



SEMI-ANNUAL UPDATE ON THE PROGRESS MADE TO
HIRE QUALIFIED STATE EMPLOYEES TO CONDUCT
THE SEXUALLY VIOLENT PREDATOR EVALUATIONS

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This report is submitted in fulfillment of the requirement of Section 6601(m)(1) of the Welfare and Institutions Code

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Executive Summary

Pursuant to Welfare and Institutions Code (WIC) Section 6601(m)(1), this is the Department of State Hospitals' (DSH) status update regarding the progress made to hire qualified State employees to perform Sexually Violent Predator (SVP) evaluations. DSH is required to provide a status update semi-annually; the seventh update is due July 10, 2012. This report is a comprehensive account of progress made since January 10, 2012, to hire qualified State employees to perform SVP evaluations.

Status

Prior to the passage of Jessica's Law (Proposition 83, approved by the voters at the November 2006 Statewide General Election), DSH already had one Consulting Psychologist (CP) civil service position to conduct forensic evaluations. After the passage of Jessica's Law, DSH received budgetary authority to establish an additional seven civil service CP positions. As of December 2009, DSH filled all seven civil service CP positions for a total of eight CP civil service positions.

DSH also proposed to create a new civil service classification of Sexually Violent Predator Evaluator (SVPE). This proposal was accepted by SPB and, in FY 2012-2013, DSH received budgetary authority to establish eight CP positions as well as eight SVPE positions. The SVPE classification is distinguished from the CP series in that the professional experience requirements are much more stringent, including demonstrated practice of psychological evaluation and risk assessment and diagnosis of high risk sex offenders and/or SVPs. Additionally, the new classification has a higher salary structure than the CP series, which allows the Sex Offender Commitment Program (SOCP) to attract the type of psychologists needed to successfully perform SVP evaluations. This brought the total number of civil service forensic evaluators to a total of 24.

Also in FY 2012-2013, DSH administratively established and filled an additional four CP positions and five SVPE positions. Since the Department of Personnel Administration's issuance of a Pay Letter in March 2012, DSH has actively recruited and hired 25 new civil service forensic evaluators. As of December 2012, DSH has hired a total of 33 civil service forensic evaluators.

Background

On January 1, 1996, the Sexually Violent Predator Act (SVP Act), SB 1143 (Mountjoy, Chapter 762, Statutes of 1995) and AB 888 (Rogan, Chapter 763, Statutes of 1995), established a new civil commitment process whereby inmates with specific qualifying sex offenses are referred to DSH for evaluation to determine if they meet SVP criteria. To perform most of the evaluations required by the SVP Act, DSH maintained contracts with independent psychologists and psychiatrists recognized as experts in the field of SVP risk assessment, evaluation and court testimony. For many years, the contractor panel consisted

of approximately 30 part-time evaluators which adequately met the program needs. On September 20, 2006, SB 1128 (Alquist, Chapter 337, Statutes of 2006) was enacted, followed by the voter-approved Proposition 83 (Jessica's Law) on November 7, 2006, both of which expanded the SVP qualifying criteria. This resulted in a significant increase in referrals to DSH and in SVP evaluation services. In response, DSH requested and received approval to hire additional administrative staff, six CPs and additional funding to complete SVP evaluation services through external contracts. The SVP Act was subjected to numerous lawsuits to determine whether it was constitutional; and the use of contractors allowed DSH to quickly increase or decrease the number of evaluators based on court decisions.

In April 2007, the American Federation of State County and Municipal Employees (AFSCME) Local 2620 filed a complaint with the SPB alleging that DSH should have been using State civil service employees to perform the required SVP evaluations rather than contract providers. In March 2008, SPB issued a final ruling in favor of AFSCME and directed DSH to use civil service employees to perform SVP evaluations and cancel the multi-provider contracts within 90 days of the ruling.

In order to ensure the protection of public safety until a sufficient number of qualified State employees could be hired to perform SVP evaluation services, SB 1546 (Runner, Chapter 601, Statutes of 2008) was enacted to allow DSH the use of contract providers until January 1, 2011. Due to hiring difficulties at that time, this proved to be an insufficient time frame. SB 1201 (DeSaulnier, Chapter 710, Statutes of 2010) extended the provision through January 1, 2012. Subsequently, SB 179 (Pavley, Chapter 359, Statutes of 2011) extended the provision until January 1, 2013.

Overview of the SVP Act

To address concerns regarding the risk to public safety as a result of sexually violent, predatory sex offenders being released directly from prison into the community, legislation was enacted, effective January 1, 1996, establishing a new category of sex offenders and a civil commitment process for persons found to meet SVP criteria. In establishing an SVP civil commitment process, codified under (WIC) 6600 et seq., the Legislature declared that there is a small group of extremely dangerous sexual predators who have diagnosable mental disorders and are likely to reoffend without treatment in a secured facility as long as their disorders continue and present a danger to the health and safety of others.

While still under the authority and control of the California Department of Corrections and Rehabilitation (CDCR), correctional personnel screen inmate records up to nine months prior to an inmate's scheduled parole date to determine if they potentially meet the SVP criteria. If so, CDCR refers the inmate to DSH for full evaluations. If the inmate does not meet SVP criteria, DSH notifies CDCR and the inmate is released out to the community under parole

authority. When an inmate is found to meet SVP criteria, DSH refers the case to the appropriate county District Attorney (DA) with a recommendation that a petition for civil commitment be filed against the inmate. If the DA files a petition for SVP commitment with the Superior Court, the inmate is not released into the community at their scheduled parole date, but is directly admitted into a State Hospital pending completion of the civil commitment judiciary process.

Sex Offender Commitment Program (SOCP)

DSH's SOCP is responsible for the administration of the SVP Act governing the evaluations of CDCR-referred inmates to determine if they meet (or continue to meet) the SVP criteria. Since the SVP Act was implemented in 1996, SOCP has relied on private sector psychologists and psychiatrists under contract to conduct most of the required SVP evaluations. These contractors are experts in the field of SVP evaluation and treatment, having extensive experience assessing SVPs and providing testimony related to their clinical assessments. These forensic evaluators stay current on research, actuarial risk assessment tools and legal issues that impact the SVP population in response to the ever changing landscape of forensic and sex offender assessment and treatment.

Until the later part of 2006, SOCP received an average of approximately 50 CDCR inmate referrals for SVP evaluation per month and found that maintaining a contract panel of about 30 part-time clinicians was adequate to meet the workload generated by those referrals. On September 20, 2006, SB 1128 was enacted, followed by the voter-approved Proposition 83 (Jessica's Law) on November 7, 2006. These new laws resulted in an expansion of the SVP criteria which increased the number of qualifying sexually violent offenses from nine to 35, reduced the requisite number of victims from two to one, and changed the commitment term from two years to indeterminate. As a result of these changes, CDCR's average monthly inmate referrals to DSH increased nearly 800 percent, generating over 600 referrals per month. The significant increase in workload required SOCP to more than double the number of contracted clinicians to 75.

In April 2007, the American Federation of State, County and Municipal Employees (AFSCME) Local 2620 filed a complaint with SPB challenging the validity of the evaluator contracts on the basis that DSH was not utilizing civil service employees. SPB ultimately supported AFSCME's position on appeal, and on March 4, 2008, made the following ruling:

In this decision, the State Personnel Board finds that the Contracts are not justified under the provisions of Government Code section 19130(b)(3), because DMH failed to establish that existing civil service classifications are inadequate to employ civil service employees to provide those services to be rendered under the Contracts, and because DMH failed to establish that it made reasonable, good-faith efforts to hire civil service psychologists or psychiatrists prior to entering into the Contracts.

In this same decision, SPB ordered the revocation of the evaluator contracts within 90 days of the date of its ruling, which was June 2, 2008. Due to the high risk to public safety if CDCR were to parole high risk sex offender inmates into the community, DSH executed emergency evaluator contracts as of June 2, 2008. Additionally, in response to SPB's order, legislation was enacted (SB 1546) amending WIC Section 6601 to allow the use of contract evaluators until January 1, 2011. Specifically, SB 1546 states, in part:

“The State Department of Mental Health is to obtain the assistance of experienced mental health professionals through contracts, as well as civil service, to perform sexually violent predator evaluations in a timely manner, and to avoid the release of prisoners who might otherwise be subject to civil commitment as sexually violent predators...”

Additionally, SB 1546 requires DSH to provide the fiscal and policy committees of the Legislature, including the chairperson of the Joint Legislative Budget Committee, and the Department of Finance, with a semi-annual update on the progress made to hire qualified State employees to conduct the evaluations required pursuant to WIC Section 6601(d).

In October 2011, CDCR implemented the provisions of AB 109 (Budget Committee, Chapter 15, Statutes of 2011) Criminal Justice Realignment, which allows for parole and probation violators to remain under the jurisdiction of the counties unless they are convicted of a new crime. As a result of this bill the number of sex offender referrals from CDCR for evaluations has reduced significantly at this time. DSH continually monitors the referral activity and will appropriately staff the program with civil service clinicians.

Civil Service Clinicians

DSH continues to make every effort to hire qualified civil service staff to perform the SVP evaluations. SOCP currently employs 20 CPs and 13 SVPEs. DSH regularly monitors the number of civil service positions needed to conduct SVP evaluations; is proceeding with the prior estimate of 50-60 evaluators; and has accelerated the hiring to be completed over the next three to four years.

As of December 2012, DSH hired 33 civil service forensic evaluators. DSH will review the evaluation needs in January 2013 to determine future hiring plans. At this time, the additional 17 to 27 positions will be phased in over Fiscal Years 2013-14 and 2014-15. Also, eight of the 33 civil service forensic evaluators hired by DSH were previously-employed State Hospital psychologists.

The SVP Evaluator classification approval, additional position authority approval, and the current State economy, have contributed to DSH's success in hiring a sufficient number of qualified State employees to conduct SVP evaluations.

Conclusion

DSH is committed to hiring civil service staff to perform SVP evaluation services. DSH requested and was granted a specific position classification which more accurately reflects the specialized scope of work required by the SVP forensic evaluators. Administrative positions have been reclassified, positions have been administratively established not to delay hiring, and additional position authority is under consideration. The private sector economy impacts the recruitment process and is now favorable to the filling of these positions. SOCP is also restructuring to establish an infrastructure to support the increase in civil service evaluators.