



CALIFORNIA DEPARTMENT OF State Hospitals

NOTICE OF PUBLIC HEARING TO CONSIDER PROPOSED RULEMAKING FOR ADOPTION OF SEXUALLY VIOLENT PREDATOR (SVP) EVALUATION PROCESSES

TITLE 9. DEPARTMENT OF STATE HOSPITALS

The Department of State Hospitals (Department) will conduct a public hearing at the time and place noted below to consider adoption of the proposed regulations for SVP evaluation processes after considering all comments, objections, and recommendations regarding the above matter.

DATE: January 2, 2018

TIME: 1:00 p.m.

LOCATION: California Health and Human Services Agency
Department of State Hospitals
Conference Room 100
1600 9th Street
Sacramento, California 95814

At the hearing, any interested person or their representative may, orally or in writing, submit comments relevant to the proposed action described in the Informative Digest. The Department requests, but does not require, that a person who makes an oral comment at the hearing also prepare and submit a written copy of their testimony. Furthermore, the Department requests, but does not require that all written and email statements on this item be filed at least 10 days prior to the hearing, so that the Department staff have sufficient time to consider each comment. The Department encourages members of the public to bring any suggestions for modifications of the proposed regulatory action to staff's attention in advance of the hearing.

WRITTEN COMMENT PERIOD AND SUBMITTAL OF COMMENTS

Any interested person, or their representative may present comments orally or in writing at the hearing and may provide comments by personal delivery, postal mail service, facsimile (fax), or email submittal before the hearing as described in detail below. The public comment period for this regulatory action will begin on November 17, 2017. For any written comment to be considered, comments not physically submitted at the hearing, must be received by the Department **no later than 5:00 pm, January 2, 2018**. The Department reserves the right to consider or not consider a late submission. For consideration, any written comments may be submitted as follows:

1. By email to DSH.Regulations@dsh.ca.gov. It is requested that emailed comments, particularly those with attachments, contain the regulation package identifier "SVP Evaluation Processes" in the subject line to facilitate timely identification and review;
2. By fax transmission to (916) 651-3090;
3. By United States Postal Service to:

California Department of State Hospitals
Office of Regulations
1600 9th Street, Room 410
Sacramento, CA 95814; or

4. Hand-delivered to the address above.

AUTHORITY AND REFERENCE

These regulatory actions are proposed under the authority granted in California Welfare and Institutions Code sections 4005.1, 4027, and 4101. These actions are proposed to implement, interpret and make specific Welfare and Institutions Code sections 6601, 6603, 6604, and 6605; *Albertson v. Superior Court* (2001) 25 Cal.4th 796.

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW PURSUANT TO GOVERNMENT CODE 11346.5(a)

Sections Affected: The Department proposes adoption of California Code of Regulations, title 9, sections 4020 and 4020.1.

Policy Statement Overview

These proposed regulations will:

1. provide safety and security to the public by providing guidance as to the validity of the Department's evaluations per the Sexually Violent Predator Act (SVPA).
2. provide uniform rules in all cases; and
3. provide clarification to the update and evaluation process under the SVPA to the petitioners and defense counsel.

The Department has conducted an evaluation and determined that these regulations are not inconsistent or incompatible with existing state regulations.

Existing Law

Current law requires the Department to evaluate inmates under the jurisdiction of the California Department of Corrections and Rehabilitation who have been convicted of one or more offenses under California Penal Code Section 290 to determine whether the inmates have a high risk of recidivism should they be paroled or discharged to the community.

Effect of the Proposed Action

This proposed rulemaking adopts new definitions in order to clarify statutory requirements for evaluations of sexually violent predators, and clarifies the Department's role in update and replacement evaluations, updates and corrections to evaluations, designation of evaluators, and the roles for evaluators designated to perform these evaluations.

DISCLOSURES REGARDING THE PROPOSED REGULATIONS

The Department has made the following initial determinations:

1. Mandates on Local Agencies or School Districts: There will be no mandates imposed on local agencies or school districts.
2. Mandate Requires State Reimbursement Pursuant to Part 7 (commencing with § 17500) of Division 4 of the Government Code: None.
3. Costs to Any Local Agency or School District that Requires Reimbursement Pursuant to Part 7 (commencing with § 17500) of Division 4 of the Government Code: None
4. Non-discretionary Costs or Savings Imposed on Local Agencies: The Department anticipates there will be no fiscal impact in the current State Fiscal Year to Local Agencies.
5. Costs or Savings to State Agencies: The Department anticipates annual savings of approximately \$25,000 per year.
6. Costs or Savings in Federal Funding to the State: None.
7. Significant, Statewide Adverse Economic Impact Directly Affecting Business: There will not be a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. We do not foresee that this regulation will be utilized and only a small fraction of the state hospital population may be eligible.
8. Cost Impacts on Representative Private Person or Businesses: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
9. Effect on Small Businesses (Cal. Code Regs., tit. 1, § 4, subds. (a) & (b)): There will be no cost impact on small businesses because the proposed regulation only affects individual patients who are terminally ill in state hospitals.

Results of the Economic Impact Analysis

These proposed regulations are intended to allow the Department to set forth the policy of the Department under the SVPA.

Creation or Elimination of Jobs within the State of California

The proposed regulations would not create or eliminate jobs within the State of California. SVP evaluators are required to perform these evaluations under the SVPA.

Creation of New Businesses or the Elimination of Existing Businesses within the State of California

The proposed regulations would not create new businesses or eliminate existing businesses. The Department already hires and/ or contracts evaluators for evaluation services and other services in providing the proper evaluations under the SVPA.

Expansion of Businesses Currently Doing Business within the State of California

The Department will need to maintain staffing contractors who provide the evaluations under the SVPA.

Anticipated Benefits Under the Regulation

The proposed regulations provide the policy of the Department. The proposed regulations also provide clear direction to the public, employees, and patients as to how an evaluation is performed.

Housing Costs

In accordance with Government Code section 11346.5, subdivision (a)(12), the Department has made the initial determination that the proposed regulatory action will not have a significant effect on housing costs.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. DSH invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation during the written comment period.

AGENCY CONTACT PERSONS

Inquiries concerning the substance of the proposed regulatory action may be directed to the agency representative Ms. Maria Latino, *SVP/MDO Program Manager*, Forensics Division, (916) 651-3206 or (designated back-up contact), Ushrena Wenell, *Staff Services Manager I*, Forensics Division, (916) 651-3220.

AVAILABILITY OF DOCUMENTS

The Department staff has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based, including an Initial Statement of Reasons (ISOR) for the proposed regulatory action and the proposed text (the "expressed terms") of the regulation. Copies of the proposed regulation text and the

ISOR, which includes a summary of the economic and fiscal impacts of the proposal may be accessed on the Department's Internet web site listed below, or may be obtained from the agency representative to whom non-substantive inquiries concerning the proposed administrative action may be directed: Beth Snyder, Regulations Unit, California Department of State Hospitals, 1600 9th Street, Sacramento, California, 95814, (916) 654-2748.

HEARING PROCEDURES/AVAILABILITY OF CHANGED OR MODIFIED TEXT

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Government Code, title 2, division 3, part 1, chapter 3.5 (commencing with § 11340). After holding the public hearing, and considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of the contact person at the address indicated above. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

FINAL STATEMENT OF REASONS AVAILABILITY

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on the Department's Internet web site listed below.

INTERNET ACCESS

This notice, the ISOR, the proposed regulation text, and all subsequent regulatory documents, including the FSOR, when completed, are available on the Department's Internet web site for this rulemaking at <http://www.dsh.ca.gov/Publications/Regulations.aspx>