



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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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 semiannually: the first due July 10, 2009; the second due January 10, 2010; the third due July 10, 2010; and the fourth due January 10, 2011. This report is a comprehensive account of progress made during those periods to hire qualified State employees to perform SVP evaluations.

Status

In July 2009, DMH received budgetary authority to establish seven Consulting Psychologists (CP) positions; DMH had filled six of the positions. Additionally, DMH planned and began to pursue a new civil service permanent-intermittent (PI) classification identified as "Sexually Violent Predator (SVP) Evaluator." The SVP evaluator classification is distinguished from the CP series in that the professional experience requirements for the SVP evaluator would be much more stringent, including demonstrated practice of psychological evaluation and risk assessment and diagnosis of high risk sex offenders and/or SVPs. The position is expected to have a higher salary structure than the CP series, which should allow SOCP to attract the type of psychologists needed to successfully perform SVP evaluations.

In January 2010, the DMH Sex Offender Commitment Program (SOCP) was working with DMH's Human Resources Department (HR) in developing the proposed SVP Evaluator classification series to submit to the Department of Personnel Administration (DPA). By July 2010, HR had worked with the SOCP to develop a classification matrix and salary analysis for the PI classification. By January 2011, the SOCP had met with DPA to discuss the initial proposal. The concept portion of the proposal was approved; however, DPA requested additional justification on the salary analysis to be submitted by February 2011. DPA communicated that they would attempt to schedule a hearing on the classification proposal with SPB by August 2011.

Upon approval from DPA for authorization to establish the PI SVP Evaluator classification, the SOCP plans to proceed with collective bargaining, recruiting and hiring of 60 PI SVP evaluators. We would phase in a shift from contracted providers to civil service and then implement this through the normal budgeting process.

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 are subject to evaluation by DMH-designated professionals to determine if they meet SVP criteria and, if so, are held in a designated State Hospital pending completion of a commitment trial. 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 clinical assessment and court testimony. For many years, the panel consisted of about 30 contract evaluators, which was adequate to meet workload 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 changed the criteria for who might be an SVP. This, in turn, resulted in a significant increase to DMH's SVP evaluation-related workload. In response, DMH requested and received resources to hire additional staff and increased the panel of contract evaluators to over 70 professionals.

In April 2007, the American Federation of State, County and Municipal Employees (AFSCME) Local 2620 filed a complaint with the 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 directing DMH to use civil service employees to perform SVP evaluations and cancel the multi-provider contracts within 90 days of the ruling.

Due to the immediate threat to public safety if inmates were released into the community without an SVP evaluation, SB 1546 (Runner, Chapter 601, Statutes of 2008) was enacted to allow DMH to use contract providers until January 1, 2011 while it transitions to using more civil service employees to perform SVP evaluations. Additionally, this legislation requires DMH to report on a semi-annual basis its progress toward hiring qualified State employees. The following year, SB 1201 (DeSaulnier, Chapter 710, Statutes of 2010) was enacted to extend the ability of the State to use contract providers until January 1, 2012.

Overview of the Sexually Violent Predator Act

To address concerns regarding the risk to public safety as a result of certain sex offenders being released directly from prison into the community, legislation was enacted, effective January 1, 1996, establishing a new category and process of civil commitment for persons found to be SVPs (the SVP Act). In establishing an SVP civil commitment process, codified under 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 can be readily identified,

confined and treated 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 clinical screening and a full evaluation. If the inmate does not meet SVP criteria, DMH so notifies CDCR, who releases the inmate out to the community under parole authority. If the inmate meets SVP criteria, DMH refers the case to the appropriate county District Attorney (DA) recommending 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; rather, the inmate is directly admitted into DMH's Coalinga State Hospital pending completion of the civil commitment judiciary process.

Sex Offender Commitment Program

DMH's SOCP is responsible for the administration of those WIC sections governing the evaluation of CDCR-referred inmates to determine if they meet (or continue to meet) the definition of an SVP. Since the SVP Act was implemented in 1996, SOCP has relied on private clinicians (psychologists and psychiatrists) under a multi-provider contract to conduct most 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. Contract evaluators stay current on research, actuarial risk assessment 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 about 50 CDCR inmate referrals for SVP evaluation per month, and found that maintaining a contract panel of about 30 clinicians was adequate to meet the workload generated by those referrals. Then, on September 20, 2006, SB 1128 was enacted, followed by voter approval of Proposition 83 (Jessica's Law) on November 7, 2006. Together the new laws: 1) expanded the criteria for who might be an SVP by increasing sexually violent offenses from nine to 35 qualifying sex crimes; 2) lowered the requisite criterion from two victims to one; and, 3) implemented an indeterminate commitment term. As a result of these changes, CDCR's average monthly inmate referrals increased nearly 800 percent, generating over 600 referrals per month. This significant increase in workload required SOCP to more than double the number of clinicians under contract to its current number of 74 as of the date of this report.

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 provision 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 the 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

In response to the significant increase in the workload due to the combined effects of the enactment of SB 1128 and voter approval of Jessica's Law (prior to AFSCME's complaint), DMH requested and received position authority in Fiscal Year 2007-08 to hire additional staff to support SOCP operations, including seven CP positions to handle a portion of the SVP evaluation workload.

To fill the CP positions, DMH used various employment recruitment forums including the SPB's Vacancy Positions (VPOS) and the American Psychological Association websites, and Monster.com. Additionally, SOCP scrutinized and revised the CP position description to make it more comparable, competitive and attractive to potential candidates. The recruitment efforts resulted in 29 applications. Staff conducted a comprehensive qualification verification process

to ensure that the applicants met position requirements, of which nine did. Several rounds of interviews followed and seven individuals were subsequently offered and accepted positions as of January 2011.

Conclusion

Efforts to hire 60 PI SVP evaluators may be subject to time delays or cost prohibitions. In addition, time limits set forth in SB 1201 will need to be extended or amended to allow DMH additional time to hire civil service employees and to maintain the use of independent evaluators. DMH is pursuing a statutory change to extend the timeframe set forth in SB 1201. DMH will continually evaluate alternatives and seek solutions in order to comply with the provisions in the SPB's ruling.