State of California
# DEPARTMENT OF STATE HOSPITALS

## Final Statement of Reasons for Rulemaking, Including Summary of Comments and Department Responses

PROPOSED REGULATIONS FOR THE SEXUALLY VIOLENT PREDATOR STANDARDIZED ASSESSMENT PROTOCOL

Public Hearing Date: January 22, 2018

## I. GENERAL

### A. INTRODUCTION

The Department of State Hospitals (DSH or the Department) released the Initial Statement of Reasons for Rulemaking (ISOR), for the proposed adoption of Sexually Violent Predator Standardized Assessment Protocol Regulation**,** on December 8, 2017. The ISOR, which is incorporated by reference herein, contains a description of the rationale for the proposed adoption of sections 4011, 4012, 4013, 4014, 4014.1 and 4015, title 9, California Code of Regulations (CCR). All documents associated with this rulemaking were made available to the public and are available on the DSH Internet Web site at: http://www.dsh.ca.gov/Publications/Regulations.aspx

On January 22, 2018, DSH conducted a public hearing to consider the proposed rulemaking for adoption of SVP Standardized Assessment Protocol Regulation, in accordance with the California Administrative Procedure Act, Government Code, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340)in which no written comments were received for the proposed action during the 45-day comment period in response to the January 22, 2018 public hearing notice. No written and oral comments were presented at the Hearing.

After the January 22, 2018 public hearing, DSH proposed modifications to the originally proposed regulation to sections 4011, 4012, 4013, 4014, 4014.1 and 4015, title 9, CCR. The Department made modifications (with the changes clearly indicated) which are sufficiently related to the originally proposed text, available for a supplemental 15-day comment period through a “Notice of Public Availability of Modified Text.”

The notice and modified text were mailed on February 15, 2018 to all interested parties. The 15-day notice listed the DSH Internet Web site where interested parties could obtain the complete text of the modified regulation text, with the modifications clearly indicated. These documents were also published on the DSH Internet Web site. The 15-day notice and modified regulatory text are incorporated by reference herein. Four comments were received and were not relevant to the proposed action during the 15-day public comment period.

On July 10, 2018, DSH made modifications (with the changes clearly indicated) which are sufficiently related to the originally proposed text, available for a supplemental Second 15-day comment period through a “Notice of Public Availability of Modified Text.” The second 15-day notice and modified text were mailed on July 10, 2018 to all interested parties. The second 15-day notice listed the DSH Internet Web site where interested parties could obtain the complete text of the modified regulation text, with the modifications clearly indicated. These documents were also published on the DSH Internet Web site. The second 15-day notice and modified regulatory text are incorporated by reference herein. Three comments were received during the second 15-day public comment period.

On August 20, 2018, DSH made modifications (with the changes clearly indicated) which are sufficiently related to the originally proposed text, available for a supplemental Third 15-day comment period through a “Notice of Public Availability of Modified Text.” The third 15-day notice and modified text were mailed on August 20, 2018 to all interested parties. The third 15-day notice listed the DSH Internet Web site where interested parties could obtain the complete text of the modified regulation text, with the modifications clearly indicated. These documents were also published on the DSH Internet Web site. The third 15-day notice and modified regulatory text are incorporated by reference herein. One comment was received during the third 15-day public comment period.

## B. MANDATES AND FISCAL IMPACTS TO LOCAL GOVERNMENTS AND SCHOOL DISTRICTS

The Department has determined that this regulatory action will not result in a mandate to any local agency or school district the costs of which are reimbursable by the state pursuant to Part 7 (commencing with section 17500), Division 4, Title 2 of the Government Code.

## C. CONSIDERATION OF ALTERNATIVES

The Department has determined there are no reasonable alternatives considered by the Department that would be more effective in carrying out the purpose for which the regulatory action was proposed or would be as effective and less burdensome to affected private persons or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law. The Department has considered the best clinical practices based upon training and information as provided by organizations such as Association for the Treatment of Sexual Abusers (ATSA), California Sex Offender Management Board (CASOMB), American Psychological Association (APA), American Psychology – Law Society Division 41 of the APA, Sex Offender Civil Commitment Program Network (SOCCPN), Forensic Mental Health Association of California (FMHAC), California Coalition on Sexual Offending (CCOSO), and State Authorized Risk Assessment Tools Used for Evaluating Sex Offenders (SARATSO).

No alternatives were proposed to DSH that would lessen any adverse economic impact on small business.

## II. MODIFICATIONS MADE TO THE ORIGINAL PROPOSAL

### A. MODIFICATIONS PROVIDED FOR IN THE FIRST 15-DAY COMMENT PERIOD

The 15-day modifications to the original proposal that were not made in response to public comment and, therefore, are not separately discussed in the summary of comments and agency response are the following.

The following modifications were made to the Initial Statement of Reasons:

1. Identified the source of the criterion provided under Section 4011 pursuant to the Sexually Violent Predator Act.
2. Expand the necessity and need language for Sections 4012, 4013, and 4014.
3. Explain the necessity language of section 4015 to help provide clarity based upon case law.

### B. MODIFICATIONS PROVIDED FOR IN THE SECOND 15-DAY COMMENT PERIOD

The second 15-day modifications to the original proposal that were not made in response to public comment and, therefore, are not separately discussed in the summary of comments and agency response are the following.

The following Second 15-day modifications were made to the Regulation Text:

Section 4012, a sentence was modified to clarify that sexual interest tests, which are part of the medical record, may also be considered in the assessment review to clarify that the evaluators are reviewing everything in the medical record, including plethysmograph and polygraph, in accordance to the general professional practice.

Section 4013(b), a sentence was added to clarify that interviews conducted by video telepsychiatry may be considered face-to-face interviews, which is already a current practice at the department. As technology advances, the medical practice is changing and incorporating technology into the standard professional practice.

Section 4013(c), minor changes were made to ensure proper references, and to clarify that the evaluator should attempt to get informed consent, as the department may not always receive consent. There is also a renumbering which ensures the numbering is correct.

Section 4014(e)(1)(A)2., a sentence was added to ensure that there was no confusion regarding a person who had been convicted as a mentally disordered sex offender. This is a repeat of the statute, included to make clear that this is something that needs to be considered.

Section 4014(e)(2)(D)4., there was an addition to ensure that the results of sexual interest testing may be reviewed to clarify that the evaluators are reviewing everything in the medical record, including plethysmograph and polygraph, in accordance to the general professional practice.

Section 4014.1, language was added to clarify when the evaluations are completed, certified and are considered done and official reports pursuant to the responsibility of the department to ensure that reports are provided pursuant to the SVP law. Evaluators upload their reports to the department via a database, but reports are not considered complete until the department either (1) certifies and sends them to the court, or (2) closes the case (in the situation where there is no referral sent to the court).

### C. MODIFICATIONS PROVIDED FOR IN THE THIRD 15-DAY COMMENT PERIOD

The third 15-day modification to the original proposal that was made in response to public comments, and separately discussed in the summary of comments and agency response are the following.

Section 4014(e)(3)(A): The sentence "'Likely' may cover a range from possible to probable" has been removed to make it clear that there is no specific range from possible to probable of an Individual's likelihood of risk of re-offense in sexually violent criminal behavior. This change was made to be consistent with case law.

### D. NON-SUBSTANTIAL MODIFICATIONS

1. Final Regulation Text

In addition to the modifications described above, additional modifications correcting grammar, changes in numbering and formatting were made, to improve clarity. These changes are non-substantive changes made to the regulatory text because they more accurately reflect the numbering of sections, correct spelling, and correct grammatical errors, but do not materially alter the requirements, conditions, rights, or responsibilities, of the originally proposed text.

Section 4013, a modification was made to properly spell out the acronym of what is commonly referred to as DECS Disability and Effective Communication System. The title of the system was slightly incorrect.

## III. SUMMARY OF COMMENTS AND AGENCY RESPONSE

No written comments were received during the 45-day comment period in response to the January 22, 2018 public hearing notice. No written and oral comments were presented at the Hearing, four comments were received during the First 15-day public comment period, three comments were received during the second 15-day public

comment period, and one comment was received during the third 15-day public comment period.

**Listed below are the organizations and individuals that provided comments during the First 15-day comment period:**

| Commenter | Affiliation |
|---|---|
| 1. Armando Rodriguez. | Napa Patient |
| 2. Cory Hoch | Coalinga Patient |
| 3. Evans Cowan | All People Services |
| 4. Manuel Burruel III | Coalinga Patient |

**Commenter # 1:** Armando Rodriguez, Napa Patient, Written Comments (received February 20, 2018)

**Comment:**
The comments in this letter are outside the scope of the rulemaking process and did not involve objections, support or recommendations specifically directed towards this regulatory action or to the 15-day changes noticed during this first 15-day comment period.

**Response:** The comments are not summarized or responded to by DSH.

**Commenter # 2:** Cory Hoch, Coalinga Patient, Written Comments (February 16, 2018)

**Comment:**
The comments in this letter are outside the scope of the rulemaking process and did not involve objections, support or recommendations specifically directed towards this regulatory action or to the 15-day changes noticed during this first 15-day comment period.

**Response:** The comments are not summarized or responded to by DSH.

**Commenter # 3:** Evans Cowan, All People Services, Written Comments (received February 20, 2018)

**Comment:**
The comments in this letter are outside the scope of the rulemaking process and did not involve objections, support or recommendations specifically directed towards this regulatory action or to the 15-day changes noticed during this first 15-day comment period.

**Response:** The comments are not summarized or responded to by DSH.

**Commenter # 4:** Manuel Burruel III, Coalinga Patient, Written Comments (received February 27, 2018 – LATE COMMENT)

**Comment:**
The comments in this letter are outside the scope of the rulemaking process and did not involve objections, support or recommendations specifically directed towards this regulatory action or to the 15-day changes noticed during this first 15-day comment period.

**Response:** The comments are not summarized or responded to by DSH.

**Listed below are the organizations and individuals that provided comments during the Second 15-day comment period:**

| Commenter | Affiliation |
|---|---|
| 1. Ellen Coleman, Attorney | Los Angeles County Public Defender's office |
| 2. David E. Rice, Attorney | Los Angeles County Public Defender's office |
| 3. Jeffrey Lowry, Deputy Public Defender | San Bernardino County Public Defender's office |

**Commenter # 1:** Ellen Coleman, Los Angeles County Public Defender's office, Written Comments (received July 20, 2018)

**Comment 1:**
**Sections 1. 4012 & 4014 (D) 4.:** This addition directing the evaluators to review testing measures such as the PPG, Polygraph and Visual reaction, is absurd and offends the evaluation process. These tests are outside of accepted norms. They consistently have no reliable validity. The evaluators are not competent to assess the tests themselves. This New addition is directly related to the fact that NO COURT in my experience, in Los Angeles County allows testimony on these tests. These tests serve the sole purpose of assisting treatment providers at numerous hospitals and to assist probation and parole officers in monitoring clients in the community. To make this mandatory consideration by evaluators part of the Protocol, is to taint and skew the evaluation process impermissibly.

Judges in Los Angeles County have signed orders BARRING the evaluators from considering such tests as the PPG, Polygraph and Visual reaction, unless they can demonstrate training and expertise in the assessment of these tests.

**Response:** Thank you for your response. The amendment was added to clarify what was already a part of the medical records that evaluators are permitted to review. This follows the best practices for those in the field of forensic psychology. The issue of admissibility in the court is an evidentiary issue outside the scope of the protocol. This protocol also applies statewide and not only to one county.

**Comment 2:**
The Department of State Hospitals is re-writing the Protocol to try and get around lawful orders from the courts.

**Response:** Thank you for your response. Pursuant to Welfare and Institutions Code section 6601, the State Department of State Hospitals is charged with developing and updating the standardized assessment protocol. As such, the department is charged with creating a protocol, this proposed regulation, to ensure that best practices are being used. If there are existing court orders in specific cases, court orders should be followed. The regulations do not provide that they would take precedence over a court order in a specific case.

**Comment 3:**
**Section 4. 4013** This addition of video interviews is not in any way the same as a "face to face" interview. These video interviews are Never solely between the doctor and the interviewee. There is always a technician in the room with the interviewee. This violates the ethical constructs of these interviews. There can never be an establishment of trust or reliable sharing of confidential information. This taints the ability of the process to be fair to the interviewee.

**Response:** Thank you for your response. The regulation does not make it mandatory that the interview be conducted via video. As technology advances, the medical practice is changing and incorporating technology into the standard professional practice. The current practice at the department ensures the interviewee is aware of the other technician in the room as they are in the room with the interviewee, and therefore provide consent for their presence during the interview.

**Comment 4:**
**Section 5. 4014.1** This section is either unnecessary if benign; or calculated to impede the independence of the evaluators. There has lately been a shift by the Department of State Hospitals away from open disclosure and transparency.

The Quality Assurance group has been applying pressure to evaluations that are negative. Instances have occurred where reports so targeted have changed before counsel or the courts are aware that this occurred. Attempts to get facts about these Reviews by Public Records Act requests have been rebuffed by DSH. This New requirement seems to be another layer of hidden agenda.

**Response:** Thank you for your comment. This regulation was added to clarify when the evaluations are completed, certified and are considered done and official reports pursuant to the responsibility of the department to ensure that reports are provided pursuant to the SVP law. Evaluators upload their reports to the department via a database, but reports are not considered complete until the department either (1) certifies and sends them to the court, or (2) closes the case (in the situation where there is no referral sent to the court).

**Commenter # 2:** David E. Rice, Los Angeles County Public Defender's office (received July 24, 2018)

**Comment 1:**
**Sections 4012 (Record Review) & 4014(e)(2)(D)(4)**: The proposed change directs the Evaluators to review testing measures such as the Penile Plethysmograph (PPG), Polygraph, and Visual Reaction. These tests are administered with the sole purpose of assisting treatment providers at numerous hospitals and to assist probation and parole in monitoring clients in the community. I am not aware of any research that supports the use of these tests in conducting an assessment as to whether any patient currently meets SVP criteria. To the best of my knowledge, no court in Los Angeles County has ever allowed testimony concerning these tests in an SVP proceeding. Few, if any, of the DSH Evaluators have the training and experience to administer, let alone, assess the results of any of these tests.

In other words, the proposed change in the Protocol directs the DSH Evaluators to review tests that have not been found to be competent or relevant in SVP proceedings.
**Response:** Thank you for your response. The amendment was added to clarify what was already a part of the medical records that evaluators are permitted to review. This follows the best practices for those in the field of forensic psychology, which include using the results of assessments to make their own assesments. The issue of admissibility in the court is an evidentiary issue outside the scope of the protocol. This protocol also applies statewide and not only to one county.

**Comment 2:**
**Section 4013 (Interview)**: The proposed change would allow for the DSH Evaluators to conduct video interviews of the Respondent in lieu of a face to face interview. This is problematical because the video interviews are also attended by a video technician which not only interferes with the privacy necessary to conduct an interview (of such a delicate nature) between the Evaluator and the Interviewee, but also violates the ethical construct for these interviews. Finally, video interviews could also lead to the disclosure of information to a third party which would violate the client's right to privacy (e.g. HIPPA).

**Response:**
The regulation does not make it mandatory that the interview be conducted via video. As technology advances, the medical practice is changing and incorporating technology into the standard professional practice. The current practice at the department ensures the interviewee is aware of the other technician in the room as they are in the room with the interviewee, and therefore provide consent for their presence during the interview.

**Commenter # 3:** Jeffrey Lowry, San Bernardino County Public Defender's office

**Comment 1:**
**Sections 4012 and 4014(D)4**: These sections authorize state evaluators to access and utilize physiological test results, specifically the PPG, Polygraph and Visual Reaction Time in their SVP evaluations. All three have been deemed inadmissible in trial because they are either unreliable or incapable of objective analysis.

A. PPG

The PPG may assist the hospital in its treatment program, but state evaluators should not have access to the results. Moreover, allowing access may create problems for evaluators when courts rule they cannot testify about the PPG. If legally it cannot be part of the basis for an opinion, then evaluators should not look at or consider it.

B. POLYGRAPH

Pursuant to state law, polygraph evidence is not admissible in criminal proceedings or State Bar disciplinary proceedings, absent a stipulation by all parties. (Evid. Code, § 351.1, subd. (a); *Arden v. State Bar* (1987) 43 Cal.3d 713, 724). In *People v. Fields* (2009) 175 Cal.App.4th 1001, 1016 the issue was raised regarding the admissibility of the polygraph in an SVP case but the court didn't confront the issue, instead ruling it would not have made any difference in the outcome. The rationale for the 351.1 exclusion is that the polygraph is not reliable enough to have probative value. (*People v. Wilkinson* (2004) 33 Cal. 4th 821, 849). If the polygraph results lack reliability in the criminal context, the same would hold true in an SVP case. Again, evaluators looking at the polygraph results would be precluded from testifying about them. Hence there is no justification for allowing evaluators access to the results. It is a treatment tool, but the results should not be part of the bases of an evaluator's opinion when the results are precluded from court.

C. VISUAL REACTION TIME

The validation of the VRT has been challenged in several courts. In particular, the error rate is fairly high, and some information which might be helpful in analyzing the test's usefulness has been kept secret by the author. Gene Abel refuses to divulge the factors used in development of the instrument thus precluding others from fairly analyzing the tool resulting in Lack of independent cross validation and replication, statistical reliability and validity.

The VRT test is a psychological instrument to be used for treatment, not for diagnostic purposes, and it is not designed to assess the tendency of a person to abuse children sexually. In fact, Able has cautioned against using AASI in litigious contexts (see Sachsenmaier, *The Abel Assessment for Sexual Interest-2: A Critical Review* a chapter in "Cognitive Approaches to the Assessment of Sexual Interest in Sex Offenders", Edited Thornton and Laws 2009, ISBN 978-0-470-05781-0).

As with the PPG and polygraph DSH seeks to have evaluators utilize and rely on a test which is inadmissible in court, thus placing evaluators in a difficult position. All three tests are appropriate for use in a treatment setting but not in court.

**Response:** Thank you for your response. The amendment was added to clarify what was already a part of the medical records that evaluators are permitted to review. This follows the best practices for those in the field of forensic psychology. The issue of admissibility in the court is an evidentiary issue outside the scope of the protocol.

**Comment 2:**
**Section 4013(b)**. It is proposed that the section be amended allowing telepsychiatry interviews in lieu of face-to-face interviews. I assume this proposes video connection such that both parties can see each other. If not, it should be specified as such. It is just as important that the interviewee see the evaluator, mannerisms, facial expressions, etc. as it is vice versa.

But the real issue is presence of other individuals during the interview. If anyone else is present (technician, guards, CSH staff) that is wholly unacceptable. The reasons why should be obvious. The subject matter is such that the patient would not necessarily be forthcoming, intimidated and less likely to be forthright. It should be specified that no one else is present on either end during the interview.

**Response:** Thank you for your response. The regulation does not make it mandatory that the interview be conducted via video. As technology advances, the medical practice is changing and incorporating technology into the standard professional practice. The current practice at the department ensures the interviewee is aware of the other technician in the room as they are in the room with the interviewee, and therefore provide consent for their presence during the interview.

**Comment 3:**
**Section 4014** (report) there is a legally incorrect statement under section 3. It states, "likely may cover a range from possible to probable". That wording in 4014 should be changed.

**Response:** Thank you for your comment. DSH agrees and has removed the text "likely may cover a range from possible to probable" from the regulation.

**Listed below is the organization and individual that provided comments during the Third 15-day comment period:**

| Commenter | Affiliation |
|---|---|
| Robert D. Lefort | Coalinga Patient |

**Comment 1:**
It has been my experience that the State Hired Evaluators have equated a conviction (Whether by a "nolo contender" plea or by a "finding" of fault with the requisite "intent"), as a behavior to qualify as an element justifying a diagnosis. …without any "current symptoms" or a "recent objective indication" to support a finding or "basis" for meeting the finding "that an individual is a menace to the health and safety of others."

**Response:** Thank you for your comment. The proposed regulations have the clinicians, as is best practice, look at the individual's psychiatric history to determine the diagnosis of the individual. However, the proposed regulations also suggest looking at current symptoms as well.

**Comment 2:**
Although a 'recent overt act" while the offender is in custody is not required, the CDC 'Operational Manual," …referencing the CDC screening form 7377…requires copies of all SVP qualifying supporting documentation, to include: "sex related CDC form 115s; and Parole Violation charge(s), if charge include an element of illegal sexual misconduct.

**Response:** Thank you for your comment. The proposed regulations have the clinicians, as is best practice, look at the individual's history and current condition to determine the diagnosis and risk of the individual. Also, this is outside the scope of regulations as it is questioning CDC screening forms.

**Comment 3:**
Since the California SVP Act does not require proof that he committed a recent overt act, indicating that an individual presents a serious threat of substantial harm to the health and safety of others.

**Response:** Thank you for your comment. The proposed regulations interpret and clarifies the specifics of the statute. Welfare and Institutions Code section 6601, subdivision (b) states that the person is to be reviewed on the person's social, criminal, and institutional history. The regulation agrees that a recent overt act is not required as stated in the proposed regulation.

**Comment 4:**
Moreover, it is essential that the evidence which forms the basis of the decision to deprive a citizen of his liberty be more concrete and more reliable than a mere expectancy or probability that the person will engage in dangerous behavior in the future.

**Response:** Thank you for your comment. The evidentiary standard is outside the scope of the proposed regulation. The proposed protocol speaks to the evaluation that utilized clinical judgment and the best clinical practices and not what occurs in court.

**Comment 5:**
The fact of present confinement is not alone sufficient to justify continued confinement, neither is the testimony of staff personnel predicting adverse consequences of release from confinement if that testimony is based wholly on opinion and is unsupported by any facts or occurrences which would lead a reasonable man to concur in the recommendation for recommitment.

**Response:** Thank you for your comment. This is outside the scope of the proposed regulation. Welfare and Institutions Code section 6600, et seq. provides the process of the hearing and allows for a hearing to occur, where evidence is presented. The evidentiary admissibility is regulated by the courts.

**Comment 6:**
The commitment must be based on "current" psychological symptoms. Current psychological symptoms are needed to establish that a person is an SVP. Relying on a past diagnosis (absent current psychological symptoms) provides absolutely no information to substantiate a current diagnosis of pedophilia or to substantiate a current mental disorder under the Sexually Violent Predator Act.

**Response:** Thank you for your comment. The statute allows for the evaluator to look at the social, criminal, and institutional history, as well as looking at the current psychological symptoms. This is consistent with best practices for forensic psychologists.

**Comment 7:**
Jury must find beyond a reasonable doubt that the person is dangerous due to his or her mantel disorder and lack of volitional control.

**Response:** Thank you for your comments. The regulations provide the protocol, which is used by the psychiatrists or psychologists in evaluating the person's behavior. This comment is outside the scope of this regulation package, as the comment refers to the judicial hearing that occurs after an evaluation is completed.

**Comment 8:**
There must be reasoning establishing a rational nexus between identified unsuitability factors and current dangerousness.

**Response:** Thank you for your comment. The protocol does provide that the evaluation provides a nexus between the individual's diagnosed mental disorder and emotional or volitional capacity, and criminal sexual acts.

**Comment 9:**
**Section 4014(e)(3)(A)** the defendant is likely to engage in sexually violent criminal behavior if he is found to present a substantial danger, that is, a serious and well-founded risk, of committing [such crimes] if released from custody. A serious and well-founded risk of reoffending is merely another way of referring to the necessary finding of future dangerousness in the context of the SVP law that requires a prior conviction of a sexually violent offense, not a separate required finding.

**Response:** Thank you for your comment. Welfare and Institutions Code section 6600 defines "sexually violent predator" as a person who has been convicted of a sexually violent offense…and who 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." "Likely" has been defined by California case law.

## IV. UPDATE TO THE INITIAL STATEMENT OF REASONS

## A. NECESSITY

### 1. Sections 4011 and 4014(e)(1)(A)2.

These subsections duplicate Welfare and Institutions Code sections 6600 et seq., and Penal Code sections 11164-11174.3 and 15600 et. seq. which are cited as "references" for the regulation. While duplicative, it is necessary to satisfy the "clarity" standard of Government Code section 11349.1, subdivision (a)(3). Since the Department is clarifying the Process for evaluators in sections 4011 and 4014 of these regulations, it is important to understand evaluator process for the Department pursuant to statute.

### 2. Section 4014(e)

The definitions to the violent elements identified in section 4014(e)(1)(B)1. - 6. were determined and developed during workshops by the forensic evaluators, which also includes forensic psychologists at the Department, as experts in the field. The definitions are based on the general use of the terms that are commonly used in practice for this industry.

The definition to the term "Emotional Capacity" identified in section 4014(e)(2)(C)1., was developed by the subject matter experts and case law (*People v. Burris*).

The definition to the term "Volitional Capacity" identified in section 4014(e)(2)(C)2. was developed by the subject matter experts using jury instructions, common dictionary and case law (*People v. Burris*).

**3. Section 4014(e)(2)(D)7.** – It is necessary to include Substance Use History to ensure that the Evaluator is able to review everything applicable to the medical history that would assist with the evaluation

**4. Section 4014(e)(2)(D)9.** – It is necessary to include the Evaluator's mental status examination of the individual to ensure that the Evaluator is able to review and include everything that is applicable to the medical history or that would assist with the evaluation.