge. *Id.* 24% of those charged will receive a new conviction. *Id.* It is important to note, however, that recidivism rates are vulnerable to manipulation. See *id.* at 159 (discussing how different criteria resulted in different recidivism calculations).

86. *Id.* at 157.

87. *Hunter III*, 307 P.3d at 1089.

88. *Id.*

89. *Allen v. People*, 307 P.3d 1102, 1110 (Colo. 2013) (Marquez, J., concurring) ("These criteria [in the SVP statute] represent a legislative judgment as to which offenders qualify as 'sexual-

Justice Marquez, however, did not explain how the majority's outcome might lead to absurd results. A few possibilities seem as though they might be absurd. First, the actual events that occur during the assault might lead to absurdity. As an example, what if the victim in *Hunter III* had managed to tear the assailant's disguise off *prior* to the actual assault? The offender would no longer be able to satisfy the "stranger" definition set forth by the majority in *Hunter III*. Consequently, a victim might actually spare his or her offender designation as an SVP if he or she tears the mask off the offender prior to the assault.<sup>90</sup>

Likewise, other possibilities for absurdity exist. The legislative judgment that an offender is only an SVP if he targets a stranger, promotes a relationship, or establishes a relationship for the purpose of sexual assault seems to completely disregard the possibility that some sexually violent predators might be as brazen as to feel no need for a disguise.

This exact situation occurred in *People v. Valencia*.<sup>91</sup> In *People v. Valencia*, an ex-boyfriend broke into his ex-girlfriend's home.<sup>92</sup> The details of the attack were particularly violent and included a sexual assault.<sup>93</sup> The trial court concluded that the offender was a SVP within the meaning of the statute and subsequently designated the offender as an SVP.<sup>94</sup> The offender appealed his designation to the Colorado Court of Appeals.<sup>95</sup>

The Colorado Court of Appeals reversed the SVP designation.<sup>96</sup> The offender eluded a designation as an SVP because he was not a stranger to the victim.<sup>97</sup> Further, the offender had not promoted or established the relationship for the purpose of the assault.<sup>98</sup> Thus, he could not meet the final element of the SVP statute.

Would anything end differently in *Valencia* after *Hunter III*? Arguably not; the offender knew the victim and did not disguise himself during the assault. This is one of the problems with the current SVP statute in Colorado: violent offenders evade SVP designations in spite of the

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ly violent predators,' that is, those offenders who pose a sufficiently high risk to the community to warrant active community notification.'").

90. The mere possibility that a victim might mitigate an offender's SVP designation through the active use of self-defense is, in this author's view, the very epitome of absurdity.

91. *People v. Valencia*, 257 P.3d 1203, 1203 (Colo. App. 2011).

92. *Id.*

93. *Id.* at 1204-05 (describing how the offender "stuck the knife down [the victim's] throat" and sexually assaulted her).

94. *Id.* at 1207.

95. *Id.* at 1204.

96. *Id.* at 1207.

97. *Id.*

98. *Id.* at 1208 ("To promote a relationship primarily for the purpose of sexual victimization, an offender must engage in some conduct, beyond the sexual assault itself, which is designed to establish an initial relationship or to expand an existing relationship into one primarily for the purpose of sexual victimization.'").

horrifying nature of their crimes. Sometimes, these offenders have been intimately involved with the people they assault.

### C. Absurdity Avoided By Neither Approach

A final absurdity exists that neither the majority nor the minority approach can resolve—indeed, it is an absurdity that is imbued in the statute. Intra-marital and intra-relationship rape is a significant problem today.<sup>99</sup> In these types of intimate attacks, the attacker is the spouse or significant other of the victim. The problem with these cases is two-fold. First, they can be incredibly difficult to prove.<sup>100</sup> There is frequently a pattern of abuse, and at least one Colorado deputy district attorney indicated juries are often skeptical of the allegations when the relationship has continued beyond previous offenses.<sup>101</sup> Second, even if a pattern of abuse can be shown, a partner-offender will almost never satisfy the relationship requirement of the SVP statute.<sup>102</sup> This is true even if there has been a pattern of offenses over the years. This point is discussed further in Part V.

## IV. VIEWS OPPOSING SEX-OFFENDER REGISTRATION STATUTES

Until this point, this paper has not questioned the merits of any sex-offender registration statutes, including SVP statutes. Before going any further, however, it is worth noting that sex-offender statutes, including SVP statutes, do not have universal support in the legal community. Opposition to sex-offender registration statutes can fall into a variety of categories. One broad and straightforward criticism of sex-offender registration statutes is that some studies suggest they have no actual effect on public safety or sex-offender recidivism.<sup>103</sup> Others focus on the impracticality of sex-offender registries as applied to specific offenders.<sup>104</sup> Finally, some arguments focus on the basic unfairness—and the long-term stigma—associated with placing an offender on a public sex-

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99. See *The Wife Rape Fact Sheet*, MEDICAL UNIVERSITY OF SOUTH CAROLINA, <https://mainweb-v.musc.edu/vawprevention/research/wiferape.shtml> (last checked Nov. 24, 2014); see also note 125 (citing study showing high rate of domestic violence re-offense).

100. I would like to thank Deputy District Attorney Brad Maloney for his insights into spousal rape cases. Mr. Maloney indicated that rape cases involving partners are some of the most difficult to prove. Often juries will look at the fact that the victim stayed with the offender and question the veracity of the allegations.

101. *Id.*

102. The qualification “almost never” must be used on the off chance that an offender assaults a partner in a way that renders the offender a stranger under *People v. Hunter*.

103. See, e.g., Amanda Y. Agan, *Sex Offender Registries: Fear Without Function?*, 54 J.L. & ECON. 207 (2011) (arguing that sex offender registries are ineffective).

104. See Stephanie N.k. Robbins, *Homelessness Among Sex Offenders: A Case for Restricted Sex Offender Registration and Notification*, 20 TEMP. POL. & CIV. RTS. L. REV. 205 (2010) (discussing difficulty of homeless sex offenders compliance with Pennsylvania registration statute).

offender registry. This argument has particular weight when the offenders are juveniles.<sup>105</sup>

The purpose of this paper is not to address and dismiss each of these arguments; that said, they are worth considering briefly. Some scholars argue that sex-offender registries do not perform a sufficiently valuable social function in order to justify their existence.<sup>106</sup> The argument asserts that the statute is not justified absent evidence that the statute is preventing additional crimes.<sup>107</sup> One of the fundamental problems with this approach is the thought that a warning, even if usually unsuccessful, is in-and-of-itself not worth providing. Indeed, much of our legal system rests on the premise that it is negligent not to provide warning to individuals of known dangers.<sup>108</sup> Yet another problem arises in regards to marital rape. Studies suggest that marital rape is one of the most underreported crimes in the nation, and offenders who offend against partners are at significant risk of reoffending against current-and-future partners and, critically, strangers.<sup>109</sup> Indeed, at least one study suggests that upwards of 45% of offenders who assault those they know also assault strangers.<sup>110</sup> These facts, of course, do not mean that the SVP statutes are perfect. They do suggest, however, that state governments have legitimate reasons to provide for their existence.

Another broad category of criticism can be termed “offender specific.” Offender specific criticism can focus on the specific situation surrounding the offender, for example a homeless offender required to list a physical address,<sup>111</sup> or it can also focus on the offender’s life circumstances—for example, the fact that the offender is a minor.<sup>112</sup> The first is a legitimate concern regarding the execution of the legislation, but it is not itself dispositive of whether or not sex-offender registries are worthwhile endeavors. The second is arguably quite persuasive—young offenders may be subject to lifelong registration requirements that will impact every aspect of their lives.<sup>113</sup> Again, however, these are specific criticisms that, while worth considering, do not suggest that it is not worth notifying the public that there are dangerous individuals who might reoffend living nearby.

Ultimately, these criticisms are beyond the scope of this paper. In Part V, this paper explores what a more relevant and effective SVP stat-

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105. See Phoebe Geer, *Justice Served? The High Cost of Juvenile Sex Offender Registration*, 27 Dev. Mental Health L. 34 (2008) (discussing ongoing negative impacts to juvenile offenders).

106. See, e.g., Agan, *supra* note 103.

107. See *id.* at 208.

108. See, e.g., *Mile Hi Concrete, Inc. v. Matz*, 842 P.2d 198, 202 (Colo. 2010) (discussing failure to warn as negligence).

109. See *infra* Part V.

110. See *infra* at p. 36 & note 116.

111. See Robbins, *supra* note 104.

112. See Geer, *supra* note 105.

113. See *id.*

ute would look like. In doing so, this paper does not intend to be dismissive of the criticisms leveled at sex-offender registries. Instead, it focuses on a simple premise—if a state chooses to govern a specific area of society, then it should endeavor to do so effectively and attempt to avoid absurd outcomes.

#### V. TOWARDS A MORE SENSIBLE SEXUALLY VIOLENT PREDATOR STATUTE

The majority and the dissent in *Hunter III* were both correct: either interpretation of the other could lead to absurd results. The majority's interpretation might result in an offender being saved the fate of a SVP designation through his victim's actions. The dissent's interpretation would nonetheless allow many sexually violent individuals to elude a SVP designation. The inherent problem with Colorado's Sexually Violent Predator statute is that absurdity is written directly into its text, and neither the majority nor the minority approach can remedy that fact.

##### A. Colorado Revised Statute Section 18-3-414.5 Reflects Historic Beliefs That Partners Could Not Rape Partners

One of the main problems with Colorado Revised Statute § 18-3-414.5 is that it carries the assumption that two otherwise identical rapes nonetheless represent different threats to society if, all other things held the same, the offender did not know the victim.<sup>114</sup> This represents a value judgment that offenders who target strangers pose a higher risk to society; notably, this is very similar to the old notion that a spouse could not sexually assault his or her significant other.

The problem with this approach is that statistical data does not support it. As an example, Colorado's own training manual for the screening tool used to identify SVPs disputes this assertion.<sup>115</sup> In its training manual, Colorado's SOMB notes the following statistics:

Significant heterogeneity exists in offending patterns based on sexual history information obtained from Colorado prisoners and parolees: 45% of stranger rapists also assault people they know, and 68% of offenders who were relatives of the victims offended against non-relatives.<sup>116</sup>

Thus, although the legislature has made the judgment that an offender who targets a stranger, promoted a relationship, or established a relationship for the purpose of sexual assault is more dangerous to society, SOMB's own manual cites data coming to the opposite conclusion.

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114. See COLO. REV. STAT. § 18-3-414.5(1)(a)(III) (2014).

115. See COLORADO SEX OFFENDER MANAGEMENT BOARD, HANDBOOK; SEXUALLY VIOLENT PREDATOR ASSESSMENT SCREENING INSTRUMENT FOR FELONS: BACKGROUND AND INSTRUCTION 37 (2003).

116. *Id.*

Offenders who target people they know are also likely to target strangers.<sup>117</sup>

While that statistic alone gives one reason to pause and consider the reasoning behind the relationship element of the SVP statute, it does not wholly dispense with the legislature's inclusion of the provision. It may be that, as Justice Marquez indicates, the relationship element represents a legislative determination that offenders who target strangers—or who establish or promote relationships for the purpose of a sexual assault—are more deserving of an SVP designation. In such an instance, however, the relationship element only acts as a moral filter; offenders who know their victims are legislatively determined to be less culpable than those who do not know their victim.

This “screening” effect mirrors another—and very similar—belief about rape. Historically rape law defined rape as forcible sexual contact between a male and a female. Further, the male was defined as someone other than the female's spouse.<sup>118</sup> The definition implied that it was impossible for a husband to rape a wife thereby creating a spousal-rape exception.<sup>119</sup>

Scholars have written a great deal regarding this historical exception. It has been asserted that the exception subjugated women and treated them as mere chattel.<sup>120</sup> Similarly, the relationship element of Colorado's SVP statute—intentionally or otherwise—represents a judgment that (as an example) a husband who rapes his wife is not as predatory as an offender who rapes a stranger. Indeed, it would seem impossible that a husband might ever satisfy the Relationship Provision unless he wore a disguise—a possibility that seems highly improbable in the typical case. It is not difficult to perceive problems with this approach.

Marital rape is likely to be severely underreported.<sup>121</sup> One study indicated that marital rape likely occurs twice as often as rape by a

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117. *See id.*

118. *See* Emily R. Brown, *Changing the Marital Rape Exemption: I Am Chattel(!); Hear Me Roar*, 18 AM. J. TRIAL ADVOC. 657, 657 (1995).

119. *See id.*

120. *Id.* at 658.

121. The statistics offered are staggering:

Given the hidden nature of marital rape, it may be among the most difficult domestic crimes to accurately assess. Many rape experts believe marital rape may be the most underreported crime in the country, while one of the most widespread. According to *Rape in America*, a report issued by the National Victim Center (NVC) and the Crime Victims Research and Treatment Center (CVC), more than 61,000 women are raped by spouses or ex-spouses each year in the United States. The CVC estimates that around 1.2 million women have ever been victims of spousal rape. In a 1994 National Crime Victimization Survey, an estimated 36,000 rape and sexual assault victims of single-offender victimizations identified a spouse or ex-spouse as the one who assaulted them.

R. BARRI FLOWERS, DOMESTIC CRIMES, FAMILY VIOLENCE AND CHILD ABUSE: A STUDY OF CONTEMPORARY AMERICAN SOCIETY 84 (2000) (citations omitted).

stranger.<sup>122</sup> If offenders who assaulted partners were unlikely to assault future partners, it may be rational to avoid labeling marital rapists as SVPs.<sup>123</sup> Offenders who commit domestic violence frequently also sexually assault their partners,<sup>124</sup> and offenders who commit domestic violence are likely to recidivate.<sup>125</sup> Additionally, offenders who commit domestic violence are likely to commit violent acts against future partners.<sup>126</sup>

These facts mirror some of the same facts that are used to identify SVPs. There is a significant relationship between offenders who commit domestic violence and mental health disorders.<sup>127</sup> This same relationship exists regarding sex offenders.<sup>128</sup> It is not clear, therefore, that offenders who commit offenses against people who can easily identify them are unlikely to commit the same offense against individuals in the future.

Although the SVP statute is not a criminal statute,<sup>129</sup> it nonetheless represents a legislative judgment that an offender who sexually assaults someone he knows represents less of a threat to society than an offender who sexually assaults a stranger. Although this may not represent the same type of subjugation of women that the historic definition of rape represents, it does represent a similar type of judgment. In effect, it asserts that raping someone you know does not represent the same type of threat to society as raping a stranger.

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122. *Id.* (“In using a conservative definition of rape, Diana Russell found that marital rape occurred more than twice as often as rape committed by strangers.”) (citations omitted).

123. This paper does not assert that the conduct of a marital rapist is any less culpable than that of a stranger rapist or that the harm is any less than the harm caused by stranger rape. To the contrary, there is some indication that victims of marital rape suffer even greater trauma than victims of stranger rape. *E.g.*, Louise McOrmond-Plummer, *Considering the Differences: Intimate Partner Violence in Sexual Assault and Domestic Violence Discourse*, CONNECTIONS, Summer 2008, at 5 (“There’s a common notion that [Intimate Sexual Partner Violence] doesn’t have as bad an impact as sexual assault by a stranger. In fact, research reveals that the trauma can be longer lasting. Significant reasons for this are a lack of recognition and ability to share pain.”) (citations omitted).

124. *See* Flowers, *supra* note 121, at 37 (“There is a significant correlation between spousal rape and other physical violence perpetrated against women by their spouses. One study estimated that sexual assaults were reported by 33 to 46 percent of women who were physically battered by their intimates.”) (citations omitted).

125. Donna K. Coker, *Heat of Passion and Wife Killing*, 2 S. CAL. REV. L. & WOMEN’S STUD. 71, 85 n.52 (1992) (citing study that offenders who commit domestic violence re-offend at a rate “between 57% and 86%.”).

126. *Id.* at 85 (1992) (“[I]t appears that an abuser is likely to bring the violence with him to each new romantic encounter.”).

127. *See* MARGI LAIRD MCCUE, DOMESTIC VIOLENCE 12 (2d ed., 2008) (“A number of recent studies have found a high incidence of psychopathology and personality disorders, most frequently antisocial personality disorder and borderline personality disorder (or post-traumatic stress disorder), among men who assault their intimate partners.”) (citations omitted).

128. Marnie E. Rice & Grant T. Harris, *What We Know and Don’t Know About Treating Adult Sex Offenders*, in PROTECTING SOCIETY FROM SEXUALLY DANGEROUS OFFENDERS: LAW, JUSTICE, AND THERAPY 101, 112 (Bruce J. Winick & John Q. La Fond eds., 2003) (“Psychopathy is an important predictor of recidivism among sex offenders, as it is among offenders more generally. Moreover, the combination of psychopathy and sexual deviance predicts especially poor outcome.”).

129. *See supra* note 9.

This assertion does not mesh with the statistics that the SOMB relies upon in its training manual.<sup>130</sup> Offenders who victimize those they know are also likely to victimize people with whom they are not acquainted.<sup>131</sup> These same offenders are unlikely to be labeled SVPs because they did not attack a stranger, did not establish the relationship for the purpose of sexual assault, and—like *Valencia*—may not be found to have promoted the relationship for the purpose of a sexual assault.

The Colorado legislature has written absurdity into the statute. Its stated purpose is to identify high-risk offenders who pose an ongoing risk to society.<sup>132</sup> Due to its language, however, it then exempts vast swathes of high-risk offenders from its reach.<sup>133</sup> It seems that the only judicial interpretation that would give the statute the full effect of the legislature's intent is that proposed by Justice Coats.<sup>134</sup> Empowering the statute to meet its stated purpose, however, requires significant judicial activism. This is not a desirable alternative to a fully functional statute, and courts are not empowered to ignore portions of statutes simply because they are illogical.<sup>135</sup>

*B. Given the Choice Between Two Absurdities, Which Absurdity is Preferable?*

As the previous section explored, Colorado's Sexually Violent Predator statute is rife with potentially absurd outcomes. In *Hunter III*, the majority interpreted "stranger" to avoid one absurd outcome. With that interpretation, however, the majority invited a new range of absurdities.<sup>136</sup> The dissent, on the other hand, would have interpreted "stranger" in a way understood by the public at large. The outcome would have been the offender in *Hunter III* managing to elude a SVP designation despite committing the type of crime that would seemingly warrant that very designation. Neither the majority nor the dissent, however, could ultimately avoid the absurdity that is imbued in the statute.

It is not surprising that the outcome was not unanimous given such choices. Nonetheless, while the majority's outcome properly designated *Hunter III*'s offender as a SVP and furthered the statute's intent to "iden-

130. See *supra* p.16 and note 116.

131. *Id.*

132. See Allen, 307 P.3d at 1110.

133. See § 18-3-414.5(1)(a)(III).

134. Justice Coats argued the stranger element would be met any time someone broke into a house uninvited for the purpose of an assault. See *supra* p. 30. This would have been a very liberal interpretation of the statute, but it may have some support from the legislature's statutory interpretation statutes. See COLO. REV. STAT. § 2-4-212 (2014) (statutes are to be given liberally construed so that the "true intent and meaning of the general assembly may be fully carried out.").

135. See COLO. REV. STAT. §§ 2-4-201 to 216 (2014).

136. One example is this hypothetical: Two identical rapes are committed. In one, however, the victim managed to remove the mask prior to the assault and recognizes the assailant. As the victim was able to identify the assailant prior to the assault, the possibility exists that—despite the identical nature of the crimes—one results in an SVP designation while the other does not.

tify that subset of high risk predators who warrant community notification,”<sup>137</sup> this paper believes it was ultimately an outcome detrimental to the people of Colorado.

Colorado’s SVP statute is imbued with absurdity. Whole swathes of predators that represent an ongoing risk to future partners—partners who will know the very person who is assaulting them—continue to elude a SVP designation.<sup>138</sup> The majority’s interpretation has done nothing to change that reality. Instead, the majority’s interpretation resulted in an outcome that—while just given the circumstances—avoided what could potentially have been a public relations nightmare.

A public relations nightmare would have brought with it public scrutiny of the statute itself. Public scrutiny, in conjunction with the absurd outcome that would have resulted from honoring the plain language of the statute, would at least have had the potential to result in pressure on the legislature to alter the statute itself. An outraged public would have been more likely to pressure the legislature; instead, one wonders if the public has even heard of *People v. Hunter*.

As it stands, Colorado Revised Statute section 18-3-414.5 continues its existence without any public scrutiny. The interpretation in *Hunter III* ensured a just result in the facts of that case, but it seems certain that future cases will once again call the statute into scrutiny.

#### CONCLUSION

Colorado’s SVP statute is fundamentally flawed. No amount of tinkering by the courts can change its literal provisions; the Relationship Provision is written into the statute, and as a result the statute is imbued with absurdity. The way Colorado courts currently apply the statute is an attempt to fix its innate flaws. Unfortunately, the solution brings its own flaws with it. The actual events of an attack might dictate whether an offender is designated an SVP. A victim who manages to rip off an attacker’s disguise only to discover that it is someone he or she knows might very well spare the offender an SVP designation. On the other hand, if the courts had not interpreted the statute in this way, then offenders who know their victims but wear disguises might never have been able to receive an SVP designation.

Regardless, the current interpretation leaves vast swathes of dangerous offenders beyond the reach of the SVP statute. Offenders who assault their significant others—married or otherwise—will almost certainly never satisfy the Relationship Provision. The unfortunate reality is that the failure of Colorado’s SVP statute to identify these dangerous individuals is just another hurdle to addressing the issue of marital and relation-

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137. *Hunter III*, 307 P.3d at 1088.

138. See part V(A), *supra* at p. 36.

ship-based sexual abuse. It is already difficult to convict these types of offenders, and it is almost impossible to give dangerous relationship-based offenders a label that might give proper warning to future targets. Thus, the statute needs to be changed.

Colorado should join the vast majority of other states that ignore the underlying relationship between offender and victim. Instead, Colorado should remove the requirement and look at two things: first, the offense that the offender has committed; second, the mental disposition of the offender and the likelihood that he or she will re-offend again in the future. This two-part inquiry treats all offenders the same and avoids the misconception that offenses against people that an offender knows is somehow less culpable than offenses against complete strangers.

The various states of this nation long ago decided to abandon the ill-conceived notion that a person could not rape his or her spouse. This action was not simply just; it was also an acknowledgment of equality amongst the sexes. Colorado should now join the majority of the states that have accepted that offenders who choose to target the people they know are just as culpable—and just as dangerous—as offenders who target strangers. Colorado should seek to execute legislation that is as effective as it is fair; Colorado should eliminate the Relationship Provision from its SVP statute.

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APPENDIX I

STATE	STATUTE	RELATIONSHIP PROVISION?	LANGUAGE
Alabama	§ 15-20A-13	NO.	
Alaska	No SVP law.	N/A	
Arizona	§ 36-3705	NO.	
Arkansas	§§ 13-12-903, 918	NO.	Note: Used to be an SVP, now it's a "sexually dangerous person." Seems to focus on mental illness.
California	§ 6600	NO.	Focuses on mental health.
Colorado	§ 18-3-414.5	YES.	Language is in § 18-3-414.5(1)(a)(ii).
Connecticut	§ 54-252	NO.	Seems to be a four-tiered approach.
Delaware	No SVP law.	N/A	
Florida	Note: Extensive statutory scheme. § 394.910; 394.912 (definition).	NO.	Focuses on mental health.
Georgia	§ 42-1-12 (definition).	NO.	Leaves it to the board. If I want to know more I probably need to see the Georgia board.
Idaho	No SVP law.	N/A	
Idaho	§ 18-8303	NO.	Leaves it to the board. I'd like to call them about their process. 208 954-8511.
Illinois	§ 207/5	NO.	Mental health issue.
Indiana	§ 35-38-1-7.5	NO.	Mental health issue.
Iowa	§ 229A.2	NO.	"Sexually violent predator" means a person who has been convicted of or charged with a sexually violent offense and who suffers from a mental abnormality which makes the person likely to engage in predatory acts constituting sexually violent offenses, if not confined in a secure facility. [Note: This seems to be a trial proceeding where any evidence can really be introduced.]
Kansas	§ 59-29a02	NO.	Mental health issue.
Kansas	§ 17-500; Doesn't appear to have a scheme.	N/A	
Kentucky	§ 560.1	NO.	Mental health issue.
Maine	No SVP law.	N/A	
Maryland	§ 11-703, 703	NO.	Wide-open issue consideration. But § 703 really focuses on there was an offense and there is a high risk that another offense will be committed.
Massachusetts	123A § 1	NO.	
Michigan	No SVP law.	N/A	
Minnesota	§ 2530.02	NO.	
Mississippi	No SVP law.	N/A	
Missouri	§ 632.480	NO.	
Montana	§ 46-23-502	NO.	
Nebraska	§ 81-174.01	NO.	Mental health and likely to repeat.
Nevada	No SVP law.	N/A	
New Hampshire	§ 135-E:2	NO.	Mental health issue.
New Jersey	§ 30-6-27.26; A very comprehensive scheme.	NO.	Same dichotomy as almost all others: (1) Prior conviction; and (2) mental condition that makes them highly likely to reoffend.
New Mexico	No SVP law.	N/A	
New York	§ 168-a	NO.	
North Carolina	§ 14-206.6(a)	YES.	Mirror Colorado; "Sexually violent predator" means a person who has been convicted of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in sexually violent offenses directed at strangers or at a person with whom a relationship has been established or promoted for the primary purpose of victimization.
North Dakota	§ 25-03.3-01	NO.	Same dichotomy but slightly more complicated language.
Ohio	§ 2971.01	NO.	Basically the same dichotomy you usually see.
Oklahoma	No framework.	N/A	
Oregon	§ 428.510	NO.	Same dichotomy as usual, though slightly different wording.
Pennsylvania	§ 9799.12, .24	NO.	Same dichotomy. But note that § 9799.24 does allow the relationship with the victim to be considered.
Rhode Island	§ 11-37-1-2	NO.	Usual dichotomy.
South Carolina	§ 44-48-30; Comprehensive scheme.	NO.	Usual dichotomy.
South Dakota	No statutory scheme.	N/A	
Tennessee	No statutory scheme.	N/A	
Texas	§ 981.003	NO.	Usual dichotomy.
Texas	No statutory scheme.	N/A	
Vermont	§ 5603	NO.	Usual dichotomy.
Virginia	§ 37.2-900	NO.	Usual dichotomy.
Washington	§ 71.09.030	NO.	Usual dichotomy.
West Virginia	§ 15-12-2a	NO.	Seems wide open; check the SCMB website.
Wisconsin	§ 980.01	NO.	Usual dichotomy.
Wyoming	§ 7-19-301	NO.	Defines "predatory" as being directed at a stranger or a person with whom the offender established a relationship for the purposes of the attack. But, it's not clear what effect that has on anything at all. It appears Wyoming tried to get legislation off the ground but nothing came of it.