

California Department of Mental Health

Sexually Violent Predator Evaluations

An Introduction – A reintroduction

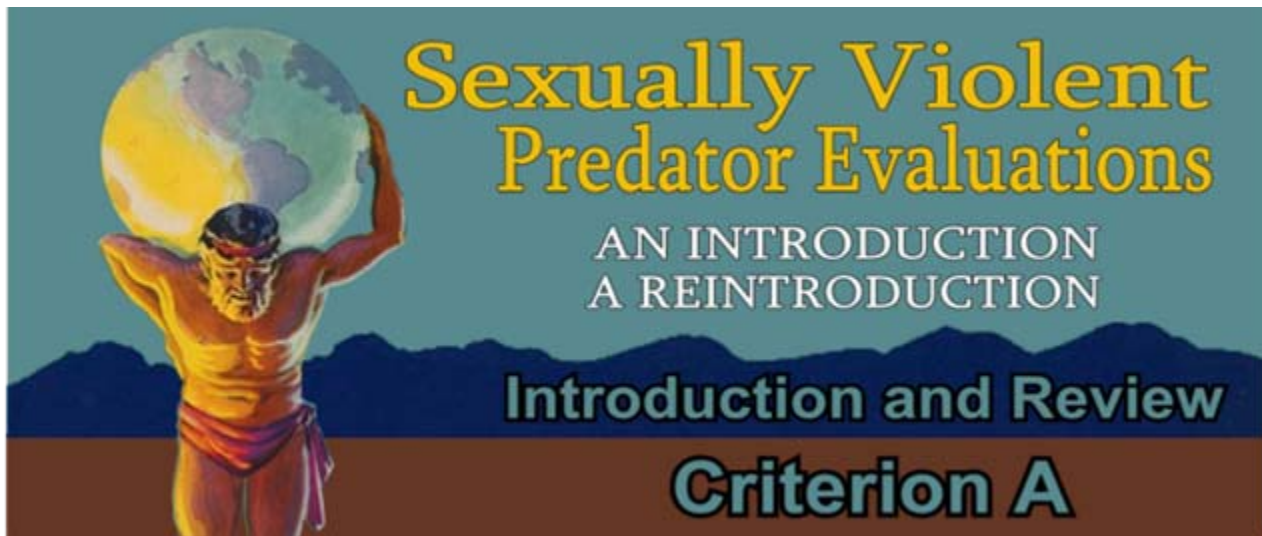
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A Sexually Violent Predator is:

A person who has been **convicted** of a **sexually violent offense** against one or more victims 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**.

SVP Report Outline

I. Identifying Information.

II. Findings.

A. Qualifying Conviction(s).

B. Diagnosed Mental Disorder(s).

C. Disorder-based Danger.

III. Conclusion.

SVP Evaluation

As Simple as ABC? (or CTR?)

CCrime(s)

Tautology

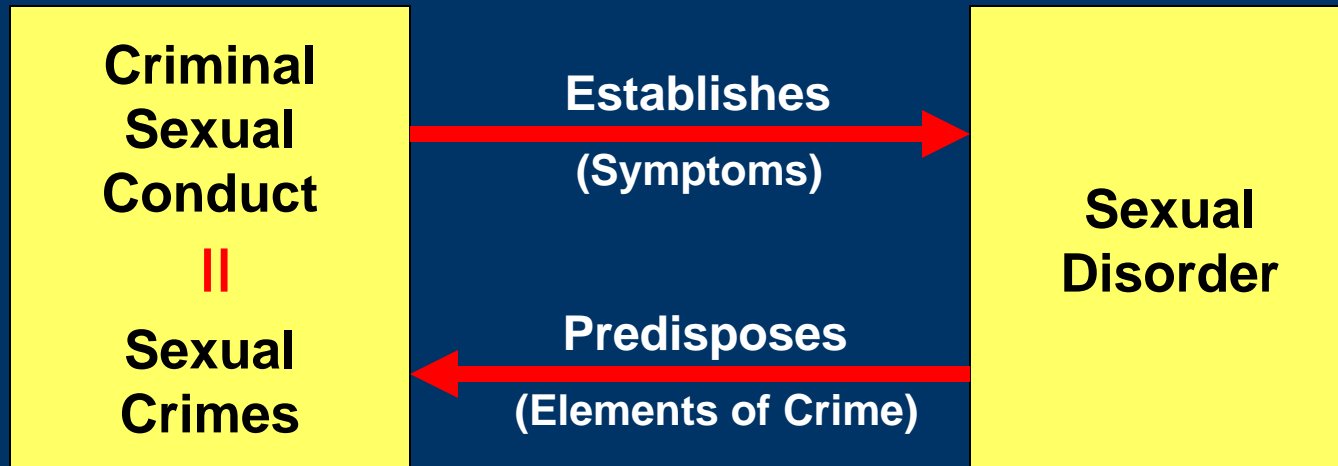
Rhetorical Question

SVP Evaluation

As Simple as ABC? (or CTR?)

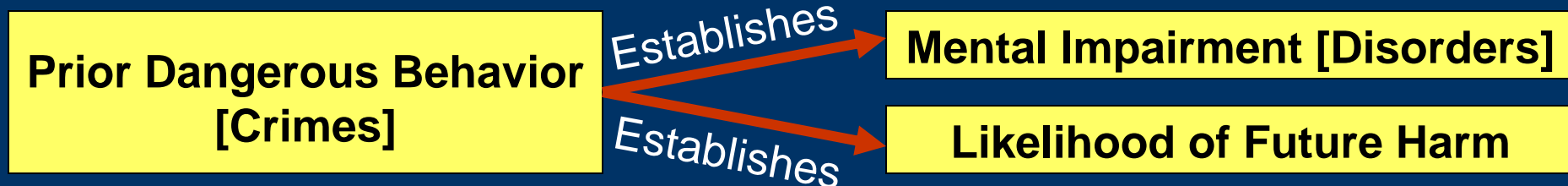
1. The Crime(s)? – Enumerated.

2. The Tautology:



2. The Tautology:

- A tautology upheld by the US Supreme Court.
- “. . . the [SVP] Act precludes commitment based solely on evidence of . . . prior crimes.” *People v. Hubbart* (1999)
- For the mental health professional: Sex Crimes = Symptoms



- “The United States Supreme Court has consistently upheld commitment schemes authorizing the use of **prior dangerous behavior [crimes]** to **establish** both present **mental impairment** and the **likelihood of future harm**.”

People v. Hubbart (1999)

SVP Evaluation

As Simple as ABC? (or CTR?)

1. The Crime(s).

2. The Tautology.

3. The Rhetorical Question:

Does a person who has committed sexual violent crimes and who has a disorder that predisposes him or her to commit such crimes represent a serious and well founded risk to commit such crimes?

“The United States Supreme Court has consistently upheld commitment schemes authorizing the use of **prior dangerous behavior [crimes] to establish** both present mental impairment and **the likelihood of future harm.**”

People v. Hubbart (1999)

Welfare and Institutions Code §6600 (a) (1)

“Sexually Violent Predator” Defined

"Sexually violent predator" means a person who has been convicted of a sexually violent offense against one or more victims 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.

Welfare and Institutions Code §6600 (a) (2)

Qualifying Convictions

For purposes of this subdivision any of the following shall be considered a conviction for a sexually violent offense:

- (A) A prior or current conviction that resulted in a **determinate prison sentence** for an offense described in subdivision (b).
- (B) A conviction for an offense described in subdivision (b) that was committed prior to July 1, 1977, and that resulted in an **indeterminate prison sentence**.

Welfare and Institutions Code §6600 (a) (2)

Qualifying Convictions

- (C) A prior conviction in **another jurisdiction** for an offense that includes **all of the elements** of an offense described in subdivision (b).
- (D) A conviction for an offense under **a predecessor statute** that includes **all of the elements** of an offense described in subdivision (b).
- (E) A prior conviction for which the inmate received **a grant of probation** for an offense described in subdivision (b).

Welfare and Institutions Code §6600 (a) (2)

Qualifying Convictions

- (F) A prior finding of **not guilty by reason of insanity** for an offense described in subdivision (b).
- (G) A conviction resulting in a finding that the person was a **mentally disordered sex offender**.
- (H) A prior conviction for an offense described in subdivision (b) for which the person was **committed to the Department of the Youth Authority** pursuant to Section 1731.5.
- (I) A prior conviction for an offense described in subdivision (b) that resulted in an **indeterminate prison sentence**.

Welfare and Institutions Code §6600 (a) (3)

Qualifying Evidence

Conviction of one or more of the crimes enumerated in this section shall constitute evidence that may support a court or jury determination that a person is a sexually violent predator, but shall not be the sole basis for the determination. The existence of any prior convictions may be shown with documentary evidence. The details underlying the commission of an offense that led to a prior conviction, including a predatory relationship with the victim, may be shown by documentary evidence, including, but not limited to, preliminary hearing transcripts, trial transcripts, probation and sentencing reports, and evaluations by the State Department of Mental Health.

Welfare and Institutions Code §6600 (a) (3)

Qualifying Evidence (Continued)

Jurors shall be admonished that they may not find a person a sexually violent predator based on prior offenses absent relevant evidence of a **currently 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.

Welfare and Institutions Code §6600 (a) (4)

Commitment Procedure Start Date

The provisions of this section shall apply to any person against whom proceedings were initiated for commitment as a sexually violent predator on or **after January 1, 1996**.

Welfare and Institutions Code §6600 (b)

“Sexually Violent Offense” Defined

“Sexually violent offense” means the following acts when committed by force, violence, duress, menace, fear of immediate and unlawful bodily injury on the victim or another person, or threatening to retaliate in the future against the victim or any other person, and that are committed on, before, or after the effective date of this article and result in a conviction or a finding of not guilty by reason of insanity, as defined in subdivision (a):

Rape - Penal Code §261 (b) Definition

“Duress”

As used in this section, "duress" means a direct or implied threat of force, violence, danger, or retribution sufficient to coerce a reasonable person of ordinary susceptibilities to perform an act which otherwise would not have been performed, or acquiesce in an act to which one otherwise would not have submitted. The total circumstances, including the age of the victim, and his or her relationship to the defendant, are factors to consider in appraising the existence of duress.

Rape - Penal Code §261 (c) Definition

“Menace”

As used in this section, "menace" means any threat, declaration, or act which shows an intention to inflict an injury upon another.

Penal Code §288 (i) (3) Definition

“Bodily Harm”

As used in this subdivision, "bodily harm" means any substantial physical injury resulting from the use of force that is more than the force necessary to commit the offense.

Rape - Penal Code §261 (a) (6) Definition

“Threat to Retaliate”

Where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat. As used in this paragraph, **"threatening to retaliate"** means a threat to kidnap or falsely imprison, or to inflict extreme pain, serious bodily injury, or death.

Welfare and Institutions Code §6600 (b)

“Sexually Violent Offense” Defined (Continued)

A felony violation of Section 261, 262, 264.1, 269, 286, 288, 288a, 288.5, or 289 of the Penal Code, or any felony violation of Section 207, 209, or 220 of the Penal Code, committed with the intent to commit a violation of Section 261, 262, 264.1, 286, 288, 288a, or 289 of the Penal Code.

Welfare and Institutions Code §6600 (b)

“Sexually Violent Offense” Defined (Continued)

Penal Code Section	Crime Name
261 (a) – (c)	Rape
262 (a) (1) – (5)	Spousal Rape
264.1	PC 262, 262 or 289 Acted in concert
269 (a) (1) – (5)	Aggravated Sexual Assault of Child
286 (a) – (k)	Sodomy

Welfare and Institutions Code §6600 (b)

“Sexually Violent Offense” Defined (Continued)

Penal Code Section	Crime Name
288(a) – (c)	Lewd Acts on a Child
288.5	Continuous Sexual Abuse Child < 14
288a(a) – (k)	Oral Copulation
289 (a) – (c) 289 (e) – (f)	Sexual Penetration Foreign Object

Welfare and Institutions Code §6600 (b)

“Sexually Violent Offense” Defined (Continued)

Below felony with intent to commit 261, 262, 264.1, 269 , 288, 288.5 , 288a, or 289	
207	Kidnapping
209	Kidnapping for Ransom, Extortion, Robbery, Sex Crime
220	Assault for Mayhem, Rape, Sodomy, Oral Copulation

Welfare and Institutions Code §6600 (c)

“Diagnosed Mental Disorder” Defined

“Diagnosed mental disorder” includes a congenital or acquired condition affecting the emotional or volitional capacity that predisposes the person to the commission of criminal sexual acts in a degree constituting the person a menace to the health and safety of others.

“Diagnosable Mental Disorder” is not defined.

Welfare and Institutions Code §6600 (d)

“Danger to the Health and Safety of Others” Defined

"Danger to the health and safety of others" does not require proof of a recent overt act while the offender is in custody.

Welfare and Institutions Code §6600 (e)

“Predatory” Defined

"Predatory" means an act is directed toward a stranger, a person of casual acquaintance with whom no substantial relationship exists, or an individual with whom a relationship has been established or promoted for the primary purpose of victimization.

Welfare and Institutions Code §6600 (f)

“Recent Overt Act” Defined

“Recent overt act” means any criminal act that manifests a likelihood that the actor may engage in sexually violent predatory criminal behavior.

Welfare and Institutions Code §6600 (g)

Juvenile Adjudication - Determinate Term Sentence

Notwithstanding any other provision of law and for purposes of this section, a **prior juvenile adjudication** of a sexually violent offense may constitute a prior conviction for which the person received a determinate term if all of the following apply:

- (1) The juvenile was **16 years of age or older at the time he or she committed the prior offense.**
- (2) The prior offense is a sexually violent offense as specified in subdivision (b).

Welfare and Institutions Code §6600

Juvenile Adjudication - Determinate Term Sentence

- (3) The juvenile was adjudged a ward of the juvenile court within the meaning of Section 602 because of the person's commission of the offense giving rise to the juvenile court adjudication.
- (4) The juvenile was committed to the Department of the Youth Authority for the sexually violent offense.

Welfare and Institutions Code §6600 (h)

Specific Treatment for Minors

A minor adjudged a ward of the court for commission of an offense that is defined as a sexually violent offense shall be entitled to specific treatment as a sexual offender. The failure of a minor to receive that treatment shall not constitute a defense or bar to a determination that any person is a sexually violent predator within the meaning of this article.

Welfare and Institutions Code §6600.1

Sexually Violent Offense – Victim Under 14

If the victim of an underlying offense that is specified in subdivision (b) of Section 6600 is a **child under the age of 14**, the offense shall constitute a "sexually violent offense" for purposes of Section 6600.

Welfare and Institutions Code §6601

- (d) Pursuant to subdivision (c), the person shall be evaluated by two practicing psychiatrists or psychologists, or one practicing psychiatrist and one practicing psychologist, designated by the Director of Mental Health. If both evaluators concur that the person has a **diagnosed mental disorder so that he or she is likely to engage in acts of sexual violence without appropriate treatment and custody**, the Director of Mental Health shall forward a request for a petition for commitment under Section 6602 to the county designated in subdivision (i). . . .

See: *People v. Ghilotti*

See: *People v. Cooley*