



C A L I F O R N I A D E P A R T M E N T O F
Mental Health

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 Mental Health's (DMH) status update regarding the progress made to hire qualified State employees to perform Sexually Violent Predator (SVP) evaluations. DMH is required to provide a status update semi-annually; the fifth update due July 10, 2011, and the sixth update due January 10, 2012. This report is a comprehensive account of progress made during those periods to hire qualified State employees to perform SVP evaluations.

Status

As of December 14, 2009, DMH had position authority and permanently filled seven Consulting Psychologist positions to perform SVP evaluations. In December 2010, DMH converted an administrative position into a Chief Psychologist position and in September 2011, converted a second administrative position into a Consulting Psychologist position which was immediately filled. In November and December 2011, DMH administratively established and filled five additional Consulting Psychologist positions.

On October 18, 2011, the State Personnel Board (SPB) approved DMH's proposed SVP Evaluator classification. Upon the Department of Personnel Administration's (DPA) issuance of a Pay Letter for the SVP Evaluator classification, DMH intends to recruit, administratively establish and fill five SVP Evaluator positions by the end of the current fiscal year, June 30, 2012.

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 793, Statutes of 1995), established a new civil commitment process whereby inmates with specific qualifying sex offenses are referred to DMH for evaluation to determine if they meet SVP criteria. To perform most of the evaluations required by the SVP Act, DMH maintains 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, which expanded the SVP qualifying criteria. This resulted in a significant increase in referrals to DMH and the SVP evaluation services. In response, DMH requested and received approval to hire additional administrative staff, six Consulting Psychologists 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 DMH 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 State Personnel Board (SPB) alleging that DMH should be using State civil service employees to perform required SVP evaluations rather than contract providers. In March 2008, SPB issued a final ruling in favor of AFSCME and directed DMH 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 DMH 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 Sexually Violent Predator 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 meeting SVP criteria. In establishing an SVP civil commitment process, codified under Welfare and Institutions Code (WIC) Section 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 to 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 SVP criteria. If so, CDCR refers the inmate to DMH for full evaluations. If the inmate does not meet SVP criteria, DMH notifies CDCR and the inmate is released into the community under parole authority. When an inmate meets SVP criteria, DMH 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

DMH's Sex Offender Commitment Program (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 a multi-provider 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 evaluators stay current on research, actuarial risk assessment and legal issues that impact the SVP population.

Until the later part of 2006, SOCP received on average about 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 voter approval of Proposition 83 (Jessica's Law) on November 7, 2006. These new laws expanded the criteria for who might be an SVP by increasing the number of qualifying sexually violent offenses from nine to 35, reducing the requisite number of victims from two to one, and implementing an indeterminate commitment term from a two-year term. As a result of these changes, CDCR's average monthly inmate referrals increased nearly 800 percent, generating over 600 referrals per month. The significant increase in workload required SOCP to more than double the number of clinicians under contract to its current number of 75.

In April of 2007, AFSCME Local 2620 filed a complaint with the SPB challenging the validity of the multi-provider contract on the basis that DMH 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 multi-provider contract 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, DMH executed an emergency multi-provider contract beginning 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 providers 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 DMH 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).

Civil Service Clinicians

DMH continues to make every effort to hire qualified civil service staff to perform SVP evaluations. SOCP currently employs 13 Consulting Psychologists with plans to hire five SVP Evaluators and a Chief Psychologist in the current fiscal year. DMH annually 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. DMH’s efforts have included converting administrative positions to Consulting Psychologists, administratively establishing those positions, and requesting additional Consulting Psychologist position authority. DMH expects to employ a total of 19 civil service psychologists to perform SVP evaluations by June 30, 2012; a total of 25 positions by June 30, 2013; 45 positions by June 30, 2014, and 55 by June 30, 2015.

Conclusion

DMH is committed to hiring civil service staff to perform SVP evaluation services. DMH has requested and was granted a specific position classification to more accurately reflect the specialized scope of work required by the SVP forensic evaluators. DMH will continue to request statutory authority to utilize contract evaluators until a sufficient number of qualified civil service staff are hired. DMH will continually evaluate alternatives and seek solutions in order to comply with the provisions in SPB’s ruling.