

## FINDING OF EMERGENCY

### A. Department of Mental Health Finding That Emergency Regulatory Action Is Necessary

These regulations are being implemented on an emergency basis for the immediate preservation of the public peace, health and safety, or general welfare, within the meaning of Government Code Section 11346.1.

### B. Description of Specific Facts Which Constitute the Emergency

#### The Necessity for the Proposed Regulations

Welfare and Institutions Code Section 6601 provides for the process under which an individual who is in custody under the jurisdiction of the California Department of Corrections and Rehabilitation (CDCR) may be screened and fully evaluated as a potential sexually violent predator. Pursuant to Section 6601, the individual shall be screened by CDCR and the Board of Parole Hearings based on whether the person has committed a sexually violent predatory offense and on a review of the person's social, criminal and institutional history. Such screening shall be conducted in accordance with a **structured screening instrument developed and updated by the Department of Mental Health (DMH)** in consultation with CDCR. If as a result of this screening it is determined that the individual is likely to be a sexually violent predator, then CDCR shall refer the individual to DMH for a full evaluation in accordance with DMH's standardized assessment protocol.

On or about July 16, 2010, Chris Johnson with the law firm of Shook, Hardy & Bacon filed a petition with the Office of Administrative Law (OAL) challenging as underground regulations DMH's Level II Screening Guidelines (Guidelines). The Guidelines are contained in the structured screening instrument developed and updated by DMH as required by Welfare and Institutions Code Section 6601 (b). On August 9, 2010, the OAL contacted DMH with questions regarding the challenged Guidelines. Although DMH believes that the Guidelines are proper and valid, DMH is seeking to enact proposed emergency regulations to ensure DMH's and CDCR's continued ability to apply the appropriate screening instrument to screen and evaluate potential sexually violent predators, and avoid future potential road-blocks to such important screenings and evaluations. The proposed regulations will implement, interpret, or make specific Welfare and Institutions Code Section 6601 (b) by spelling out in regulations the criteria, terms and provisions of the structured screening instrument referenced therein.

## The Finding of Emergency

DMH finds that the proposed regulations are necessary to address an emergency. An emergency is “a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare.” Government Code Section 11342.545. Any disruption or prevention of DMH’s and CDCR’s ability to screen and evaluate potential sexually violent predators will create serious harm to public peace, health, safety, and general welfare. Such disruption and prevention could occur from the OAL finding that the challenged Guidelines constitute underground regulations, resulting in a court enjoining CDCR and DMH from properly applying the Guidelines in the screening of potential sexually violent predators. Such disruption or prevention would delay the proper screening and evaluation of potential sexually violent predators, and could potentially cause the parole or release into the community of individuals who are potential sexually violent predators. Appropriate regulations must be enacted immediately to ensure the continued ability to apply the appropriate screening instrument to screen and evaluate potential sexually violent predators to protect public peace, health, safety and general welfare.

### C. Authority and Reference Citations

Authority: Welfare and Institutions Code Sections 4005.1 and 4101

Reference: Welfare and Institutions Code Section 6601 (b)

### D. Informative Digest and Policy Statement Overview

#### Policy Statement

The objective of the proposed action is to implement, interpret, or make specific Welfare and Institutions Code Section 6601 (b) by spelling out in regulations the criteria, terms and provisions of the structured screening instrument referenced therein.

#### Existing Law

Welfare and Institutions Code Section 6601 provides for the process under which an individual who is in custody under the jurisdiction of the California Department of Corrections and Rehabilitation (CDCR) may be screened and fully evaluated as a potential sexually violent predator. Pursuant to subsection (b) of Section 6601, the individual shall be screened by CDCR and the Board of Parole Hearings based on whether the person has committed a sexually violent predatory offense and on a review of the person’s social, criminal and institutional history. Such screening shall be conducted in accordance with a structured screening instrument developed and updated by the Department of Mental Health (DMH) in consultation with CDCR. If as a result of this screening it is determined that the individual is likely to be a sexually violent predator, then CDCR shall refer the individual to DMH for a full evaluation in accordance with DMH’s standardized assessment protocol.

## E. Summary of Proposed New Regulations

### Section 4000

Section 4000 is being amended to state that Title 9, Division 1, Chapter 15 applies to screenings or evaluations pursuant to Welfare and Institutions Code Section 6600 et seq.

### Section 4001

Section 4001 gives definitions for the terms “Screening,” “Evaluation” and “Individual” as used in Title 9, Division 1, Chapter 15.

### Section 4010

Section 4010 states that the Department of Mental Health may accept a designation from the Department of Corrections and Rehabilitation to conduct screenings of individuals in accordance with Welfare and Institutions Code Section 6601(b).

### Section 4015

Section 4015 subpart (a) requires that a screening include a determination of qualifying offenses pursuant to Welfare and Institutions Code Section 6600(b). Subpart (b) requires that screenings be performed by administrative or clinical staff or a clinical staff employee, or a non-state employee contracting either with DMH or CDCR. Subpart (c) sets forth minimum criteria for evaluators to include in their screening. Subpart (d) sets forth the responsibilities of evaluators, according to their professional judgment, to apply tests or instruments, along with other status and dynamic risk factors that are appropriate to the particular patient on a case-by-case basis. Subpart (e) sets forth the requirement that DMH maintain its own records documenting the screenings performed pursuant to this chapter.

## F. Technical, Theoretical, and Empirical Study or Report

None

## G. Determinations

The Substantial Difference from Existing Comparable Federal Regulations or Statute.

None.

Mandates on Local Agencies or School Districts. None.

Mandate Requires State Reimbursement Pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. None.

Costs to Any Local Agency or School District that Requires Reimbursement Pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. None.

Non-discretionary Costs or Savings Imposed on Local Agencies. None.

Costs or Savings to Any State Agency. None.

Costs or Savings in Federal Funding to the State. None.

Costs or Savings to Individuals or Businesses. None.