PETITION TO THE OFFICE OF ADMINISTRATIVE LAW

RE: **ALLEGED UNDERGROUND REGULATION**

FROM: MICHAEL GEORGE ST.MARTIN, Petitioner

DATE: January 20, 2009

This is a computer generated petition based on the optional OAL form supplying the information required by Title 1, California Code of Regulations, §280, for a petition challenging an alleged underground regulation.

1. Identifying Information: **Petitioner**

Your Name: **MICHAEL GEORGE ST.MARTIN**
CO-000414-3, RRU-10

Your Address: **P.O. Box 5003, Coalinga, CA 93210**

Your Telephone Number: **(559) 935-3814 or (559) 934-1634**

Your E-Mail (if you have one): michaelst.martin@hotmail.com

2. State Agency or Department being challenged:

California Department of Mental Health ("DMH")

3. Provide a complete description of the purported underground regulation. Attach a written copy of it. If the purported underground regulation is found in an agency manual, identify the specific provision of the manual alleged to comprise the underground regulation. Please be as precise as possible.

Description of alleged Underground Regulation

The DMH issued the ***CLINICAL EVALUATOR HANDBOOK AND STANDARDIZED ASSESSMENT PROTOCOL*** (November 2008) (hereinafter ***"Protocol"***) without following the requirements of the Administrative Procedures Act. The DMH has revised this Protocol several times, most recently in November 2008. The covers of all editions, including the 2008 revision are identical except for the date and contain the following:

SEX OFFENDER COMMITMENT PROGRAM (SOCP)
WIC 6600 (SEXUALLY VIOLENT PREDATOR)

CLINICAL EVALUATOR HANDBOOK
AND
STANDARDIZED ASSESSMENT PROTOCOL
NOVEMBER 2008

California Department of Mental Health
Sacramento, California

The Protocol (2008) is a 40-page manual, with several additional pages of appendices. Welfare & Institutions Code section 6601(c) requires that persons are evaluated in accordance with a standardized assessment protocol. The Protocol being challenged by this petition is the "standardized assessment protocol" required by section 6601(c). The Protocol thus creates a mandatory instruction, criterion, or manual, which is a Standard of General Application utilized

for the entire class of persons subject to Civil Commitment under the SVPA Statute. Furthermore, the Protocol is replete with references to the Sexually Violent Predator Act and thus the Protocol implements, interprets, or makes specific the SVPA.

Petitioner alleges the entire Protocol is an underground regulation, as there is no evidence that any portion of this mandatory directive has been promulgated pursuant to the Administrative Procedures Act.

A true and correct copy of the
Clinical Evaluator Handbook and Standardized Assessment Protocol (2008)
is attached hereto as EXHIBIT A.

THE CLINICAL EVALUATOR HANDBOOK AND STANDARDIZED ASSESSMENT PROTOCOL (2008)
IS A REGULATION WITHIN THE MEANING OF THE APA

Welfare & Institutions Code section 6601(c) requires the Director of the Department of Mental Health (DMH) to develop a standardized assessment protocol for evaluations of persons considered for commitment pursuant to the Sexually Violent Predator Act (SVPA):

> "(c) The State Department of Mental Health shall evaluate the person in accordance with a standardized assessment protocol, developed and updated by the State Department of Mental Health, to determine whether the person is a sexually violent predator . . . The Standardized assessment protocol shall require assessment of diagnosable mental disorders, as well as various factors known to be associated with the risk of reoffense among sex offenders. Risk factors to be considered shall include criminal and psychosexual history, type, degree, and duration of sexual deviance, and severity of mental disorder."

Thus in 1996, the California Department of Mental Health was instructed by the California Legislature to develop and update a standardized assessment protocol. However, the Department has failed or refused to adopt, in substantive compliance with the Administrative Procedures Act, any version of their ***Clinical Evaluator Handbook and Standardized Assessment Protocol*** upon which Psychological Evaluations for persons considered for Civil Commitment must be based.

In fact, on August 15, 2008, the Office of Administrative Law issued 2008 OAL Determination No. 19 (OAL FILE # CTU 2008-0129-01), which declared the ***Clinical Evaluator Handbook and Standardized Assessment Protocol (2007)*** to be an underground regulation that must be promulgated pursuant to the Administrative Procedures Act.

The Department of Mental Health has simply revised the ***Clinical Evaluator Handbook and Standardized Assessment Protocol (2007)*** and reissued it as the ***Clinical Evaluator Handbook and Standardized Assessment Protocol (2008)*** without promulgating it pursuant to the Administrative Procedures Act.

The Department of Mental Health cannot reasonably claim any version of the ***Clinical Evaluator Handbook and Standardized Assessment Protocol*** is not subject to the

Administrative Procedures Act because ***OAL Determination No. 19*** has previously determined that the ***Protocol*** is subject to the APA, and the DMH did not challenge this determination in a court of law.

The Department of Mental Health has, from the date of its issue, thumbed its nose at the Governors ***EXECUTIVE ORDER S-2-03***, 11/17/2003, that required all State agencies to promulgate their regulations pursuant to the Administrative Procedures Act.

Notwithstanding the fact that the Department of Mental Health knew and understood that prior to implementation, or revision thereof, the Department was required to adopt the ***Protocol***, or any revision thereof pursuant to the Administrative Procedures Act, the DMH nevertheless failed to do so, and thus, pursuant to the law the current ***Protocol*** being utilized is also invalid and an "Underground Regulation."

The November 2008 revision of the ***Protocol*** contains updates related to Proposition 83, also known as Jessica's Law; insignificant grammar and readability improvements; and, a few changes in the order of presentation of topics.

In reference to the statement, "WIC Section 6601(c) requires that a person referred from CDCR be evaluated in accordance with a standardized assessment protocol," which is contained in both the 2007 and 2008 versions of the ***Protocol***. The November 2008 revision of the ***Protocol***, at page 2, no longer contains the statement, "This clinical evaluator handbook is the centerpiece of that protocol."

Petitioner alleges that the Department of Mental Health cannot have it both ways: the ***Clinical Evaluator Handbook and Standardized Assessment Protocol (2008)*** is either the "standardized assessment protocol" required by WIC section 6601(c), or it is not. If the ***Clinical Evaluator Handbook and Standardized Assessment Protocol (2008)*** is the "standardized assessment protocol" required by WIC section 6601(c), then its implementation or revision must be promulgated pursuant to the APA. If the ***Clinical Evaluator Handbook and Standardized Assessment Protocol (2008)*** is not the "standardized assessment protocol" required by WIC section 6601(c), then the Department of Mental Health is doing all of its clinical evaluations in violation of the Sexually Violent Predator Act, because these evaluations are being done without the required "standardized assessment protocol."

Clinical Evaluator Handbook and Standardized Assessment Protocol (2008) contains numerous language changes where the word "must" as used in the 2007 ***Protocol*** now reads "should" in the 2008 ***Protocol***. However, the word "should" is used in a manner that infers it is meant to be mandatory.

The section of the ***Clinical Evaluator Handbook and Standardized Assessment Protocol (2008)***, beginning at page 13, is now entitled "SUGGESTED CLINICAL EVALUATION PROTOCOL." The word "SUGGESTED" was added to this revision. Here, the DMH has attempted, through a word game slight-of-hand, to make this section appear to be not mandatory. However, the actual language of that section has few if any changes. It still contains mandatory language, e.g., "will," "shall," and "must."

The replacement of unquestionably mandatory words such as "shall," "will," "or must" with words such as "suggested," "encouraged," "recommended," "strongly recommended" or "should," when taken in the context used in the ***Clinical Evaluator Handbook and Standardized Assessment Protocol (2008)*** is simply a pretext by the DMH to avoid promulgating the ***Clinical Evaluator Handbook and Standardized Assessment Protocol (2008)*** as a regulation.

Any reasonable person who is employed by another, whether it be by direct employment or by contract, fully understands that when his employer issues any type of guideline, manual or verbal instruction, which contain directions on how to perform a specific job function, that the use of words like "suggested," "should," "encouraged," "recommended," or "strongly recommended" are meant to be mandatory. Any reasonable employee or contractor knows full well that to not do exactly as "suggested," "encouraged to," or "recommended that" by his or her boss will most likely result in discipline or termination.

In the case of the DMH Contract Evaluator Panel, doing exactly what is "suggested," "encouraged," "recommended," or "strongly recommended" is just what keeps them active on the panel. Some of these Panel Evaluators have earned well over one million dollars per year by doing exactly what the DMH "suggested," "encouraged," "recommended," or "strongly recommended."

A true and correct copy of the
Panel members and amount of pay (2007)
is attached hereto as EXHIBIT B.

Other Panel Evaluators have been removed for a failure to do exactly what was suggested, encouraged, recommended, or strongly recommended by the DMH. Thus in the context of the ***Clinical Evaluator Handbook and Standardized Assessment Protocol (2008)***, the words "should", "suggested," "encouraged," "recommended," or "strongly recommended" or are mandatory.

A true and correct copy of the
PARTIAL LIST OF SVP EVALUATOR PANEL MEMBERS WHO WERE DISCHARGED FOR ALLEGEDLY NOT FOLLOWING "GUIDELINES"
is attached hereto as EXHIBIT C.

Thus, even though those former evaluators on the attached list were discharged prior to the issuing of the 2008 ***Protocol***, the message has been clear to the remaining Panel evaluators from the very beginning: the ***Clinical Evaluator Handbook and Standardized Assessment Protocol (2008)***, and any verbal guidance received where "encouraged" by the Protocol to consult with the DMH, are meant to be mandatory, and those who do not follow the suggestions, recommendations, and encouragements contained therein are subject to dismissal.

Petitioner alleges that the revisions contained in the ***Clinical Evaluator Handbook and Standardized Assessment Protocol (2008)*** do not change the fact that it is a regulation within the meaning of the APA and must be promulgated.

Though the Director may prescribe rules and regulations such as the mandated protocol of section 6601(c), they must be promulgated and filed per Chapter 3.5 of art. 1 of Division 3 of Title 2 of the Administrative Procedures Act, government Code, section 11340 et seq. There is no evidence that DMH has promulgated the ***Clinical Evaluator Handbook and Standardized Assessment Protocol (2008)*** pursuant to the APA.

The ***Protocol*** is a regulation. Chapter 3.5, article 5, of the Administrative Procedure Act, Govt. Code sections 11346 et seq., governs adoption, amendment and repeal of regulations by administrative agencies known as rulemaking. Govt. Code section 11342.600 provides that:

> "[A regulation is] every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret or make specific the law enforced or administered by it or to govern its procedure."

Syngenta Crop Protection, Inc. V. Helliker (2d Dist. 2006) 138 Cal.App. 4th 1135, 1175-77, 42 Cal.Rptr.3d 191, 221-222, quotes *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal. 4th 557, 59 Cal.Rptr.2d 186, which explains:

> "[The APA] establishes 'minimum procedural requirements' for rulemaking. ([Govt. C.] § 11346(a).) The agency must provide notice of the proposed action (Id. §§ 11346.4, 11346.5), the complete text of the proposal (§ 11346.2(a)), and an initial statement of reasons for the proposal (§ 11346.2(b)), and a final statement of reasons (§ 11346.9(a)). The agency must provide a public hearing if an interested person timely requests a hearing (§ 11346.8(a)), provide an opportunity for interested persons to submit written comments if no hearing is held (ibid.), and respond in writing to comments in the final statement of reasons (§ 11346.9(a)(3)). The agency must submit the entire rulemaking file to the Office of Administrative Law (§§ 11347.3(c), 11342.550), which reviews the regulation for compliance with the law and other criteria and approves or disapproves the regulatory action. (§§ 11349.1, 11349.3 . . . " (14 Cal. 4th 557, 59 Cal.Rptr.2d 186.)
>
> "No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to this chapter." (Govt. Code § 11340.5(a).)"
>
> "A substantial failure to comply with chapter 3.5 of the APA renders the regulation invalid. § 11350(a); *Tidewater Marine Western, Inc. v. Bradshaw, supra*, 14 Cal. 4th at 576, 59 Cal.Rptr.2d 186.)"
>
> "A regulation subject to the APA thus has two principal identifying characteristics. First, the agency must intend its rule to apply generally, rather than in a specific case. The rule need not, however, apply universally; a rule applies generally so long as it declares how a certain class of cases will be decided . . . Second, the rule must 'implement, interpret, or

make specific, the law enforced or administered by [the agency], or . . . govern [the agency's] procedure.' ([Former] Govt. Code § 11342(g) [now § 11342.601].) Of course, interpretations that arise in the course of case-specific adjudication are not regulations, though they may be persuasive as precedents in similar subsequent cases . . . Similarly, agencies may provide private parties with advice letters, which are not subject to the rulemaking provisions of the APA. ([Former] Govt Code § 11343(a)(3), 11346.1(a) [now § 11340.9(I)].) Thus, if an agency prepares a policy manual that is no more than a summary, without commentary, of the agency's prior decisions in specific cases and its prior advice letters, the agency is not adopting regulations . . . A policy manual of this kind would of course be no more binding on the agency in subsequent agency proceedings or on the courts when reviewing agency proceedings than are the decisions and advice letters that it summarizes."(Emphasis added.) (*Tidewater Marine Western, Inc. v. Bradshaw, supra*, 14 Cal. 4th at 571, 59 Cal.Rptr.2d 186.)"

Morning Star Co. v. State Bd. Of Equalization (2006), 38 Cal. 4th 324, 333-334, 42 Cal.Rptr.3d 47, 53-54, confirms the Syngenta/Tidewater analysis, especially that a regulation must be intended to apply generally, and that it must implement, interpret or make specific the law administered by the agency, or govern the agency's procedure.

The *Protocol* is a regulation. It is applied to all persons proposed or adjudicated to be SVPs in California. It declares how this certain class of cases will be decided. Its use by all state evaluators is mandatory. They must prepare the reports which are utilized to support their professional opinions that the person examined is an SVP pursuant to the *Protocol*. Thus the mandate the ***Protocol*** implements, enforces or otherwise makes specific is the language of the Sexually Violent Predators Act (SVPA). The following excerpts from the *Protocol* mandate specific actions by either the DMH, its employees, or contractors that affect he taxpayers of California, and make clear that the ***Clinical Evaluator Handbook and Standardized Assessment Protocol (2008)*** is a regulation:

1. "Evaluator Panel," (page 2) "In the event that an Evaluator is sued for conduct within their scope of work under the contracts with the DMH, DMH will make a request that the State Attorney General's Office provide legal representation. "

> This mandates DMH employees to request the State Attorney General's Office to provide legal representation to contractors at taxpayer expense. Many of whom make in excess of a million dollars per year.

2. "Suggested Clinical Evaluation Protocol," pp. 13-33. In the title itself, the word "suggested" is added. As alleged *anti* by petitioner, this does not change the mandatory inference and intent of everything contained within this section. This section is replete with detailed mandatory instructions in every facet of the clinical evaluation.

> With the exception of a few additions, rearranging of order, and updating of references, the basic language and procedure being mandated remains mostly unchanged from the 2007 ***Protocol*** declared an underground regulation on August 15, 2008, in ***2008 OAL Determination No. 19*** (OAL FILE # CTU 2008-0129-01).

3. ***Protocol*** (page 36) "Since the person has been committed as an SVP by the court for 'appropriate treatment' (Welf. & Inst. Code § 6604), the department believes that a person must finish the program, including the completion of a period of outpatient supervision. Only under rather unusual circumstances would a patient being evaluated for SVP commitment extension be deemed unlikely to commit future sexually violent acts as a result of a mental disorder, if all five phases of treatment have not been completed. If this is the case, the evaluator is encouraged to consult with the department on their conclusion."

This language is unchanged except for one word from the 2007 ***Protocol*** declared an underground regulation on August 15, 2008, in ***2008 OAL Determination No. 19*** (OAL FILE # CTU 2008-0129-01). The word "required," in the last sentence, was changed to "encouraged." As used in the context of the ***Protocol***, the word "encouraged" is meant to be mandatory.

This is a mandated determination that the person meets the SVPA criteria if he has not completed all five phases of treatment – a determination that is for the jury to decide. This mandated determination is in direct conflict with the controlling statute's requirement that, "The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator." (Welf & Inst. Code § 6604.) Such a mandate also violates the guarantee of Due Process Under the Laws of both the California and Untied States Constitutions.

Throughout the ***Protocol***, the words "Must" and "Required" are used repeatedly. When used in the language of the Protocol they create a mandatory instruction, criterion, or manual, which is a standard of general application utilized for the entire class of persons subject to civil commitment under the SVPA. Furthermore, the ***Protocol*** is replete with references to the SVPA, thus the ***Protocol*** implements, interprets, or makes specific the SVPA. Therefore the Protocol is a regulation, and one which has not been adopted in compliance with the APA.

4. Provide a description of the agency actions you believe demonstrate that it has issued, used, enforced, or attempted to enforce the purported underground regulation.

WIC §6601(c) mandated DMH to develop and update the ***Clinical Evaluator Handbook and Standardized Assessment Protocol***. Over the years, the DMH published and released several revisions of this handbook. WIC §6601(c) infers its use is mandatory when conducting SVP evaluations. The current version is used statewide by all State Evaluators when conducting SVP evaluations. Its existence and use are not in controversy.

The DMH has taken the firm position that the ***Clinical Evaluator Handbook and Standardized Assessment Protocol (2008)*** is not a regulation subject to the provisions of the APA.

Petitioner alleges that the ***Clinical Evaluator Handbook and Standardized Assessment Protocol (2008)*** is a regulation within the meaning of the APA.

5. State the legal basis for believing that the guideline, criterion, bulletin, provision in a manual, instruction, order, standard of general application, or other rule or procedure is a regulation as defined in Section 11342.600 of the Government Code that no express statutory exemption to the requirements of the APA is applicable.

NO EXCEPTION EXCLUDES THE *PROTOCOL* FROM THE APA PROCEDURES.

> Clearly inapplicable are the provisions of Govt. Code § 11340.9 excluding:
> "(d) A regulation that relates only to the internal management of the state agency . . . "
> "(f) A regulation that embodies the only legally tenable interpretation of a provision of law . . . "
> "(I) A regulation that is directed to a specifically named person or to a group of persons and does not apply generally throughout the state."

Armistead v. State Personnel Bd. (1978) 22 Cal.3d 198, 204-205, 149 Cal.Rptr. 1, 4 quoting from the *First Report of the Senate Interim Committee on Administrative Regulations to the 1955 Legislature*, documents the necessity for strict adherence to the APA. The court found this necessary so as to prevent state agencies from avoiding obedience to the APA by denominating rules as "'policies,' 'interpretations,' 'instructions,' 'guides,' 'standards,' or the like," and by containing them "in internal organs of the agency such as manuals, memoranda, bulletins, or [directing them] to the public in the form of circulars or bulletins."

Armistead underlined that "[R]ules that interpret and implement other rules have no legal effect unless they have been promulgated in substantial compliance with the APA" (emphasis added), thus provision of state personnel transactions manual governing withdrawal of resignation by state employee merited no weight as agency interpretation where such provision had not been duly promulgated and published.

The ***Protocol*** in question here fits the above description perfectly. It is called a "SUGGESTED CLINICAL EVALUATION PROTOCOL." but it contains mandatory language making it much more than a simple "SUGGESTED CLINICAL EVALUATION PROTOCOL." Instead, it is a forbidden underground regulation without its adoption pursuant to the Administrative Procedures Act.

THE *PROTOCOL* APPLIES GENERALLY THROUGHOUT THE STATE

Modesto City Schools v. Education Audits Appeal Panel, (3d Dist. 2004) 123 Cal.App. 4th 1365, 1381, 20 Cal.Rptr.3d 831, 842, holds that to be deemed an underground regulation, which would be invalid because it was not adopted in substantial compliance with the procedures of the APA, the agency must intend it to apply generally rather than in a specific case, and the agency must adopt it to implement, interpret, or make specific the law enforced by the agency.

Kings Rehabilitation Center, Inc. V. Premo, (3rd Dist. 1999) 69 Cal.App. 4th 215, 217, 81 Cal.Rptr.2d 406, notes:

> "The APA is partly designed to eliminate the use of 'underground' regulations; rules which only the government knows about. If a policy or procedure falls within the

definition of a regulation within the meaning of the APA, the promulgating agency must comply with the procedures for formalizing such regulations, which include public notice and approval by the Office of Administrative Law (OAL). Failure to comply with the APA nullifies the rule. (Govt Code § 11350(a); *Armistead v. State Personnel Bd.* (1978) 22 Cal.3d 198, 204, 149 Cal.Rptr. 1, 4") (Emphasis added.)

The ***Protocol*** is neither intended nor utilized to make specific determinations but is utilized generally throughout the state when performing all SVP evaluations. Thus, the ***Protocol*** is a regulation that must be promulgated as a regulation but otherwise is a null and void underground regulation.

6. Provide information demonstrating that the petition raises an issue of considerable public importance requiring prompt resolution.

The Legislature passed the Administrative Procedures Act with the intent that all State Agencies would follow that law. The Governor issued ***EXECUTIVE ORDER S-2-03***, 11/17/2003, ordering all State agencies to promulgate their regulations pursuant to the Administrative Procedures Act. The Department of Mental Health became aware on August 15, 2008, following ***2008 OAL Determination No. 19*** declaring the previous edition of the ***Protocol*** to be an underground regulation, and that the ***Protocol*** and any future revisions must be promulgated. Yet the DMH refused and failed to do so, instead issuing the November 2008 revision without making any attempt to promulgate. The irony of this is the DMH is using the ***Protocol*** to involuntarily commitment citizens of California because they might commit a crime in the future. The reality is that the Administration of the DMH is actually committing crimes in the present by refusing and failing to follow existing laws. This is a classic example of the bureaucratic tyranny warned of in *Tidewater* and *Morning Star*..

Morning Star reiterates, "[2] These requirements promote the APA's goals of bureaucratic responsiveness and public engagement in agency rulemaking. 'One purpose of the APA is to ensure that those persons or entities whom a regulation will affect have a voice in its creation [citation], as well as notice of the law's requirements so that they can conform their conduct accordingly [citation]. The Legislature wisely perceived that the party subject to regulation is often in the best position, and has the greatest incentive, to inform the agency about possible unintended consequences of a proposed regulation. Moreover, public participation in the regulatory process directs the attention of agency policymakers to the public they serve, thus providing some security against bureaucratic tyranny. [Citation.]' [132 P.3d 255] (*Tidewater, supra*, 14 Cal.4th at pp. 568-569, 59 Cal.Rptr.2d 186, 927 P.2d 296.)" (*Morning Star Co. v. State Bd. Of Equalization* (2006), 38 Cal. 4th 324, 333, 42 Cal.Rptr.3d 47, 53.)

An entire class of citizens face a potential life term of incarceration based on evaluations performed under the mandate of this alleged underground regulation. Every citizen has an interest based upon the fundamental American principles of justice and freedom to have every law, rule, regulation, policy, procedure, guideline, criterion, bulletin, manual, instruction, order, or standard used in any procedure which could aid to deprive any citizen of his liberty to be legally promulgated prior to its implementation.

Many psychologists are complaining that the ***Protocol***, particularly in the section beginning at page 19, "**B. Does the inmate have a diagnosed mental disorder that predisposes the person to the commission of criminal sexual acts? (Yes/No)**," contains misstatements regarding proper use of the *Diagnostic and Statistical Manual of Mental Disorders-Fourth Edition-Text Revision (DSM-IV-TR)*. They claim this section contains a major flaw in reasoning. That, among other things, it states that the *DSM-IV TR* diagnosis can be used to determine volitional impairment and serious difficulty controlling behavior. That wherever contained in the ***Protocol***, the term "volitional" is improperly used.

Ethical psychologists claim the ***Protocol***, as written, contains numerous passages that are poorly written, resulting in professional and ethical concerns. This conflict between the language of the ***Protocol*** and the very profession required to follow the mandates of the ***Protocol*** illustrates the need for promulgation of the ***Protocol***, and the need for input from members of the Psychological Community during the promulgation process.

CONCLUSION

Clearly, both those who may receive a life-time commitment following psychological evaluations performed pursuant to the ***Clinical Evaluator Handbook and Standardized Assessment Protocol (2008)***, and members of the psychological profession believe the Protocol meets neither the mandate of the SVPA nor professional and ethical standards of the psychological and psychiatric communities. Thus, public participation in the regulatory process is needed to halt the bureaucratic tyranny of the Department of Mental Health.

"Moreover, public participation in the regulatory process directs the attention of agency policymakers to the public they serve, thus providing some security against bureaucratic tyranny. [Citation.]' [132 P.3d 255] (*Tidewater, supra*, 14 Cal.4th at pp. 568-569, 59 Cal.Rptr.2d 186, 927 P.2d 296.)" (*Morning Star Co. v. State Bd. Of Equalization* (2006), 38 Cal. 4th 324, 333, 42 Cal.Rptr.3d 47, 53.)

The DMH, part of the Executive Branch, lacks Constitutional authority to enact legislation. The Legislature has granted state agencies and departments quasi-legislative powers through the APA providing they follow specific promulgation procedures. However, until and unless the DMH does follow the provisions of the APA to properly promulgate The ***Clinical Evaluator Handbook and Standardized Assessment Protocol***, it is an underground regulation which has been implemented in violation of the Separation of Powers Clause, Article III, Section 3, of the California Constitution.

To allow the DMH to continue to utilize such a controversial handbook, such as the ***Protocol***, would be to allow the sort of unfettered power in the Executive Branch that is a step toward a totalitarian concentration of power in the executive; a power to be exercised with inadequate legislative standard, and capable of avoiding judicial review such as this has been prohibited from the earliest times. See Hayburn's Case, (1792) 2 U.S. (Dall.) 408, 1 L.Ed. 436, and its progeny.

Based on the foregoing, it is clear that there is a need for public participation in the regulatory process which directs the attention of agency policymakers to the public they serve, and to ensure that those persons or entities whom a regulation will affect have a voice in its creation.

8. Certifications:

I certify that I have submitted a copy of this petition and all attachments to:

Stephen W. Mayberg, Ph.D., Director
California Department of Metal Health
1600 9th St., Suite 151
Sacramento, CA 95814
(916) 654-2413 / (916) 654-2309

I certify that all the above information is true and correct to the best of my knowledge.

MICHAEL GEORGE ST.MARTIN
PETITIONER

January 20, 2009
Date

EXHIBIT A.

Clinical Evaluator Handbook and Standardized Assessment Protocol (2008)

SEX OFFENDER COMMITMENT PROGRAM (SOCP)
WIC 6600 (SEXUALLY VIOLENT PREDATOR)

CLINICAL EVALUATOR HANDBOOK
AND
STANDARDIZED ASSESSMENT PROTOCOL

NOVEMBER 2008

California Department of Mental Health
Sacramento, California

CLINICAL EVALUATOR HANDBOOK
TABLE OF CONTENTS

Address questions regarding this Clinical Evaluator Handbook to:

Department of Mental Health
Sex Offender Commitment Program
Long Term Care Services
1600 9th Street Room 250
Sacramento, CA 95814
Telephone: (916) 653-1843
Fax: (916) 653-2257

INTRODUCTION

The California Sexually Violent Predator (SVP) law is contained in Welfare and Institutions Code Section (WIC) 6600 et seq. (see Appendix A). This law was enacted in October 1995 and became effective January 1, 1996. It established a new category of civil commitment for persons found, upon release from prison, to be sexually violent predators. The SVP commitment term was for two years from the inception of the law until 2006 with the passage of Proposition 83 ("Jessica's Law") when it was made indeterminate. The SVP commitment ends if it is found that the individual's diagnosed mental disorder has so changed that he or she is not likely to commit future acts of sexual violence. Over the years, Supreme and Appellate Court decisions have had a direct impact on the SVP evaluation process. This standardized assessment protocol includes references to the most relevant of these court decisions.

The Department of Mental Health (DMH) program that administers evaluation responsibilities under the SVP statute is the Sex Offender Commitment Program (SOCP).

Pursuant to WIC 6600 et seq., DMH-SOCP assigns two clinical Evaluators (board certified psychiatrists and/or licensed psychologists) to determine if individuals screened by the California Department of Corrections and Rehabilitation (CDCR) and referred to DMH meet the criteria of a sexually violent predator. If the two Evaluators agree that the inmate meets the criteria, the Director of DMH will request that the designated counsel in the county of last CDCR commitment file a petition for civil commitment. If the initial Evaluators have a difference of opinion DMH-SOCP will assign two additional independent Evaluators to evaluate the inmate. These independent Evaluators cannot be state government employees and must have at least five years of experience in the diagnosis and treatment of mental disorders. If it is determined that the criteria are met following these additional evaluations, the Director of DMH will request that the designated counsel in the county of last CDCR commitment file a petition for commitment . DMH will send such letters of request to multiple county district attorneys if an evaluated inmate is serving simultaneous prison sentences from multiple counties.

Enclosed with the DMH recommendation are all evaluations (positive and negative) completed by the initial and/or independent clinical Evaluators and earlier SVP evaluations if the person was previously evaluated by DMH-SOCP, additional material collected by DMH-SOCP, as well as all background information originally provided to DMH-SOCP by CDCR. If the district attorney concurs with the recommendation, the district attorney may file a petition for civil commitment in that county's Superior Court. In the event of multiple counties, the involved district attorneys will determine which county will be responsible for the civil commitment petition.

STANDARDIZED ASSESSMENT PROTOCOL

WIC Section 6601(c) requires that a person referred from CDCR be evaluated in accordance with a standardized assessment protocol. This Handbook may be supplemented by additional instructions to clinical Evaluators, as necessary, and the enactment of regulations under the Administrative Procedures Act.

EVALUATOR PANEL

Pursuant to WIC Section 6601 (d), DMH may utilize both independent contractors and state employees for clinical SVP evaluations. All evaluations are assigned, monitored, and submitted to the DMH-SOCP in Sacramento. The address and phone number for the DMH-SOCP is located in the Table of Contents page at the front of this Handbook.

State contract Evaluators are selected, trained and monitored by the DMH-SOCP. Evaluators (both contract and State employees) are professionally obligated to utilize their best clinical judgment to interview and evaluate inmates. The procedures contained within this Handbook are a suggested framework of how to organize and carry out an evaluation. As required by WIC 6601(e), the DMH utilizes only contract evaluators for Difference of Opinion (DOP) cases.

In the event that an Evaluator is sued for conduct within their scope of work under the contracts with the DMH, DMH will make a request that the State Attorney General's Office provide legal representation.

CASE ASSIGNMENT FROM DMH-SOCP

Under existing internal management procedures, cases received by DMH-SOCP from the Board of Parole Hearings (BPH) or CDCR are normally processed and assigned based on a random rotational process.

After the Evaluator accepts a case referral, the DMH-SOCP will provide the Evaluator with all available case documents, such as:

- The CDCR or Board of Parole Hearings (BPH) material that was sent to DMH-SOCP;
- Additional supporting documentation obtained by the DMH-SOCP Case Managers;
- A cover letter that includes the name of the CDCR inmate, the inmate's location, release date, controlling discharge date and the date the completed evaluation is due, and the name and phone number of the responsible Case Manager. The need for a translator or interpreter is also noted in this letter.

Before the case is referred for evaluation, the DMH-SOCP Case Manager will have reviewed the material to ensure basic DMH-SOCP legal criteria are met (i.e., convictions of qualifying offenses, victims, etc.). However, DMH- SCOP suggests that the Evaluator confirm this information since it will be included in the final report. Should any additional information be needed regarding the case referral, please contact the responsible DMH-SOCP Case Manager.

It is not unusual for a previously evaluated case to be re-referred to DMH-SOCP from CDCR. This may occur if there was a previous negative evaluation finding, or if the referral to the county did not result in an SVP commitment and the person was returned to CDCR custody. In cases where there has been a previous evaluation, the Department has several options:

- The DMH will consider all relevant information related to the case, including changes to the evaluation protocol since the last review by DMH-SOCP. At the DMH's discretion, the case may be assigned to the most recent Evaluators for new evaluations.

- If a previous Evaluator is no longer available, the case will be assigned to a new Evaluator. Evaluations from the Evaluator who is no longer available will become part of the case record and will be available to any and all Evaluators handling that case.

- The DMH may consider assignment patterns and workloads and may assign new Evaluators even when the previous Evaluators remain on the contract panel.

For an Evaluator to discuss an ongoing case with other current evaluators could raise concerns of conflicts of interest, as well as that the Evaluator and the evaluation are not independent and unbiased. DMH-SOCP recommends that until a case is resolved, Evaluators not discuss the case with any other current evaluators assigned to the same case.

DMH-SOCP CASE MANAGER

The normal point of contact an Evaluator has with DHM-SOCP is the DMH-SOCP Case Manager. Because of strict time constraints please let the Case Manager know of any delays in completing and submitting the clinical evaluation.

SPECIAL REQUESTS FROM COURTS AND ATTORNEYS

In the event that you receive a request, subpoena or court order, please feel free to contact DMH-SOCP for assistance.

SCHEDULING AN EVALUATION

The law allows the Evaluator the discretion to schedule the evaluation at the prison or facility where the inmate is housed. The majority of the inmates are in CDCR institutions, although some inmates may be in local jails or at Atascadero State Hospital (ASH) or Coalinga State Hospital (CSH). DMH-SOCP suggests that the Evaluator confirm the inmate's location prior to making an interview appointment. DMH-SOCP staff can assist in locating the individual if necessary.

Suggested procedures for gaining access to these facilities are as follows:

Access to the Prisons

1. Contact the Classification and Parole Representative (C&PR) where the inmate is housed to schedule the evaluation. The C&PR or a designee will schedule the interview and usually be the contact person at that location.

2. Tell the C&PR that the following are needed:

    a. Gate clearance to enter the facility, unless you possess a CDCR ID card.
    b. Time to review the Central and Medical files prior to the interview. Specify the amount of time needed.
    c. Someone to make copies of relevant records from the files.
    d. Quiet interview room with an optimal amount of privacy.
    e. Time for the clinical interview of the inmate. Specify the amount of time needed.
    f. Appropriate supervision to ensure safety.

3. Once at the facility, enter through the main gatehouse. Inform the Gate Officer of your assigned contact person. Your contact person will assist you in the logistics of moving through the facility and in the file review process. It is helpful to have the contact person's phone number with you as the Gate Officers sometimes do not have this information.

4. Do not wear jeans, any denim-type material, any light blue shirt with navy colored pants, or any blue clothes of any color blue. This is the inmates' attire and CDCR staff needs to be able to identify visitors as separate from the inmate population.

5. If you experience any difficulty, including lengthy waiting prior to an interview, please contact DMH-SOCP at (916) 653-1843 for assistance.

Access to Atascadero State Hospital and Coalinga State Hospital

As a reminder, ASH and CSH are forensic facilities with rules that must be followed:

1. Contact the Health Information Management Department, Legal Section or Review Desk to schedule the interview. A two-day advance notice is required for all appointments. Exceptions do apply when an Evaluator has been given a rush assignment. ASH and CSH operate on a reservation system. If a reservation is made to interview a patient, it is extremely important to notify the hospital if the appointment cannot be kept.

   The individual's CDCR file will be retained at the California Men's Colony (CMC) and a separate visit must be made for its review

2. Check in at the main reception area for directions to the Health Information Department. ASH and CSH records may be reviewed at this location prior to the interview.

3. Return to the main reception area to check into the secured area of the hospital for the actual interview.

4. Do not wear khaki or any similar colored material at ASH. Do not wear khaki, blue or denim colored clothing at CSH.

5. Visiting hours are from 8:15 am to 1:45 pm at ASH. Visiting hours are from 8:00 am to 3:45 pm at CSH. Appointments that may extend beyond normal work hours must have prior approval.

It is possible that an evaluation may need to be conducted at a state hospital other than ASH or CSH if the inmate is temporarily housed there. The above rules may also apply. Before visiting any state hospital to conduct an evaluation, contact the Forensic Coordinator at the hospital for specific instructions.

Access to County Jails

The Evaluator should call the jail to arrange for the interview. If necessary, access to individual county jails can be facilitated through the DMH-SOCP Case Manager.

DEFINITIONS RELEVANT TO DMH-SOCP

WIC 6600 et seq. sets forth several legal definitions. These are the definitions that are used in evaluations and in court and are summarized below. Court decisions clarifying some of these definitions are noted or referenced.

A. "**Sexually violent predator"** – 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.

For the purposes of counting offenses and victims, consider the "sexually violent offenses" listed in section (B) below. Countable convictions (listed in (B)) include:

- a prior or current conviction that resulted in a determinate prison sentence,
- a conviction for an offense that was committed prior to July 1, 1977, and that resulted in an indeterminate prison sentence,
- a prior finding of not guilty by reason of insanity, and
- a prior conviction for which the inmate received a grant of probation.
- A conviction resulting in a finding that the person was a mentally disordered sex offender (MDSO) counts regardless of the convicted offense.
- One juvenile adjudication may be counted as a conviction if the inmate was at least 16 years of age at the time of the juvenile offense and the juvenile was sentenced to the California Youth Authority.
- A conviction in another state for an offense that includes all the elements of an offense listed in (B) below, shall also be deemed to be a sexually violent offense even if the offender did not receive a determinate sentence for that prior offense.

B. **"Sexually violent offense"** – One of several specified crimes committed by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, and that are committed on, before, or after the effective date of this article and result in a conviction." If the victim of an underlying offense specified below is a child, under the age of 14, the offense shall constitute a "sexually violent offense" for the purposes of Section 6600. "Sexually violent offenses" consist of the following Penal Code sections (modified by Jessica's Law, November 2006):

PC Code Section	Crime Description
261	**Rape (all subdivisions)**
261(a)(1)	Rape where the person is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should have been known to the person committing the act.
261(a)(2)	Rape against a person's will by force, violence, duress, menace or fear of immediate and unlawful bodily injury on the person or another.
261(a)(3)	Rape where the person is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance administered by or with the privity of the accused.
261(a)(4)	Rape where the person is at the time unconscious of the nature of the act, and this is known to the accused.
261(a)(5)	Rape where the person submits under the belief that the person committing the act is the victim's spouse, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with the intent to induce the belief.
261(a)(6)	Rape with threat of retaliation.
261(a)(7)	Rape where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or any other person, and the victim has a reasonable belief that the perpetrator is a public official.
261(b)	Rape by coercion through "duress" – direct or indirect use of violence, force, danger, retribution.
261(c)	Rape by "menace" – threat, declaration, or act that shows an intention to inflict an injury upon another.
262	**Rape of person Who is Spouse of Perpetrator (all subdivisions)**
262(a)(1)	Rape of spouse by force, violence, duress, menace, or fear of immediate and unlawful bodily injury.
262(a)(2)	Rape of spouse where the person is prevented from resisting by an intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known, by the accused.
262(a)(3)	Rape of spouse where the person is at the time unconscious of the nature of the act, and this is known to the accused.
262(a)(4)	Rape of spouse with threat of retaliation.
262(a)(5)	Rape of spouse where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official.
264.1	**Defendant acted in concert with another person to commit PC 261, 262, or 289.**
269	**Aggravated Sexual Assault of a Child**
286	**Sodomy (all subdivisions)**
288	**Lewd Acts on a Child (all subdivisions)**
288(a)	Lewd or lascivious act upon a child under 14 years of age
288(b)(1)	Lewd or Lascivious Act upon a child under 14 years of age by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury.
288(c)(1)	Any person who commits an act described in subdivision (a) with the intent described in that subdivision, and the victim is a child of 14 or 15 years, and the person is at least 10 years older than the child.
288.5	**Continuous Sexual Abuse of Child Under 14 Years**

288a	**Oral Copulation (all subdivisions)**
289	**Sexual Penetration by Foreign or Unknown Object (all subdivisions)**
289(a)	Sexual penetration by foreign or unknown object by force, violence, duress, or fear of injury.
289(b), (c)	Sexual penetration where the person is incapable, because of mental disorder, or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act.
289(e)	Sexual penetration where the person is at the time unconscious of the nature of the act, and this is known to the accused.
289(f)	Sexual penetration where the person submits under the belief that the person committing the act is the victim's spouse, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with the intent to induce the belief.
289(g)	Sexual penetration where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official.
Felony conviction of the below, committed with the intent to commit a violation of PC Section 261, 262, 264.1, 288, 288a, or 289.	
207	Kidnapping
209	Kidnapping for Ransom or Extortion or to Commit Robbery or Sex Crime
220	Assault with the Intent to Commit Mayhem, Rape, Sodomy, Oral Copulation

C. **"Diagnosed mental disorder"** - 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.

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

E. **"Predatory"** - An act 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. Initial screening based upon the definition of predatory was discontinued in January 2002 based upon a California Supreme Court Decision People v. Torres (2001) 25 Cal. 4th 680.

F. **"Prior juvenile adjudication"** – The juvenile was 16 years of age or older at the time he or she committed the offense; the juvenile was adjudged a ward of the court; the offense committed by the juvenile was one of the offenses listed in WIC 6600(b); and the juvenile was committed to the California Youth Authority for the sexually violent offense.

G. "**Volitional impairment"** – Condition involving individuals who have serious difficulty in controlling their behavior. In Kansas v. Crane (2002) 534 U.S. 407, the United States Supreme Court held that the federal constitution does not require an absolute lack of control. The California Appellate Court in People v. Burris (2002) 102 Cal. App. 4th 1096 contains a discussion as to the lack of deterrence of past criminal sanctions providing evidence of volitional impairment.

H. **CDAA Quote *"Rose v. Mayberg (7-06) 454 F.3d 958.*** - Held that, in accord with USSC and California Supreme Court *(People V. Williams (2003) 31 Cal. 4th 757)* that an SVP need only have serious difficulty controlling his dangerous behavior, rejecting the "dangerous beyond his control" argument."

SUBMITTING THE REPORT

Because of the often short time constraints, DMH-SOCP requests that after an Evaluator has formed his/her conclusion the Clinical Evaluation Summary is completed and faxed to DMH-SOCP as soon as possible. Additionally, the full written evaluation is due by the due date assigned at the time of the referral. If a report has not been submitted to DMH-SOCP by the agreed due date, a Case Manager will contact the Evaluator to determine if additional time is needed to complete the written report.

UPDATING THE REPORT

Here is a Summary of the requirements of California law for updating reports:

- In order to maintain accurate tracking, SOCP has informed District Attorneys that the District Attorney who filed the SVP petition must request updates of reports through the DMH-SOCP.
- The SVP statute requires evaluators to re-interview an SVP respondent if the respondent will voluntarily interview or there is a court order for an interview.
- The interview of an updated report will be audio-recorded if ordered by the court or requested by the respondent or either attorney.
- Evaluators may use medical and non-medical information to update reports and to apply risk assessment tools to assess the SVP respondent.
- Updated reports are to be forwarded to the DMH-SOCP or to the State Hospital (ASH or CSH) in cases of update reports for commitment extension evaluations.
- The statute requires DMH to provide a copy of the report to the inmate's attorney.

If the Evaluator, through whatever means, obtains significant new information regarding a previously completed SVP report, contact should be made with the DMH-SOCP Case Manager. The Case Manager is responsible for transmitting copies of this new information to the other Evaluators on the case. Evaluators should complete an addendum to their report when necessary and submit this addendum to the DMH-SOCP.

COURT TESTIMONY

As part of the Evaluator's agreement in accepting a case for evaluation he/she may be asked to provide court testimony in various hearings and trials. The District Attorney will likely contact the Evaluator directly and request testimony services. If the evaluation resulted in a difference of opinion, and there was a conclusion that criteria were not met, he/she may be subpoenaed by defense counsel to testify as to the findings. The Evaluator should be prepared to explain his or her evaluation. If the Evaluator is subpoenaed by the District Attorney, it is recommended that the Evaluator consult with the District Attorney prior to the testimony to offer information as to how the conclusion was reached.

As an expert witness the Evaluator should be familiar with the SVP law, research literature pertaining to risk assessment of sex offenders and the specifics of the case. Regardless of who requires the Evaluator's attendance in court, or what conclusions are contained in the report, the Evaluator remains a "fact finder," having applied the requirements of the SVP statutes to a particular case, and arriving at his or her own independent, professional opinion. If presented with contradictory or different information after submission of the report, the Evaluator should consider the new information and change his/her conclusion if the new information so warrants.

The California Supreme Court decision, *Cooley v. Superior Court of Los Angeles* (2002) 29 Cal. 4th 228, clarifies that a probable cause determination must consider all the elements contained in the definition of the sexually violent predator statute that are required to be proven at trial. Therefore, the Evaluator should be prepared to testify at the probable cause hearing and address pertinent questions regarding the case findings.

SUBPOENAS AND DEPOSITIONS

Per California law, Clinical Evaluators must comply with subpoenas for appearances in relation to cases they have evaluated. Subpoenas may also require Evaluators to produce documents. Some documents, such as training materials provided to all Evaluators are maintained by DMH-SOCP. The Evaluator may contact the DMH-SOCP for assistance regarding past training materials. Generally, the Evaluator is not responsible for providing materials and/or documents that are not in the possession/control of the Evaluator, and the Evaluator may suggest that the material or documents might be obtainable from DMH-SOCP. When the DMH-SOCP responds to a subpoena, every effort is made to notify the Evaluator of what materials are sent to courts and attorneys. If subpoenas hold conflicting appearance dates, the first subpoena to arrive generally takes precedence. Communication with the issuers of the subpoenas is recommended. To prevent being held in contempt of court, it is essential to respond to all subpoenas.

DMH-SOCP advises Evaluators not rely on the DMH-SOCP for all materials. It is recommended that Evaluators maintain records until all proceedings and appeals have been finalized. It is highly likely that the court will call on each Evaluator to testify in the proceedings. A common subpoena request is the income an Evaluator has made from doing contract SVP evaluations. It is also highly likely that an Evaluator will also be asked to provide copies of other materials not provided to him/her by the DMH-SOCP that were obtained in the course of separate educational and training activities not sponsored by DMH-SCOP or that were used in his/her formulation of evaluation findings. Sometimes subpoenas request that confidential information be provided. Examples of such items include names or evaluations of other SVP cases the Evaluator has evaluated for the DMH-SOCP and all income for specified tax years. If you receive such a subpoena, you may want to notify DMH-SOCP staff, who will advise you on how to proceed.

A subpoena may require production of “raw data” from psychological tests administered to the person evaluated. If ethical guidelines require such data be provided only to persons appropriately trained to interpret the test data, then the recommended response is that the data will be provided to a trained person or to the court for appropriate distribution. If the court orders production of the data it must be provided.

RECORD RETENTION SCHEDULE

Pursuant to Business and Professions Code 2919, “A licensed psychologist shall retain a patient's health service records for a minimum of seven years from the patient's discharge date. If the patient is a minor, the patient's health service records shall be retained for a minimum of seven years from the date the patient reaches 18 years of age.”

However, DMH-SOCP maintains all case records electronically. Therefore, the Evaluator may maintain the following DMH-SOCP record retention schedule:

Evaluation reports should be maintained by the Evaluator for a minimum of 5-7 years.

All testing data and/or Evaluator interview notes should be maintained for 5-7 years.

Case records provided by DMH-SOCP (documents from BPH, CDCR, criminal records, rap sheets, police reports, etc) should be maintained by the Evaluator for a minimum of 5-7 years and then disposed of in a manner consistent with the Health Insurance Portability and Accountability Act (HIPPA) and Department of Justice polices that pertain to the destruction of confidential materials.

THE FOLLOWING SECTIONS ARE A SYNOPSIS OF THE LEGAL REQUIREMENTS AND SUGGESTED EVALUATION APPROACHES

SEX OFFENDER COMMITMENT PROGRAM
SUGGESTED CLINICAL EVALUATION PROTOCOL
(Synopsis)

I. IDENTIFYING INFORMATION

II. FINDINGS (WIC 6600 criteria)

A. Has the inmate* been convicted of a sexually violent criminal offense specified in WIC 6600 against ***one*** or more victims? (Yes/No)

B. Does the inmate* have a diagnosed mental disorder that predisposes the person to the commission of criminal sexual acts? (Yes/No)

C. Is the inmate* likely to engage in sexually violent predatory criminal behavior as a result of his/her diagnosed mental disorder without appropriate treatment and custody? (Yes/No)

III. CONCLUSION

"Based on the above information, in my opinion the inmate* meets/does not meet the criteria as a sexually violent predator as described in Section 6600 (a) of the Welfare and Institutions Code."

* When the person being evaluated is at the State Hospital, he/she is referred to as "individual."

SEX OFFENDER COMMITMENT PROGRAM
SUGGESTED CLINICAL EVALUATION PROTOCOL
(Annotated)

I. IDENTIFYING DATA

a. Name (Last, First, Middle)
b. Date of Birth
c. CDCR Number (California Department of Corrections and Rehabilitation)
d. CII Number
e. Facility
f. EPRD (Earliest Possible Release Date)
g. CDD (Controlling Discharge Date) – If available
h. County of Commitment
i. Interview Date
j. Date Typed
k. Outcome: Positive/Negative
l. Evaluator Name, Address, Telephone Number, Fax Number

Include a short narrative discussion of the circumstances pertaining to the evaluation. This should include a brief description of the location and length of the clinical interview, documentation on the discussion of confidentiality and mandatory reporting and notification of evaluation as a sexually violent predator. Document if the inmate declined to be interviewed and include the limitations of a record review only evaluation. The following is an example from an evaluation:

> Mr. Doe was interviewed at Avenal State Prison by Dr. Evaluator on June 7, 2000, in a facility conference room for two hours. Mr. Doe was informed of the nature and purpose of the interview that was to determine whether he qualifies as a Sexually Violent Predator (SVP) under the Welfare and Institutions Code (WIC) Section 6600. Issues of confidentiality and mandated reporting were explained to the inmate. He read aloud and signed a *Notification of Evaluation as a Sexually Violent Predator Form*, which provides information about the commitment procedure. After answering questions posed by the inmate about the SVP Act, Mr. Doe agreed to participate in a clinical interview pursuant to WIC 6600 and signed the notification form accordingly.

SOURCES OF INFORMATION

List all documents you read and relied upon to form your clinical opinion. Include the date and case number of each document for clarification.

EVALUATION PROCEDURES

List procedures, actuarial instruments and any psychological tests administered.

II. FINDINGS (WIC 6600 Criteria)

A. Has the inmate been convicted of a sexually violent criminal offense specified in WIC 6600 against one or more victims? (Yes/No)

Always cite the source of your information regarding the offense and then list each arrest and conviction for the relevant PC violations that make a subject eligible for referral under WIC 6600. An example from a report illustrates this documentation.

> On October 2, 1994, the inmate was charged with PC 288(a) (Count 1) and PC 288(a)(c) (Count 2) as noted in the San Francisco County Criminal Complaint, Case No. 1234. The San Francisco County Abstract of Judgment-Prison Commitment, Case No. 1234, indicated that the inmate was convicted by a plea of guilty to PC 288(a) (Count 1) on April 12, 1995, and sentenced to four years in prison.

List dates and provide narrative descriptions of the crimes involved. Descriptions of the crimes are contained in Arrest Reports, Probation Officer's Reports and Preliminary Hearing Transcripts. If you have inadequate information describing the crimes, contact the DMH-SOCP Case Manager who is responsible for the case and request additional records.

A thorough description of the sexually violent offenses listed in Criterion A is necessary for several reasons. First, you will need to have an accurate account of the circumstances of the offense for court testimony. Second, this is often the only way one can untangle the complex circumstances that often arise, especially where multiple victims are involved. Use first names and last initial to identify the victims, victims' family members and witnesses. Never use victims', victims' family members or witnesses' full names in the evaluation report

For each qualifying victim indicate whether force, violence, duress, menace or fear of immediate and unlawful bodily injury on the victim or another person was involved. Evaluators sometimes assume that since they have already described the crime in detail that a summary statement indicating that force and violence was involved in the offense is adequate. This is not the case. The Evaluator needs to quote facts of the case and specific behaviors which indicate that force, violence, duress, menace or fear of immediate and unlawful bodily injury on the victim or another person have occurred **for each qualifying victim.**

A prior MDSO finding is considered an SVP qualifying conviction, regardless of what offense led to the MDSO. It is not necessary to find that the underlying offense was committed by force, violence, duress, menace or fear of immediate and unlawful bodily injury on the victims or another person. The MDSO determination is sufficient to meet the SVP conviction requirement. Documentation is still needed that there was at least one victim.

A summary statement should be made to address whether or not the conditions of Criterion "A" are met.

B. Does the inmate have a diagnosed mental disorder that predisposes the person to the commission of criminal sexual acts? (Yes/No)

According to this statute, the continuing danger posed by these inmates and the continuing basis for their judicial commitment is their currently diagnosed mental disorder which predisposes them to engage in sexually violent criminal behavior.

“Diagnosed mental disorder” is defined in WIC 6600 as “including 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.”

While the definition of a “diagnosed mental disorder” is statutorily defined, clinicians utilize the diagnostic categories in the Diagnostic and Statistical Manual of Mental Disorders-Fourth Edition-Text Revision (DSM-IV-TR) to describe the diagnosed mental disorder. Since V Codes are not contained in the sixteen major diagnostic categories in the DSM-IV-TR and only represent conditions that may be a focus of clinical attention or treatment, the use of V Codes for diagnostic purposes in SVP evaluations is inappropriate (see p. 731 in DSM-IV-TR).

The DSM-IV-TR contains many classifications of mental disorders; however, the WIC 6600 statutory definition of a mental disorder includes only those conditions that predispose the person to the commission of criminal sexual acts. Paraphilias, antisocial personality disorder and substance abuse or dependence are common diagnoses associated with criminal sexual acts. There may also be other conditions that are relevant to the issue of a “predisposition to the commission of criminal sexual acts” such as, but not limited to: mood, psychotic or personality disorders. These disorders should be discussed in terms of their nexus to the commission of deviant sexual acts. In some cases, there are multiple diagnoses present that together affect the individual’s emotional and volitional capacity. Alternatively, the individual may suffer from other psychiatric conditions that the examiner believes are not related to the commission of criminal sexual acts. These disorders can be discussed in terms of their clinical presentation but distinguished from those that comprise “diagnosed mental disorders” according to WIC 6600.

The diagnosed mental disorder offered should be based on psychiatric history, the mental status examination, psychological testing and if conducted, current findings from the clinical interview. If a clinical interview is not conducted, a diagnostic impression can be offered if adequate records are available to confirm a diagnostic impression. While an evaluation completed using a record review alone and based on adequate records is both clinically and ethically appropriate when an interview is not conducted, limitations of a record review only should be clearly stated in the clinical evaluation.

Kansas v. Crane (2001) identified that a qualifying diagnosed mental disorder should show proof of "serious difficulty in controlling behavior." Prior to *Kansas v. Crane* Evaluators were required to demonstrate that the person's emotions and volition were so affected that they were predisposed to the commission of criminal sexual acts in a degree constituting the person a menace to the health and safety of others. The *Crane* decision now requires that Evaluators must show that the offender has serious difficulty in controlling his or her behavior that causes them to be predisposed to the commission of criminal sexual acts in a degree constituting the person a menace to the health and safety of others. In evaluating the offender's volition consider behaviors such as poor institutional behavior, reoffending after treatment, impulsivity or reoffending quickly when released as indices of volitional difficulty. An example of this discussion is as follows:

> Mr. Doe has serious difficulty controlling his volitional capacity in that his drive to engage in coercive sexual behavior overcame obvious barriers such as his victim's protests and a history of being detected and incarcerated for such behavior in the past. Furthermore, Mr. Doe's condition affects his emotional capacity in that he is less likely to appropriately respond to the fear, protests, and resistance of his victims.

The following areas should be addressed in an SVP evaluation and discussed in Criterion "B":

- Brief developmental history
- Psychiatric history
- Substance abuse history
- Juvenile and adult criminal history
- Parole history
- Institutional history
- Psychosexual history
- Relationship history
- Mental Status Examination, behavioral observations and attitudes of the inmate
- Psychiatric diagnosis in **list format on AXIS I and AXIS II**
- Explanation of psychiatric diagnosis offered
- Justification for the psychiatric diagnosis

For inmates with a documented psychiatric history in CDCR, a summarized chronological account of pertinent evaluations and treatment should be documented along with the source of the information and the date.

A Mental Status Examination should be performed during the clinical interview and the Evaluator should note behavioral observations and current attitude of the inmate. This clinical information along with historical data and psychological testing, if administered, will form the basis for the diagnosed mental disorder on AXES I and II.

The importance of a thorough sexual history is obvious for SVP evaluations. Since the level of deviant sexual preference is linked to the paraphilia diagnosis and contributes to offender risk, the evaluation should contain a thorough description of the offender's paraphiliac symptoms and behavior. The sexual history can afford the examiner an opportunity to determine the individual's level of deviant sexual preference, the presence of multiple paraphilias, the onset and chronicity of deviant sexual preoccupation, paraphiliac symptoms and behavior, precocious sexuality and other areas relevant to the development of sexual orientation. It should be noted, however, that offender interview information in the SVP process may be limited by social desirability factors (e.g. desire to appear non-deviant), as well as the non-confidential nature of the evaluation and the purpose of the process (i.e. potential placement in a locked psychiatric facility).

The obtained sexual history should therefore be considered in light of demonstrated sexual behaviors as noted in the records. If an offender engages in the same sexually deviant behavior repeatedly, then an interest or preference is easily established. In instances where the activity has occurred only once, it is more difficult to determine if it is really a sexual preference, and hence a paraphilia. Basically, the longer the pattern of sexually deviant behavior the stronger the preference. Data indicates that an identified deviant sexual preference is associated with a higher risk for sexual reoffense. The Hanson and Bussiere (1998) meta-analysis identified variables associated with sexual deviance that were significant correlates with sexual recidivism. The strongest predictor variable in this study is sexual arousal towards children as measured by phallometric assessment.

Psychological testing

The use of psychological tests in SVP evaluations is left to the discretion of the clinical Evaluator, but should be selected appropriately to answer the clinical referral questions. While some Evaluators prefer to give a more extensive battery of tests, others may find that a thorough clinical interview and record review provides adequate basis to determine which offenders are at risk for future sexual reoffense by reason of their diagnosed mental disorder.

While most personality tests provide a better understanding of the inmate's personality functioning, personality disorders and presence of mood or psychotic disorders they do not generally provide direct information to assist the clinician in differentiating which offenders will sexually reoffend. The clinician is cautioned that only the PCL-R has shown modest predictive accuracy in identifying sexual recidivists (Rice, Harris, Quinsey, 1990; Quinsey, Rice & Harris, 1995).

C. Is the inmate likely to engage in sexually violent predatory criminal behavior as a result of his or her diagnosed mental disorder without appropriate treatment and custody? (Yes/No)

Criterion "C" requires a determination of the inmate's likelihood to engage in future sexually violent predatory behavior based upon the presence of a diagnosed mental disorder. While Evaluators may organize their risk assessment in their own unique way, it is strongly recommended that they rely on the guidelines of this protocol and include the following elements of risk assessment.

As new developments regarding risk assessment become known, SOCP will notify evaluators. New developments in risk assessment will be addressed during periodic training sessions.

Approaches to Risk Assessment

A frequently cited finding in sexual recidivism literature is that unguided clinical judgments are significantly less accurate than clinical judgments that are based upon empirically derived risk factors and actuarial risk scales. Actuarial instruments used to evaluate sex offender recidivism combine empirically derived variables via explicit rules that translate the ratings on the individual variables into an overall risk percentage or level. The use of actuarial instruments for sex offender recidivism is the first step in evaluating sex offender risk.

To date, there are no pure actuarial rating scales that incorporate all risk factors for sexual re-offense. Additionally, each offender may present case specific factors that affect his risk for sexual reoffense. Consequently, the SVP evaluation is more accurately termed an adjusted actuarial approach. The adjusted actuarial approach begins by identifying an initial risk classification (e.g., low, medium, or high), which is derived from the actuarial risk scale being used. Then, expert Evaluators may choose to adjust the actuarial-derived estimate of risk after considering other factors that are associated with sexual recidivism but were not included in the actuarial measure (Quinsey, Lalumiere, Rice, & Harris, 1995; Hanson, 1998).

Actuarial Risk Assessment

Since January 2000, the Static-99 risk assessment instrument has been used by DMH in sex offender risk assessments. The Static-99 combined items from the Rapid Risk Assessment for Sexual Offense Recidivism (RRASOR: Hanson, 1997) and an English actuarial instrument, the Structured Anchored Clinical Judgment (SACJ-Min: Grubin, 1998). Because the combination of items from these two rating scales showed improved predictive accuracy over either scale alone, the Static-99 is recommended for use by Evaluators in California's DMH-SOCP. In addition, the Static-99 is currently the risk assessment instrument with the most complete scoring guidelines and is the instrument with the most empirical support to date. The Static-99 has consistently been identified as a moderate predictor of sexual offense recidivism (Hanson & Thornton, 2000; Harris, Phenix, Hanson & Thornton 2003).

In conjunction with the Static-99, Evaluators may choose to use additional validated actuarial instruments. There are several other validated risk assessment instruments for sexual recidivism that are appropriate for use in sexual offender risk assessments such as the Sex Offender Risk Appraisal Guide (SORAG) (Quinsey, Harris, Rice & Cormier, 1998), the Minnesota Sex Offender Screening Tool-Revised (MnSOST-R), (Epperson, Kaul & Hesselton, 1999) and the RRASOR. The predictive accuracy of these instruments has been measured in the moderate range on repeated cross-validations.

Adjusting an Actuarial Risk Estimate

Because an adjusted actuarial approach for risk assessment of sex offenders is being used, it is sometimes appropriate to adjust the risk estimate derived from the actuarial instrument either up or down, depending upon the presence or absence of risk factors for sexual recidivism. When adjusting actuarial risk estimates, Evaluators should consider whether there are external factors that can reasonably be considered to increase or decrease the risk estimate provided by the actuarial instrument(s). External factors are those that are related to sexual offense recidivism but are not fully accounted for within the actuarial scale. Evaluators should exercise caution in utilizing risk factors that may be highly intercorrelated with each other.

A review of additional factors that support risk, as well as those which mitigate risk, offers a balanced risk assessment and goes toward the basic purpose of the SVP evaluation as a neutral fact-finding process. The basic question is whether the number of external risk factors are more or less than would be expected for an offender with a given actuarial score. Before adjusting an actuarial risk estimate up or down, the Evaluator should consider how many external risk factors would be expected based on the individual's risk classification. Some external risk factors would always be expected and their presence does not, in itself, justify an adjustment. Adjustments are most easily justified when there are many variables that are inconsistent with the actuarial estimate, a few prominent variables are present, or when there are pertinent individual risk factors.

Static Risk Factors to Consider Outside the Static-99

A static risk factor for sexual reoffense refers to a variable associated with sexual reoffense recidivism that usually does not change over time. The following are some static risk factors that are not scored in entirety on the Static-99, but have been shown to be significantly related, through research, to sexual recidivism. It should be noted that those variables most likely to have a high degree of intercorrelation have been grouped together in clusters. The Evaluator should consider whether the following empirically derived risk factors are present or absent and consider adjusting the actuarial risk estimate accordingly. Because the Static-99 considers several variables that are associated with sexual recidivism, the Evaluator should increase or decrease the risk estimate of the actuarial instrument cautiously. In most cases, little or no adjustment is necessary. Adjustments to the risk estimate are most easily justified when the extraneous variables reviewed are unusually high or low in comparison to the Static-99 estimate of risk. The static variables recommended for consideration were selected from the Hanson and Bussiere's review of recidivism risk predictors (1998) article, "Predicting Relapse: A meta-analysis of sexual offender recidivism studies" as well as from a recent meta-analysis by Hanson and Morton (2004) and Hanson and Thornton (2003). This list was developed in consultation with R. Karl Hanson, Ph.D., co-author of the Static-99.

- Sexual Deviance Variables
  - Sexual offenses against two or more children under the age of 12, with at least one unrelated child victim (male or female)
  - Sexual offenses as a juvenile (under age 18) and an adult

- Treatment
  - Dropping out of most recent attempt at sex offender specific treatment

- General Criminality/Lifestyle Instability
  - Childhood maladjustment as defined by two or more of the following instances, separated by more than 12 months – History of grade failure, psychiatric treatment, group home placement, or running away from home
  - Criteria for conduct disorder met
  - Psychopathy (Hare Psychopathy Checklist-Revised (PCL-R of 30 or above)
  - Violation of conditional release or a new offense while on community supervision
  - Frequently unemployed as defined by the inmate being employed less than 50 percent of the last 12 months prior to incarceration

Dynamic Risk Factors

In addition to the static risk factors described above, it is also important to review relevant dynamic risk factors when assessing one's risk for sexual reoffense. The Static-99 does not contain dynamic risk factors so it is necessary to examine them outside the actuarial instrument. A dynamic risk factor refers to something that has the capacity to change over time, for example with treatment. Dynamic risk factors may be "stable" or "acute." Stable dynamic factors are amenable to change but, without intervention, tend to remain relatively constant such as one's sexual deviance or cooperation with supervision. Acute dynamic risk factors comprise relatively immediate precursors to reoffense and can be considered factors that can quickly change in the month prior to sexual reoffense, e.g., intoxication.

The Stable-2007 (Hanson & Harris, 2007) is an empirically based assessment developed to evaluate dynamic risk factors for sexual reoffense. The operational definitions for the risk factors below were obtained from the Stable-2007. It should be noted that the listed Stable-2007 items include those that have empirical support. The Hanson and Morton meta-analysis (2004) as well as the recent Dynamic Supervision Project (Hanson, Harris, Scott & Helmus, 2007-05) provide empirical support for a number of the following factors. Additionally, Cluster B personality disorders have been added to the list of stable risk factors that are associated with risk for sexual reoffense. These items and their operational definitions are provided below. Also, in order to assess these items thoroughly, it is recommended Evaluators review the Stable-2007 scoring manual by Hanson and Harris (2003) and consider the information provided by Andrew Harris, Ph.D., in his January 2008 training on the use of the dynamic risk factors in an institutional setting (i.e., "in-house").

It is important to note that the Stable-2007 was validated on a community sample and scored by parole officers who evaluated the offenders across time. This differs from the sample of inmates in CDCR who are in a confined setting. Therefore, the Stable 2007 factors may be less generalizable to this sample. Furthermore, the Stable-2007 has yet to be cross-validated. Due to these limitations it is recommended that you do not score the instrument to obtain specific risk estimates. Rather, consider the instrument as an empirically guided risk assessment of dynamic risk factors. Research clearly indicates consideration of these factors add incremental validity over the Static-99. However, when offenders have been institutionalized for many years, Evaluators only have institutional behavior upon which to base the assessment. Without some plausible evidence about their behavior in less restrictive settings it is difficult to determine the effects of incarceration from "subtle" change. Therefore, for offenders who have been incarcerated continuously over lengthy periods of time the dynamic factors will have less relevance.

Below is a list of dynamic risk factors recommended for review at this time. The individual risk factors are organized into clusters. For example, the "Intimacy Deficits" cluster includes five main subcategories: a) Capacity for relationship stability, b) Emotional identification with children, c) Hostility toward women d) General social isolation/rejection/loneliness and, e) Lack of concern for others. It is not necessary for an offender to have problems in all subcategories for the cluster to be relevant to the risk assessment. The basic question is whether the offender shows more (or less) problems than would be expected based upon the other information already considered in the evaluation.

Consider information from multiple data sources when possible (e.g., criminal history, prior psychological reports, DOC chronological notes, etc.) when assessing dynamic risk factors. The interview questions from the Stable-2007 Master Coding Guide provide a structured approach for obtaining this information during the interview (one data source).

Significant Social Influences: The nature of an individual's social network is one of the most well established predictors of criminal behavior. This area is evaluated by examining the social influences and support of the individual and assessing whether those people are positive or negative influences in regards to supporting pro-social or anti-social behaviors. Negative influences include family, friends, and acquaintances who are criminally involved, have past sexual offenses, gang involved, have substance problems, or who minimize or deny the offender's sex crimes. Positive influences are people who promote pro-social values, encourage self control and provide support to the offender. Things to consider include whether the individual provides material support and if the offender sought advice would the individual be likely give pro-social or anti-social advice. Consider whether the individual undermines the offender's behavioral controls.

When assessing offenders currently in confinement consider the offender's social network in the facility, visitation and telephone contacts, and who the offender has identified as social supports to rely on upon release.

- **Intimacy Deficits:** The basic construct being assessed is whether the offender has the emotional capability to develop and maintain healthy, intimate relationships with an appropriate adult partner. This section has five parts, each representing a potential problem area for sexual offenders.

  - Capacity for relationship stability: Individuals without intimacy deficits will have (or have had) a stable romantic relationship with an appropriate partner. Higher risk is associated with relationships that may be short-term, conflicted or problematic, marked by infidelity, or in which the offender has never lived with the partner. Highest risk is associated with never having had any intimate relationships.

When assessing offenders currently in confinement, consider whether the offender has any intimate supports that remain active during the offender's incarceration. Consider the extent to which this partner communicates with the offender through telephone, mail or visiting. Examine the quality of the relationship both if it existed previously to incarceration and currently.

- Emotional identification with children: Child molesters may be attracted to children based on feeling emotionally close or intimate with them. They may feel that children are their peers or equals and may feel that they can relate to children more easily than to adults. When the offender has no obvious identification with children they pose low risk on this factor. Higher risk is associated with adults who have immature relationships or see children as having special qualities of understanding or communication that adults do not. Highest risk is associated with offenders who obviously feel more comfortable with children than adults and have children as "friends." Only consider this factor for offenders with one or more child victims' aged 13 or less.

- When assessing offenders currently in confinement, consider behaviors such as viewing child oriented media (e.g., pornography, books, television shows, pictures of children), leisure activities (e.g., contributing to child oriented charities, making toys) and visits from people with children.

  Hostility toward women: Both rapists and child molesters may have deficits in their capacity to form warm, constructive relationships with women. These deficits can be expressed as sexist attitudes or an inability to consider women as people worthy of trust and respect. Low risk is with associated with the offender who is comfortable with women and has females as friends, or if he does not have women as friends and there are no specific conflicts with women. Higher risk is associated with the offender who has uneasy or conflicting interactions with more than one woman across different settings. Highest risk is associated with the offender who is frequently in conflict with women, feels women are only good for sex and dismisses their opinion.

  When assessing offenders currently in confinement consider their behavior towards women as compared to men. For example, does the offender engage in continual conflict with females within his current setting, does the offender make derogatory comments toward females (e.g., officers, medical personnel, supervisors) or display more negative behavior toward female staff in comparison to male staff.

General social isolation/rejection/loneliness: The basic attribute being assessed is the offender's capacity to make friends and feel close to others (secure adult attachments).

Low risk is associated with offenders who are generally well integrated with people inside or outside of confinement. Higher risk is associated with offenders with weak or superficial connections with others, no close relationships, or see themselves as a "loner." Highest risk is associated with the offender who typically feels lonely or rejected and during their confinement and are considered socially inept.

- Lack of concern for others: This area concerns offenders who have little consideration for the feelings of others and act according to their own self-interest. Low risk related to this factor is associated with individuals who have a normal range of emotional expression or those who may be callous/indifferent to some people (e.g., adversaries) in specific circumstances, but are generally emotionally responsive and caring. Risk is increased when the individual typically shows little remorse or concern for others and their interactions are utilitarian with little attachment to others. Individuals at high risk on this factor do not have an "in group" to whom they feel connected.

  When assessing offenders currently in confinement, consider whether the offender is predatory toward weaker inmates (e.g., mentally or physically), cons or steals from other inmates, or is ruthless, indifferent or quickly aggressive toward others. Most inmates have inmate friends or "associates" to whom they are loyal. If they have no discernable connection to other inmates or staff then they are higher risk.

- **General self-regulation:** This construct concerns the offender's ability to self-monitor and inhibit antisocial thoughts and behaviors. Offenders often have unstable lifestyles characterized by behavioral impulsivity, and frequent or poorly thought out changes in work, residences and relationships. The capacity to self-regulate is important for offenders wishing to change their behavior. The three components of general self-regulation include: 1) impulsive acts, 2) poor cognitive problem solving, and 3) negative emotionality/hostility. Most of the items in this section can be evaluated based on examining the offenders' behavior in the community (e.g., while on community supervision) as well as within the institution. Again, the interview questions in the Stable-2007 Master Coding Guide can be useful for eliciting information about the offender's attitudes toward supervision, their self management strategies and the extent of their self-regulation problems in other settings.

- Impulsivity refers to the extent the offender is easily bored, seeks thrills and has little regard for personal safety or the safety of others in multiple settings. Low risk is associated with offenders who have no difficulties with impulsivity or if the impulsivity is limited to sexual misbehavior. Higher risk is associated with occasional impulsive behavior or repeated high risk behavior in only one context (e.g., frequently gambles, changes jobs frequently). Highest risk is associated with frequent impulsive behavior in more than one setting beyond just sexual offending.

  When assessing offenders currently in confinement consider behaviors such as frequent fights, accepting bets and dares, abruptly terminating conversations or therapy programs and/or receiving many rules violations.

- Poor cognitive problem solving is characterized by the offender's failure to identify the problems they have, proposing unrealistic solutions (or none at all), having a lack of long-term plans and failure to recognize the consequences of their actions. Low risk is associated with offenders who pose realistic solutions to life problems. Risk increases as the offender frequently makes poor decisions, fails to correctly identify problems and does not recognize the negative consequences of their behavior.

  When assessing offenders currently in confinement consider the offender's ability to manage incarceration and overcome feelings of hopelessness (e.g., they are helpless to do anything), over-reliance on physical or verbal aggression for resolving difficulties and the absence of positive steps toward release (such as treatment and developing realistic vocational plans etc.)

- Negative emotionality is a tendency towards feeling hostile, victimized, resentful and vulnerable to emotional collapse when under stress. The offender may engage in hostility, aggression, suspicion, rumination, victim blaming, entitlement, emotional collapse when stressed and explosive expressions of emotion. Low risk is associated with emotional responses that are congruent with the situation. Higher risk is associated with an offender who has a degree of hostility or resentment but attempts to cope and work through the emotions, often successfully. Highest risk is associated with the offender who routinely ruminates on difficulties, easily gives up, often feels persecuted and acts out behaviorally.

  When assessing offenders currently in confinement consider the offender who believes everyone is out to get him/her, files endless grievances, whose chronological notes reflect constant complaints and who may be aggressive and emotionally explosive.

- **Sexual self-regulation**: This need area concerns poorly controlled expressions of sexual impulses. Three aspects of sexual disregulation should be considered:

  - Sex drive/Preoccupation: This area focuses on recurrent sexual thoughts and behaviors that are not directed to a current romantic partner. Examples of sexual pre-occupations include the following:
    - Masturbation most days for 2+ months, or 15+ times a month – Evaluator should consider offender's age in assessing this factor
    - Daily masturbation for a period of three months or more
    - Regular use of prostitutes, strip bars, massage parlors, phone-sex
    - Sex-oriented internet use, such as sexually explicit sites, chat rooms
    - Pornography collection
    - Cruising for impersonal sex
    - Excessive sexual content in typical conversations
    - Pre-occupations with own/other's sex crimes
    - Self-report of difficulty controlling sexual impulses
    - Any disturbing sexual thoughts
    - A history of multiple sexual partners (e.g., 30 or more)

    Higher risk is associated with some evidence of the above factors such as impersonal sex and regular use of pornography. Risk increases as the number or severity of factors above increases.

    When assessing offenders currently in confinement consider sexual activity with multiple partners, homosexual encounters if the offender is heterosexual, or using sex as a tool (e.g., debt repayment or punishment). An offender may be willing to disclose that this is an area of difficulty for him or her. However, also consider the offender who reports that they never have sexual thoughts and consider sexual thoughts sinful as a high risk individual.

  - Sex as coping: When faced with life stressors or negative emotions, some sex offenders start thinking sexual thoughts (normal or deviant) or engage in sexual behavior in efforts to manage their emotions. This coping behavior will be seen in multiple life domains (e.g., in response to work stress, interpersonal stress). Increased risk is associated with occasional lapse into sexual fantasy when stressed, but it is not the typical reaction. Highest risk is associated with offenders for whom negative emotions or life events typically invoke sexual thoughts or behaviors.

When assessing offenders currently in confinement direct inquiry into when the offender engages in sexual fantasy or behaviors (e.g., masturbation, sexual activity with other inmates) to adequately gauge their level of sexual coping. Determine if this is secondary to conflict or estrangement from family, conflict with other inmates or work related difficulties.

- Deviant sexual interests: This factor is present when the offender is sexually aroused by or sexually interested in people, objects or activities that are illegal, inappropriate or highly unusual. These interests could include, but are not limited to, sexual interest in children, non-consenting adults, voyeurism, exhibitionism, cross-dressing and fetishism. Domains to consider include number of sex offense victims, number of deviant victims (prepubescent body type), self report of deviant interest, and results of phallometric testing (i.e., PPG).

  Risk increases as the number of victims increases, number of deviant preference victims (prepubescent body type) increases, deviant sexual interests become more apparent, or where there is phallometric assessment indicating a clearer sexual preference toward deviance.

  When assessing offenders within a confined setting consider for example, media preferences (possibly used for masturbatory fantasy), illegal sexual acts (e.g., peeping in the shower, exposing, forcing sex on others) and obtaining fetish materials (e.g., child's underwear).

- **Cooperation with supervision:** This area concerns the offender's ability to self-monitor and comply with the rules of community and institutional supervision. When assessing this variable, consider whether or not an offender believes he/she is at risk for sexual reoffense. If not, then his/her ability to cooperate with conditions of community supervision would be compromised. Additionally, offenders with general criminal lifestyles would be expected to have more supervision problems. Offenders may be disengaged in supervision and exhibit behaviors that are manipulative, deceitful and counterproductive to their treatment plan. Higher risk for this factor is associated with offenders who miss scheduled appointments, show up late or frequently reschedule. Poor prognostic indicators are breaking the conditions of community supervision or conditional release and placing oneself in high-risk situations. In general, this variable is related to whether one feels an offender is working with or against a supervisor or more generally a treatment program. When offenders see themselves as no risk then they are more likely to place themselves in high risk situations that may increase their chance of violating conditions of community supervision.

When assessing offenders currently within confinement consider institutional violations (e.g., number and severity of infractions), poor compliance with rules and structure of the institution, unwillingness to engage in treatment or refusal to discuss crimes. Important information to also consider includes efforts at programming, strong employment ratings, general adherence to facility rules and cooperative attitude.

- **Diagnosed Cluster B Personality Disorder:** Cluster B personality disorders have been associated with increased risk for sexual offense recidivism. Although other personality clusters may aggravate risk as well, there is less empirical support given limited numbers of subjects. The severity of the personality disorder will affect the impact of this variable.

The degree to which these variables are consistently present or absent affects the degree to which an offender's overall risk estimate is considered higher, lower, or consistent with the risk estimate provided by the Static-99. Evaluators should look for converging evidence regarding an offender's estimate of risk. For example, if the offender is considered to be a low risk for sexual reoffense per the Static-99 and most of the extraneous variables reviewed are present, then the Evaluator may conclude the overall level of risk is higher than the Static-99 estimate. Likewise, if the actuarial estimate is high and most extraneous risk factors are absent, then the Evaluator may opine that the overall level of risk is lower than the Static-99 estimate. However, in most cases these variables are present in a pattern that is consistent with the Static-99 estimate.

Protective Factors

The variables below, if present, have been associated with reduced risk for sexual reoffense and should be considered in addition to the variables described above.

- **Have been in community sex offense free for significant period of time**

  If an offender has been in the community for a significant period of time without committing a new sexual or violent offense and they have not been returned to confinement for a significant period of time (e.g. several months), then their estimate of risk may be mitigated in accordance with the table on page 60 of the Static-99 Coding Rules (Harris, Phenix, Hanson, and Thornton 2003). Because most evaluations are completed on individuals who have been incarcerated for a significant period of time, this variable rarely applies. Also, if the offender was in the community for a significant period of time and was then returned to confinement for a significant period of time, their credit for being in the community offense free is voided. Most often this variable would apply to an individual who was successful on parole for at least two years and was then returned to confinement for a minor violation.

- **Less than 15 years left in offender's time and risk due to age or poor health**

  In particular, it is important to consider how age and health may impact an individual's opportunity, ability, or motivation to reoffend sexually. Research indicates that older offenders reoffend at lower rates than younger offenders (Hanson, 2002). Therefore, it is important to assess the impact of age, poor health and limited mobility on a case by case basis and in the context of the individual's offense history.

- **Successfully completed cognitive-behavioral treatment program for sexual offenders**

  Research has shown that offenders who complete appropriate sexual offender treatment are at lower risk to reoffend than offenders who do not complete treatment (Hanson, et al. 2002). Not all treatment programs are effective in reducing recidivism. Cognitive-behavioral treatment programs have the strongest research support. When considering whether treatment completion should mitigate risk, consider the extent to which the program addressed the offender's most serious risk factors and whether the duration and intensity of treatment was sufficiently long that changes on these factors would be expected.

Case Specific Risk Factors

Case specific risk factors may also increase or decrease the risk of reoffense. For example, self-admission of urge to re-offend, multiple detected offenses not reflected in arrests or convictions, neurological disorders contributing to increased impulsivity and an extreme history of deviant sexual preference such as sexual sadism are likely to increase risk estimates. Factors such as health concerns, advanced age, sex offender treatment and level of community supervision may decrease an individual's risk in some cases.

Procedure for Conducting an Adjusted Actuarial Risk Assessment for the purpose of an SVP evaluation

Although the determination of how to complete a sex offender risk assessment is ultimately the responsibility of each Evaluator, the following guidelines may assist the Evaluator in completing an actuarial-adjusted risk assessment for the SVP.

1. Begin by summarizing the contribution of the diagnosed mental disorder(s) to sexual recidivism risk.

2. Determine an approximate base rate for sexual reoffense:

   Calculate the individual's score on the Static-99. Consider that these recidivism base rate estimates are based on data of convicted sex offenders. Because

most sex offenses are unreported, these base rates underestimate the true risk of a sex offender. Also, the risk estimate on the Static-99 spans 15 years and there is a slow but steady increase in sexual recidivism from 15 years to 25 years after release into the community (Hanson, Scott, & Steffy, 1995; Hanson, Steffy, & Gauthier, 1993a; Prentky, Lee, Knight, & Cerce, 1997). This means that the base rate provided by the Static-99 is an underestimate of the individual's true risk (Barbaree & Marshall 1988).

3. Determine the presence or absence of empirically derived static risk factors for sexual recidivism not included in the actuarial scheme and adjust or retain the risk level as measured in the Static-99.

4. Determine the presence or absence of empirically derived dynamic risk factors not included in the actuarial scheme and adjust or retain the risk level as measured in the Static-99.

5. Identify and consider case specific risk factors and adjust or retain the risk level as measured in the Static-99.

6. Formulate your clinical conclusion and level of offender risk. Note if the Static-99 risk estimate, in your opinion, represents an accurate estimate, underestimate or overestimate of the inmate's probability of re-offense.

7. Provide a summary statement under Criterion "C" as to whether the offender is, or is not, likely to engage in sexually violent predatory criminal behavior as a result of his or her diagnosed mental disorder without appropriate treatment and custody.

"Likely" - Defined

The California Supreme Court in People v. Superior Court of Marin County (2002) 27 Cal. 4th 888 (Patrick Ghilotti, Real Party in Interest) ruled on the meaning of likely within the context of evaluation for the SVP Act, that is, in the question "Is the inmate ***likely*** to engage in sexually violent predatory criminal behavior as a result of his or her diagnosed mental disorder without appropriate treatment and custody?"

The court defined **"likely"** as used in DMH evaluations to require "a determination that, as the result of a current mental disorder which predisposes the person to commit violent sex offenses, he or she presents a **substantial danger** – that is, **a serious and well-founded risk** – of reoffending in this way if free."

Evaluators should apply this standard to all elements of the criteria in the completion of all SVP reports. The recommended method by which one comes to this conclusion remains the guideline contained in the Evaluator Handbook and Standardized Assessment Protocol.

It is worth noting that the Court specifically stated in this decision that the standard of ”more likely than not” cannot be the basis for decision in these reports. The court stated: “If an evaluator finds such a serious and well-founded risk, but nonetheless recommends against commitment or recommitment solely because the evaluator cannot conclude the person is more likely than not to reoffend, the evaluator has applied the statute erroneously.” Evaluators should not apply a standard of “more likely than not” when making SVP report conclusions. The standard is not tied to a percentage of risk, but to a judgment, considering all evidence, that there is a substantial danger, based on a serious and well-founded risk, that the person being evaluated will engage in acts of sexual violence without appropriate treatment and custody.

Turner v. Superior Court (2003)

Turner v. Superior Court (2003) is an appellate decision that set forth a special requirement to be addressed in the evaluation in cases where the respondent has previously been found by a jury NOT to be an SVP. The *Turner* decision requires that in your evaluation you must acknowledge the prior jury finding and rely on post-parole facts to support your conclusions. The *Turner* decision offered the following statement:

> “At the very least, the prosecution’s supporting reports must contain information showing the evaluating professionals understood and accepted, for purposes of the current diagnosis, the prior jury finding as true, and then explain why despite that prior finding, the facts are sufficiently different so that the individual is now a dangerous person who is likely to reoffend within the meaning of the SVPA.”

You may find that inmate qualifies as an SVP even if a jury found him not to qualify in the past if his subsequent behavior is high risk. For example this may be ascertained from subsequent parole violations involving high risk behavior, his admissions or other facts that increase his risk subsequent to the jury finding him not to meet criteria.

Predatory Finding

It is imperative that the evaluation contains a statement that future sexually violent acts will or will not be predatory (as defined in the SVP statute). Furthermore, if the finding is that future criminal acts will be predatory, there should be a rationale based on the **“likely”** standard defined in the Ghilotti California Supreme Court Decision (2002).

Plans for Voluntary Treatment without Commitment

The offender may suggest a voluntary plan for supervision and treatment that may affect whether a person meets the SVP criteria for commitment. The California Supreme Court in *Cooley v. Superior Court of Los Angeles* (2002) 29 Cal. 4th 228 has specifically stated that Evaluators must consider the offender's amenability to voluntary treatment, as opposed to involuntary treatment in determining the risk of committing sexually violent predatory criminal acts. The Evaluator should be convinced or have a high degree of confidence that the person's expressed desire to seek supervision and treatment in the community without the SVP commitment is meaningful, sincere, and sufficiently significant. The guidance regarding consideration of voluntary treatment is taken from the California Supreme Court decision of People v. Superior Court of Marin County (2002) 27 Cal. 4th 888 (Patrick Henry Ghilotti, Real Party in Interest).

If the offender being evaluated proposes voluntary treatment in the community, the following factors should be considered to determine the extent that the voluntary plan provides sufficient reduction of risk to reoffend: (1) the availability, effectiveness, safety, and practicality of community treatment for the individual offender, (2) whether the person's mental disorder leaves him or her likely to pursue and maintain such treatment voluntarily, (3) the intended treatment effectiveness and the influence of such effectiveness on a reasonable expectation that the person will pursue it, (4) a history of pursuing and maintaining voluntary treatment, (5) progress in ongoing treatment, the person's expressed intent, if any, to seek out and submit to any necessary treatment, whatever, its effects, and (6) any other indicia bearing on the credibility and sincerity of such an expression of intent.

The Evaluator should not assume because the person will be subject to state parole conditions that any particular level of sex offender treatment will be provided or that the offender will continue sex offender treatment at the end of the parole period. Finally, the evaluation report should not recommend a course of treatment. The purpose of the report is to determine whether an individual meets the statutory SVP criteria at the time of the evaluation. The purpose of the report is not to prescribe a course of action absent a finding that the person meets SVP criteria.

Final Statement in Criteria C

The final statement in Criteria C is a clear yes or no answer as to whether the person is, or is not, likely to engage in sexually violent predatory criminal behavior as a result of his or her diagnosed mental disorder without appropriate treatment and custody. The report should not end with statements such as "there is not enough evidence to draw positive conclusions."

III. CONCLUSIONS

Finally, state your opinion regarding the inmate meeting or not meeting the three criteria pursuant to WIC 6600. For example:

> Based on the above information, it is my opinion that Mr. Doe **does or does not** meet the criteria as a sexually violent predator as described in Section 6600(a) of the Welfare and Institutions Code.

SVP COMMITMENT EXTENSION EVALUATIONS

Extension evaluations (sometimes referred to as “recommitment” evaluations) are clinical evaluations of persons who are presently civilly committed as a sexually violent predator and are most likely in custody in a state hospital. The suggested standardized assessment protocol that is described in the Clinical Evaluator Handbook and Standardized Assessment Protocol can also apply to SVP extension evaluations. However, there is supplemental information to consider that would not be necessary to consider when evaluating a person who has never been committed as a sexually violent predator. References in this supplement to an SVP means a civilly committed sexually violent predator. References to the “initial” evaluation means the evaluation of an SVP evaluation of a person who is not currently a civilly committed SVP.

EVALUATOR RESPONSIBILITY

The SVP has been committed by a superior court to the care and custody of the state hospital. Therefore, the state hospital is responsible for all medical and evaluation services rendered to an SVP. The extension evaluation has been requested by the state hospital. For this reason, the original copy of the extension evaluation is submitted to the state hospital via ITWS. Update extension reports should be submitted in the same manner.

PRIMARY DIFFERENCES FROM INITIAL EVALUATIONS

Past qualifying convictions should be noted and described, but do not require elaboration or the type of analysis that is required in an initial evaluation (e.g., descriptor of force, violence, duress, menace and fear). The elements legally qualifying the individual have been proven to be present by virtue of the person’s prior SVP commitment.

The “likely” standard, as defined in this Handbook, remains the same for persons evaluated for commitment extension.

State Hospital Treatment Consideration

Like the initial evaluation, the Evaluator’s assignment is not treatment, but to evaluate static and dynamic information about the patient against legal criteria. In so doing, the hospital treatment record should be considered. The treatment provided to an SVP at a state hospital is a multi-modal treatment program designed to assist participants in developing skills and behaviors for managing their deviant behavior and for reducing their risk of re-offending. The treatment program is structured into five phases:

Phase I

Treatment Readiness – This phase provides an educational overview of the treatment program, including knowledge of basic concepts and skills for working in groups. Requires no participation by the patient. The person is allowed to simply be present and listen to information being presented. Patients can continue in this Phase indefinitely. The patient must volunteer to enter Phase II and agree to the following criteria: he/she has committed past sexual offenses; he/she wants to reduce his risk of re-offending; he/she is willing to discuss his sexual offenses; he/she will cooperate with the required assessment procedures (PPG/Psychological Assessment Battery/Polygraph); and he/she will behave appropriately during group sessions.

Phase II

Skills Acquisition - The patient identifies significant events and thinking errors that led to past sexual offending (fundamental skills of relapse prevention). Participants also identify the consequences of sexual offending on victims of sexual abuse. At the end of this phase, participants will have completed an autobiography to help them identify situations and risks that may lead to future sexual offenses, as well as a commitment not to reoffend. In order for staff to determine that the patient is appropriate for movement to Phase III, the patient must have met the following criteria: developed a comprehensive list of his high-risk factors and cognitive distortions based on a complete review of his/her sexually violent criminal history; identified a variety of realistic coping responses for his/her high-risks and corrections for his/his cognitive distortions; completed Phase II assessments and specialty groups.

Phase III

Skills Application - Patients participate in a more advanced level of identifying thinking errors that contributed to their sexual crimes, improve their ability to recognize the consequences of sexual abuse on victims, and use a journal to become more aware of other factors that could lead to reoffense. In order to move to Phase IV, the patient must have met the following criteria: he/she is able to identify high risks in day-to-day life and utilize appropriate and effective coping responses; demonstrated that he/she has corrected his/her past cognitive distortions, has the ability to identify and correct new cognitive distortions as they arise, demonstrated specific ability to manage his/her deviant sexual arousal. The team is also confirming that the patient is now ready to develop an individualized community safety plan.

Phase IV

Discharge Readiness/Release Planning - Patients continue to use a journal to identify and cope with current thoughts, feelings and behaviors that represent high risk. They anticipate situations they will face in the community and identify how they will cope with these new situations. They develop a community safety plan in cooperation with the Conditional Release Program (CONREP) and sign Terms and Conditions for community supervision. When the Wellness and Recovery Team believes that a patient is ready for transition to Phase V, it is determined that the patient is not likely to commit acts of predatory sexual violence while under supervision and treatment in the community.

Phase V

Outpatient - The patient is discharged from the hospital into the care of CONREP. The patient's treatment, supervision, and monitoring proceeds according to the Terms and Conditions established in Phase IV. The patient has the right to return to court annually to determine the need for continued placement in CONREP.

The SVP extension evaluation should not provide an opinion as to whether a state hospital patient is in the correct phase of Relapse Prevention or other treatment. The purpose of the evaluation is to provide an opinion as to whether the person presently has a mental disorder that makes it likely that he/she will commit predatory sexually violent acts in the future.

Also, it is important to underscore that the SVP patient has not completed the treatment program until all five phases of the Relapse Prevention program are completed. Since the person has been committed as an SVP by a court for "appropriate treatment" (WIC 6604), the Department believes that a person must finish the program, including the completion of a period in outpatient supervision. Only under unusual circumstances would a patient being evaluated for SVP commitment extension be deemed unlikely to commit future sexually violent acts as a result of a mental disorder, if all five phases of treatment have not been completed. If this is the case, the Evaluator is encouraged to consult with the Department on their conclusion.

ACCESS TO RECORDS

Obtaining Documents to Review

The documentation to be reviewed by the Evaluator in an extension is contained in the state hospital record and at the California Men's Colony (CMC) in the former inmate's central file. These include CDCR information and treatment information for the period he or she has been a patient in the state hospital. To gain access to the hospital record or prison records, we recommend the following:

1. Contact the record review desk at Atascadero (805) 468-2679, or at Coalinga (559) 935-7258, to arrange a date and time to review their hospital records.

2. Contact the individual by utilizing the patient phone numbers to determine whether he or she will interview. You can also just go to the visiting room and request to see the patient when you get there. As in the initial SVP evaluation of a prison inmate, if the person will not interview, the evaluation is completed based on documentation only. Determining this up front may allow you to more effectively use your time.

3. Call CMC-East and arrange to review the Central File of the patient(s) you are planning to evaluate.

4. After reviewing the relevant records and interviewing or attempting to interview the patient, it is recommended that you contact the identified member of the patient's Wellness and Recovery Team to review relevant issues and clarify the information in the chart.

5. Once you have completed the report, send the original to ASH or CSH via ITWS.

ASH and CSH Wellness and Recovery Plan

Wellness and Recovery Plan & Assessments

The Wellness and Recovery Plan (WRP) is the blueprint that provides each individual a roadmap for his/her recovery while he/she is in the hospital. It is dynamic in that it will change as the individual makes progress towards a lesser level of care than inpatient hospitalization. The Wellness and Recovery plan is person-centered and the primary role of the Wellness and Recovery Team is to facilitate the individual's recovery.

The WRP is developed by a Wellness & Recovery Team based on the findings of the Integrated Assessments of the psychiatrist, psychologist, social worker, rehabilitation therapist, and nurse. This team includes the individual as an active and full member. The team provides direction for treatment, rehabilitation, and enrichment and addresses the individual's focus of hospitalization, objectives, interventions, and progress in treatment.

The Wellness and Recovery Team consists of the individual served, the psychologist, rehabilitation therapist, social worker/behavioral specialist, registered nurse, psychiatric technician, and as needed, the treating psychiatrist. Based on the individual's needs; dietitian, pharmacist, teacher, and a CONREP representative may also be a part of the team.

The Wellness and Recovery Conference is convened to develop or review the WRP.

The WRP documents a comprehensive case formulation for each individual. This formulation is based on interdisciplinary assessments and specifies the individual's:

- focus of hospitalization (i.e. goals)
- assessed needs (i.e. objectives)
- how the staff will assist the individual to achieve his/her goals/objectives (i.e. interventions) based on the individual's strengths, preferences and interests.

Case Formulation (6 P's)

The 6 P's is a phenomenological approach to case formulation. It is based on facts and includes no value judgments. The 6 P's include:

Pertinent history – This includes brief social, psychiatric and legal history.

Pre-disposing factors –Includes biological and psychosocial considerations and medical illnesses/risks.

Precipitating factors – Factors that led to first offense, which led to first hospitalization, factors which led to current hospitalization, and factors which led to any forensic involvement.

Perpetuating factors – Including personality disorder, medical conditions, substance/alcohol abuse, family issues, non-compliance to treatment or medication regimen.

Previous treatment and response – all inclusive in terms of previous treatment, information from the last quarter is included.

Present status. - Symptom status including current signs and symptoms of psychiatric disorder, medical conditions and behavioral factors/psychological distress. Include current interventions and response. Include functional strengths, cultural issues, general wellness issues and areas needing further intervention. Describe risk status, including suicide and homicide, functional status, current legal status and progress toward discharge, update for the quarter, information on PBS plan and outcomes, BY CHOICE data and allocation of points.

In the sex offender treatment program, everyone starts in the Contemplating Change Phase, regardless of where the individual is in the legal commitment process. During this phase the individual will be assigned to a group but not required to discuss personal offense material or even to be an active participant. Participation is voluntary. The goal of this phase is educational and is intended to prepare the individual to actively enter therapy in Phase II. Phases II-IV are therapeutic (rather than strictly educational) and will focus directly on personal sex offending issues.

Everyone will progress through the phases sequentially because each one builds on what the individual learned in the previous phase. The groups are open-ended since each individual will set his/her own pace for moving from one phase to the next. Treatment is not considered complete until the individual has met the requirements of each of the five phases.

Each of the phases will share some similar components, and others will be unique to a specific phase. Some of the similar components include; Core Phase group, Recreational and Rehabilitation Activities, and a variety of Hospital-Wide services and activities.

The Recreational and Rehabilitation activities are a mix of planned and drop-in groups. Leisure referrals are available for education, the music room, the art center and the gymnasium. Certain requirements must be met to obtain a leisure referral. All individuals will be expected to participate in Unit Council, Information Meetings and Meal on the Unit. The Hospital provides vocational training in Graphic Arts and carpentry/cabinet construction. Hospital wide services include the following: Religious Services; Academic Education (GED/Computer Skills); various psycho-educational and Substance Abuse Groups; NA and AA meetings; and Senior Support Group among others.

An assigned Psychiatrist can prescribe a number of medical treatments that are helpful to individuals with sexual disorders. The following types of medications have been beneficial for some individuals with a history of sex offenses: SSRI/Antidepressants and Antiandrogen Therapy.

Some of the program components which comprise a particular phase include the Core Phase group; Assignment Focus Group; Specialty Groups; Skill Training Groups and Assessment Procedures. The content of the Phase group will change from one Phase to the next but will address similar modules such as Relapse Prevention, Cognitive Distortions, Interpersonal Relating and Empathy. A series of skill training and specialty groups will be offered to individuals on topics such as Sex Education, Human Sexuality, Depression Management, Anger Management, Medication Management, Interpersonal Skills and Covert Sensitization. The sequence of these groups has been planned so that each builds on what the individual learned in previous groups. Each Phase may include some type of assessment procedure. This may include some standard psychological testing, specific knowledge base testing, or sexual arousal measuring in the Psychophysiological Laboratory.

Patient Plans for Voluntary Treatment Post-Commitment

The patient may suggest that he or she has a voluntary plan for continued relapse prevention, or treatment, if released from the SVP commitment. You may consider this information in your decision as to whether the person is likely to commit future sexual violent acts without treatment and custody. However, the California Supreme Court specifically stated that Evaluators must weigh the possibility of voluntary post-commitment treatment with requisite care and caution. In other words, the Evaluator should be convinced or have a high degree of confidence that the person’s expressed desire to continue treatment, even without the SVP commitment, is meaningful, sincere,

and sufficiently significant. It further stated that the pertinent factors to consider include: (1) the availability, effectiveness, safety, and practicality of community treatment for the particular disorder the person harbors, (2) whether the person's mental disorder leaves him or her with volitional power to pursue such treatment voluntarily, (3) the intended and collateral effects of such treatment, and the influence of such effects on a reasonable expectation that one would voluntarily pursue it, (4) the person's progress in treatment, (5) the person's expressed intent, if any, to seek out and submit to any necessary treatment, whatever its effects, and (6) any other indicia bearing on the credibility and sincerity of such an expression of intent.

This guidance regarding consideration of voluntary treatment is taken from the California Supreme Court decision of *People v. Superior Court of Marin County* (2002) 27 Cal. 4th 888 (Patrick Henry Ghilotti, Real Party in Interest). This court case is required reading for all sexually violent predator Evaluators.

EVALUATION RECOMMENDATION

The conclusion of an extension evaluation should reflect whether the person currently meets criteria as a sexually violent predator as described in Sec. 6600(a) of the Welfare and Institutions Code. The recommendation should not be that the individual should or should not be extended or recommitted. That is a decision first for the county attorney who may file a petition for extended commitment, and second, for court adjudication. Likewise, the decision of whether or not the person is suitable for Phase V of the sex offender treatment program is up to the Wellness and Recovery Team and CONREP clinicians.

Appendices:

A. Welfare and Institutions Code 6600

B. Notification of Evaluation as a Sexually Violent Predator

C. Clinical Evaluation Summary Form

D. Required Report Format for Recommitment Evaluation

E. References - Literature

F. References – Court Decisions

APPENDIX A

WELFARE AND INSTITUTIONS CODE SECTION 6600-6609.3

6600. As used in this article, the following terms have the following meanings:

(a) (1) "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.

(2) 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.

(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).

(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.

(3) 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. 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.

(4) 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.

(b) "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): 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.

(c) "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.

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

(e) "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.

(f) "Recent overt act" means any criminal act that manifests a likelihood that the actor may engage in sexually violent predatory criminal behavior.

(g) 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).

(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.

(h) 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.

6600.05. (a) Until a permanent housing and treatment facility is available, Atascadero State Hospital shall be used whenever a person is committed to a secure facility for mental health treatment pursuant to this article and is placed in a state hospital under the direction of the State Department of Mental Health unless there are unique circumstances that would preclude the placement of a person at that facility. If a state hospital is not used, the facility to be used shall be located on a site or sites determined by the Director of Corrections and the Director of Mental Health. In no case shall a person committed to a secure facility for mental health treatment pursuant to this article be placed at Metropolitan State Hospital or Napa State Hospital.

(b) A permanent facility for the housing and treatment of persons committed pursuant to this article shall be located on a site or sites determined by the Director of Corrections and the Director of Mental Health, with approval by the Legislature through a trailer bill or other legislation. The State Department of Mental Health shall be responsible for operation of the facility, including the provision of treatment.

6600.1. 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.

6601. (a) (1) Whenever the Director of Corrections determines that an individual who is in custody under the jurisdiction of the Department of Corrections, and who is either serving a determinate prison sentence or whose parole has been revoked, may be a sexually violent predator, the director shall, at least six months prior to that individual's scheduled date for release from prison, refer the person for evaluation in accordance with this section. However, if the inmate was received by the department with less than nine months of his or her sentence to serve, or if the inmate's release date is modified by judicial or administrative action, the director may refer the person for evaluation in accordance with this section at a date that is less than six months prior to the inmate's scheduled release date.

(2) A petition may be filed under this section if the individual was in custody pursuant to his or her determinate prison term, parole revocation term, or a hold placed pursuant to Section 6601.3, at the

time the petition is filed. A petition shall not be dismissed on the basis of a later judicial or administrative determination that the individual's custody was unlawful, if the unlawful custody was the result of a good faith mistake of fact or law. This paragraph shall apply to any petition filed on or after January 1, 1996.

(b) The person shall be screened by the Department of Corrections and the Board of Prison Terms 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. This screening shall be conducted in accordance with a structured screening instrument developed and updated by the State Department of Mental Health in consultation with the Department of Corrections. If as a result of this screening it is determined that the person is likely to be a sexually violent predator, the Department of Corrections shall refer the person to the State Department of Mental Health for a full evaluation of whether the person meets the criteria in Section 6600.

(c) The State Department of Mental Health shall evaluate the person in accordance with a standardized assessment protocol, developed and updated by the State Department of Mental Health, to determine whether the person is a sexually violent predator as defined in this article. The standardized assessment protocol shall require assessment of diagnosable mental disorders, as well as various factors known to be associated with the risk of reoffense among sex offenders. Risk factors to be considered shall include criminal and psychosexual history, type, degree, and duration of sexual deviance, and severity of mental disorder.

(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). Copies of the evaluation reports and any other supporting documents shall be made available to the attorney designated by the county pursuant to subdivision (i) who may file a petition for commitment.

(e) If one of the professionals performing the evaluation pursuant to subdivision (d) does not concur that the person meets the criteria specified in subdivision (d), but the other professional concludes that the person meets those criteria, the Director of Mental Health shall arrange for further examination of the person by two independent professionals selected in accordance with subdivision (g).

(f) If an examination by independent professionals pursuant to subdivision (e) is conducted, a petition to request commitment under

this article shall only be filed if both independent professionals who evaluate the person pursuant to subdivision (e) concur that the person meets the criteria for commitment specified in subdivision (d). The professionals selected to evaluate the person pursuant to subdivision (g) shall inform the person that the purpose of their examination is not treatment but to determine if the person meets certain criteria to be involuntarily committed pursuant to this article. It is not required that the person appreciate or understand that information.

(g) Any independent professional who is designated by the Director of Corrections or the Director of Mental Health for purposes of this section shall not be a state government employee, shall have at least five years of experience in the diagnosis and treatment of mental disorders, and shall include psychiatrists and licensed psychologists who have a doctoral degree in psychology. The requirements set forth in this section also shall apply to any professionals appointed by the court to evaluate the person for purposes of any other proceedings under this article.

(h) If the State Department of Mental Health determines that the person is a sexually violent predator as defined in this article, the Director of Mental Health shall forward a request for a petition to be filed for commitment under this article to the county designated in subdivision (i). Copies of the evaluation reports and any other supporting documents shall be made available to the attorney designated by the county pursuant to subdivision (i) who may file a petition for commitment in the superior court.

(i) If the county's designated counsel concurs with the recommendation, a petition for commitment shall be filed in the superior court of the county in which the person was convicted of the offense for which he or she was committed to the jurisdiction of the Department of Corrections. The petition shall be filed, and the proceedings shall be handled, by either the district attorney or the county counsel of that county. The county board of supervisors shall designate either the district attorney or the county counsel to assume responsibility for proceedings under this article.

(j) The time limits set forth in this section shall not apply during the first year that this article is operative.

(k) If the person is otherwise subject to parole, a finding or placement made pursuant to this article shall toll the term of parole pursuant to Article 1 (commencing with Section 3000) of Chapter 8 of Title 1 of Part 3 of the Penal Code.

(l) Pursuant to subdivision (d), the attorney designated by the county pursuant to subdivision (i) shall notify the State Department of Mental Health of its decision regarding the filing of a petition for commitment within 15 days of making that decision.

6601.3. Upon a showing of good cause, the Board of Prison Terms may order that a person referred to the State Department of Mental

Health pursuant to subdivision (b) of Section 6601 remain in custody for no more than 45 days beyond the person's scheduled release date for full evaluation pursuant to subdivisions (c) to (i), inclusive, of Section 6601.

6601.5. Upon filing of the petition and a request for review under this section, a judge of the superior court shall review the petition and determine whether the petition states or contains sufficient facts that, if true, would constitute probable cause to believe that the individual named in the petition is likely to engage in sexually violent predatory criminal behavior upon his or her release. If the judge determines that the petition, on its face, supports a finding of probable cause, the judge shall order that the person be detained in a secure facility until a hearing can be completed pursuant to Section 6602. The probable cause hearing provided for in Section 6602 shall commence within 10 calendar days of the date of the order issued by the judge pursuant to this section.

6602. (a) A judge of the superior court shall review the petition and shall determine whether there is probable cause to believe that the individual named in the petition is likely to engage in sexually violent predatory criminal behavior upon his or her release. The person named in the petition shall be entitled to assistance of counsel at the probable cause hearing. Upon the commencement of the probable cause hearing, the person shall remain in custody pending the completion of the probable cause hearing. If the judge determines there is not probable cause, he or she shall dismiss the petition and any person subject to parole shall report to parole. If the judge determines that there is probable cause, the judge shall order that the person remain in custody in a secure facility until a trial is completed and shall order that a trial be conducted to determine whether the person is, by reason of a diagnosed mental disorder, a danger to the health and safety of others in that the person is likely to engage in acts of sexual violence upon his or her release from the jurisdiction of the Department of Corrections or other secure facility.

(b) The probable cause hearing shall not be continued except upon a showing of good cause by the party requesting the continuance.

(c) The court shall notify the State Department of Mental Health of the outcome of the probable cause hearing by forwarding to the department a copy of the minute order of the court within 15 days of the decision.

6602.5. (a) No person may be placed in a state hospital pursuant to the provisions of this article until there has been a determination pursuant to Section 6601.3 or 6602 that there is probable cause to believe that the individual named in the petition is likely to engage in sexually violent predatory criminal behavior.

(b) The State Department of Mental Health shall identify each person for whom a petition pursuant to this article has been filed who is in a state hospital on or after January 1, 1998, and who has not had a probable cause hearing pursuant to Section 6602. The State Department of Mental Health shall notify the court in which the petition was filed that the person has not had a probable cause hearing. Copies of the notice shall be provided by the court to the attorneys of record in the case. Within 30 days of notice by the State Department of Mental Health, the court shall either order the person removed from the state hospital and returned to local custody or hold a probable cause hearing pursuant to Section 6602.

(c) In no event shall the number of persons referred pursuant to subdivision (b) to the superior court of any county exceed 10 in any 30-day period, except upon agreement of the presiding judge of the superior court, the district attorney, the public defender, the sheriff, and the Director of Mental Health.

(d) This section shall be implemented in Los Angeles County pursuant to a letter of agreement between the Department of Mental Health, the Los Angeles County district attorney, the Los Angeles County public defender, the Los Angeles County sheriff, and the Los Angeles County superior court. The number of persons referred to the superior court of Los Angeles County pursuant to subdivision (b) shall be governed by the letter of agreement.

6603. (a) A person subject to this article shall be entitled to a trial by jury, to the assistance of counsel, to the right to retain experts or professional persons to perform an examination on his or her behalf, and to have access to all relevant medical and psychological records and reports. In the case of a person who is indigent, the court shall appoint counsel to assist him or her, and, upon the person's request, assist the person in obtaining an expert or professional person to perform an examination or participate in the trial on the person's behalf.

(b) The attorney petitioning for commitment under this article shall have the right to demand that the trial be before a jury.

(c) (1) If the attorney petitioning for commitment under this article determines that updated evaluations are necessary in order to properly present the case for commitment, the attorney may request the State Department of Mental Health to perform updated evaluations.

If one or more of the original evaluators is no longer available to testify for the petitioner in court proceedings, the attorney petitioning for commitment under this article may request the State Department of Mental Health to perform replacement evaluations. When a request is made for updated or replacement evaluations, the State Department of Mental Health shall perform the requested evaluations and forward them to the petitioning attorney and to the counsel for the person subject to this article. However, updated or replacement

evaluations shall not be performed except as necessary to update one or more of the original evaluations or to replace the evaluation of an evaluator who is no longer available to testify for the petitioner in court proceedings. These updated or replacement evaluations shall include review of available medical and psychological records, including treatment records, consultation with current treating clinicians, and interviews of the person being evaluated, either voluntarily or by court order. If an updated or replacement evaluation results in a split opinion as to whether the person subject to this article meets the criteria for commitment, the State Department of Mental Health shall conduct two additional evaluations in accordance with subdivision (f) of Section 6601.

(2) For purposes of this subdivision, "no longer available to testify for the petitioner in court proceedings" means that the evaluator is no longer authorized by the Director of Mental Health to perform evaluations regarding sexually violent predators as a result of any of the following:

(A) The evaluator has failed to adhere to the protocol of the State Department of Mental Health.

(B) The evaluator's license has been suspended or revoked.

(C) The evaluator is unavailable pursuant to Section 240 of the Evidence Code.

(d) Nothing in this section shall prevent the defense from presenting otherwise relevant and admissible evidence.

(e) If the person subject to this article or the petitioning attorney does not demand a jury trial, the trial shall be before the court without a jury.

(f) A unanimous verdict shall be required in any jury trial.

(g) The court shall notify the State Department of Mental Health of the outcome of the trial by forwarding to the department a copy of the minute order of the court within 72 hours of the decision.

6604. The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court shall direct that the person be released at the conclusion of the term for which he or she was initially sentenced, or that the person be unconditionally released at the end of parole, whichever is applicable. If the court or jury determines that the person is a sexually violent predator, the person shall be committed for an indeterminate term to the custody of the State Department of Mental Health for appropriate treatment and confinement in a secure facility designated by the Director of Mental Health. The facility shall be located on the grounds of an institution under the jurisdiction of the Department of Corrections.

6604.1. (a) The indeterminate term of commitment provided for in Section 6604 shall commence on the date upon which the court issues the initial order of commitment pursuant to that section.

(b) The person shall be evaluated by two practicing psychologists or psychiatrists, or by one practicing psychologist and one practicing psychiatrist, designated by the State Department of Mental Health. The provisions of subdivisions (c) to (i), inclusive, of Section 6601 shall apply to evaluations performed for purposes of extended commitments. The rights, requirements, and procedures set forth in Section 6603 shall apply to all commitment proceedings.

6605. (a) A person found to be a sexually violent predator and committed to the custody of the State Department of Mental Health shall have a current examination of his or her mental condition made at least once every year. The annual report shall include consideration of whether the committed person currently meets the definition of a sexually violent predator and whether conditional release to a less restrictive alternative or an unconditional release is in the best interest of the person and conditions can be imposed that would adequately protect the community. The Department of Mental Health shall file this periodic report with the court that committed the person under this article. The report shall be in the form of a declaration and shall be prepared by a professionally qualified person. A copy of the report shall be served on the prosecuting agency involved in the initial commitment and upon the committed person. The person may retain, or if he or she is indigent and so requests, the court may appoint, a qualified expert or professional person to examine him or her, and the expert or professional person shall have access to all records concerning the person.

(b) If the Department of Mental Health determines that either: (1) the person's condition has so changed that the person no longer meets the definition of a sexually violent predator, or (2) conditional release to a less restrictive alternative is in the best interest of the person and conditions can be imposed that adequately protect the community, the director shall authorize the person to petition the court for conditional release to a less restrictive alternative or for an unconditional discharge. The petition shall be filed with the court and served upon the prosecuting agency responsible for the initial commitment. The court, upon receipt of the petition for conditional release to a less restrictive alternative or unconditional discharge, shall order a show cause hearing at which the court can consider the petition and any accompanying documentation provided by the medical director, the prosecuting attorney or the committed person.

(c) If the court at the show cause hearing determines that probable cause exists to believe that the committed person's diagnosed mental disorder has so changed that he or she is not a

danger to the health and safety of others and is not likely to engage in sexually violent criminal behavior if discharged, then the court shall set a hearing on the issue.

(d) At the hearing, the committed person shall have the right to be present and shall be entitled to the benefit of all constitutional protections that were afforded to him or her at the initial commitment proceeding. The attorney designated by the county pursuant to subdivision (i) of Section 6601 shall represent the state and shall have the right to demand a jury trial and to have the committed person evaluated by experts chosen by the state. The committed person also shall have the right to demand a jury trial and to have experts evaluate him or her on his or her behalf. The court shall appoint an expert if the person is indigent and requests an appointment. The burden of proof at the hearing shall be on the state to prove beyond a reasonable doubt that the committed person's diagnosed mental disorder remains such that he or she is a danger to the health and safety of others and is likely to engage in sexually violent criminal behavior if discharged.

(e) If the court or jury rules against the committed person at the hearing conducted pursuant to subdivision (d), the term of commitment of the person shall run for an indeterminate period from the date of this ruling. If the court or jury rules for the committed person, he or she shall be unconditionally released and unconditionally discharged.

(f) In the event that the State Department of Mental Health has reason to believe that a person committed to it as a sexually violent predator is no longer a sexually violent predator, it shall seek judicial review of the person's commitment pursuant to the procedures set forth in Section 7250 in the superior court from which the commitment was made. If the superior court determines that the person is no longer a sexually violent predator, he or she shall be unconditionally released and unconditionally discharged.

6606. (a) A person who is committed under this article shall be provided with programming by the State Department of Mental Health which shall afford the person with treatment for his or her diagnosed mental disorder. Persons who decline treatment shall be offered the opportunity to participate in treatment on at least a monthly basis.

(b) Amenability to treatment is not required for a finding that any person is a person described in Section 6600, nor is it required for treatment of that person. Treatment does not mean that the treatment be successful or potentially successful, nor does it mean that the person must recognize his or her problem and willingly participate in the treatment program.

(c) The programming provided by the State Department of Mental Health in facilities shall be consistent with current institutional standards for the treatment of sex offenders, and shall be based on a

structured treatment protocol developed by the State Department of Mental Health. The protocol shall describe the number and types of treatment components that are provided in the program, and shall specify how assessment data will be used to determine the course of treatment for each individual offender. The protocol shall also specify measures that will be used to assess treatment progress and changes with respect to the individual's risk of reoffense.

(d) Notwithstanding any other provision of law, except as to requirements relating to fire and life safety of persons with mental illness, and consistent with information and standards described in subdivision (c), the department is authorized to provide the programming using an outpatient/day treatment model, wherein treatment is provided by licensed professional clinicians in living units not licensed as health facility beds within a secure facility setting, on less than a 24-hour a day basis. The department shall take into consideration the unique characteristics, individual needs, and choices of persons committed under this article, including whether or not a person needs antipsychotic medication, whether or not a person has physical medical conditions, and whether or not a person chooses to participate in a specified course of offender treatment. The department shall ensure that policies and procedures are in place that address changes in patient needs, as well as patient choices, and respond to treatment needs in a timely fashion. The department, in implementing this subdivision, shall be allowed by the State Department of Health Services to place health facility beds at Coalinga State Hospital in suspense for a period of up to six years. Coalinga State Hospital may remove all or any portion of its voluntarily suspended beds into active license status by request to the State Department of Health Services. The facility's request shall be granted unless the suspended beds fail to comply with current operational requirements for licensure.

(e) The department shall meet with each patient who has chosen not to participate in a specific course of offender treatment during monthly treatment planning conferences. At these conferences the department shall explain treatment options available to the patient, offer and re-offer treatment to the patient, seek to obtain the patient's cooperation in the recommended treatment options, and document these steps in the patient's health record. The fact that a patient has chosen not to participate in treatment in the past shall not establish that the patient continues to choose not to participate.

6607. (a) If the Director of Mental Health determines that the person's diagnosed mental disorder has so changed that the person is not likely to commit acts of predatory sexual violence while under supervision and treatment in the community, the director shall

forward a report and recommendation for conditional release in accordance with Section 6608 to the county attorney designated in subdivision (i) of Section 6601, the attorney of record for the person, and the committing court.

(b) When a report and recommendation for conditional release is filed by the Director of Mental Health pursuant to subdivision (a), the court shall set a hearing in accordance with the procedures set forth in Section 6608.

6608. (a) Nothing in this article shall prohibit the person who has been committed as a sexually violent predator from petitioning the court for conditional release or an unconditional discharge without the recommendation or concurrence of the Director of Mental Health. If a person has previously filed a petition for conditional release without the concurrence of the director and the court determined, either upon review of the petition or following a hearing, that the petition was frivolous or that the committed person's condition had not so changed that he or she would not be a danger to others in that it is not likely that he or she will engage in sexually violent criminal behavior if placed under supervision and treatment in the community, then the court shall deny the subsequent petition unless it contains facts upon which a court could find that the condition of the committed person had so changed that a hearing was warranted. Upon receipt of a first or subsequent petition from a committed person without the concurrence of the director, the court shall endeavor whenever possible to review the petition and determine if it is based upon frivolous grounds and, if so, shall deny the petition without a hearing. The person petitioning for conditional release and unconditional discharge under this subdivision shall be entitled to assistance of counsel.

(b) The court shall give notice of the hearing date to the attorney designated in subdivision (i) of Section 6601, the retained or appointed attorney for the committed person, and the Director of Mental Health at least 15 court days before the hearing date.

(c) No hearing upon the petition shall be held until the person who is committed has been under commitment for confinement and care in a facility designated by the Director of Mental Health for not less than one year from the date of the order of commitment.

(d) The court shall hold a hearing to determine whether the person committed would be 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 due to his or her diagnosed mental disorder if under supervision and treatment in the community. If the court at the hearing determines that the committed person would not be a danger to others due to his or her diagnosed mental disorder while under supervision and treatment in the community, the court shall order the

committed person placed with an appropriate forensic conditional release program operated by the state for one year. A substantial portion of the state-operated forensic conditional release program shall include outpatient supervision and treatment. The court shall retain jurisdiction of the person throughout the course of the program. At the end of one year, the court shall hold a hearing to determine if the person should be unconditionally released from commitment on the basis that, by reason of a diagnosed mental disorder, he or she is not a danger to the health and safety of others in that it is not likely that he or she will engage in sexually violent criminal behavior. The court shall not make this determination until the person has completed at least one year in the state-operated forensic conditional release program. The court shall notify the Director of Mental Health of the hearing date.

(e) Before placing a committed person in a state-operated forensic conditional release program, the community program director designated by the State Department of Mental Health shall submit a written recommendation to the court stating which forensic conditional release program is most appropriate for supervising and treating the committed person. If the court does not accept the community program director's recommendation, the court shall specify the reason or reasons for its order on the record. The procedures described in Sections 1605 to 1610, inclusive, of the Penal Code shall apply to the person placed in the forensic conditional release program.

(f) If the court determines that the person should be transferred to a state-operated forensic conditional release program, the community program director, or his or her designee, shall make the necessary placement arrangements and, within 21 days after receiving notice of the court's finding, the person shall be placed in the community in accordance with the treatment and supervision plan unless good cause for not doing so is presented to the court.

(g) If the court rules against the committed person at the trial for unconditional release from commitment, the court may place the committed person on outpatient status in accordance with the procedures described in Title 15 (commencing with Section 1600) of Part 2 of the Penal Code.

(h) If the court denies the petition to place the person in an appropriate forensic conditional release program or if the petition for unconditional discharge is denied, the person may not file a new application until one year has elapsed from the date of the denial.

(i) In any hearing authorized by this section, the petitioner shall have the burden of proof by a preponderance of the evidence.

(j) If the petition for conditional release is not made by the director of the treatment facility to which the person is committed, no action on the petition shall be taken by the court without first obtaining the written recommendation of the director of the treatment facility.

(k) Time spent in a conditional release program pursuant to this section shall not count toward the term of commitment under this article unless the person is confined in a locked facility by the conditional release program, in which case the time spent in a locked facility shall count toward the term of commitment.

6608.5. (a) A person who is conditionally released pursuant to this article shall be placed in the county of the domicile of the person prior to the person's incarceration, unless the court finds that extraordinary circumstances require placement outside the county of domicile.

(b) (1) For the purposes of this section, "county of domicile" means the county where the person has his or her true, fixed, and permanent home and principal residence and to which he or she has manifested the intention of returning whenever he or she is absent. For the purposes of determining the county of domicile, the court may consider information found on a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing that person's name and address, or information contained in an arrest record, probation officer's report, trial transcript, or other court document. If no information can be identified or verified, the county of domicile of the individual shall be considered to be the county in which the person was arrested for the crime for which he or she was last incarcerated in the state prison or from which he or she was last returned from parole.

(2) In a case where the person committed a crime while being held for treatment in a state hospital, or while being confined in a state prison or local jail facility, the county wherein that facility was located shall not be considered the county of domicile unless the person resided in that county prior to being housed in the hospital, prison, or jail.

(c) For the purposes of this section, "extraordinary circumstances" means circumstances that would inordinately limit the department's ability to effect conditional release of the person in the county of domicile in accordance with Section 6608 or any other provision of this article, and the procedures described in Sections 1605 to 1610, inclusive, of the Penal Code.

(d) The county of domicile shall designate a county agency or program that will provide assistance and consultation in the process of locating and securing housing within the county for persons committed as sexually violent predators who are about to be conditionally released under Section 6608. Upon notification by the department of a person's potential or expected conditional release under Section 6608, the county of domicile shall notify the department of the name of the designated agency or program, at least 60 days before the date of the potential or expected release.

(e) In recommending a specific placement for community outpatient treatment, the department or its designee shall consider all of the following:

(1) The concerns and proximity of the victim or the victim's next of kin.

(2) The age and profile of the victim or victims in the sexually violent offenses committed by the person subject to placement. For purposes of this subdivision, the "profile" of a victim includes, but is not limited to, gender, physical appearance, economic background, profession, and other social or personal characteristics.

(f) Notwithstanding any other provision of law, a person released under this section shall not be placed within one-quarter mile of any public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, if either of the following conditions exist:

(1) The person has previously been convicted of a violation of Section 288.5 of, or subdivision (a) or (b), or paragraph (1) of subdivision (c) of Section 288 of, the Penal Code.

(2) The court finds that the person has a history of improper sexual conduct with children.

6608.7. The State Department of Mental Health may enter into an interagency agreement or contract with the Department of Corrections or with local law enforcement agencies for services related to supervision or monitoring of sexually violent predators who have been conditionally released into the community under the forensic conditional release program pursuant to this article.

6608.8. (a) For any person who is proposed for community outpatient treatment under the forensic conditional release program, the department shall provide to the court a copy of the written contract entered into with any public or private person or entity responsible for monitoring and supervising the patient's outpatient placement and treatment program. This subdivision does not apply to subcontracts between the contractor and clinicians providing treatment and related services to the person.

(b) The terms and conditions of conditional release shall be drafted to include reasonable flexibility to achieve the aims of conditional release, and to protect the public and the conditionally released person.

(c) The court in its discretion may order the department to, notwithstanding Section 4514 or 5328, provide a copy of the written terms and conditions of conditional release to the sheriff or chief of police, or both, that have jurisdiction over the proposed or actual placement community.

(d) (1) Except in an emergency, the department or its designee shall not alter the terms and conditions of conditional release without the prior approval of the court.

(2) The department shall provide notice to the person committed under this article and the district attorney or designated county counsel of any proposed change in the terms and conditions of conditional release.

(3) The court on its own motion, or upon the motion of either party to the action, may set a hearing on the proposed change. The hearing shall be held as soon as is practicable.

(4) If a hearing on the proposed change is held, the court shall state its findings on the record. If the court approves a change in the terms and conditions of conditional release without a hearing, the court shall issue a written order.

(5) In the case of an emergency, the department or its designee may deviate from the terms and conditions of the conditional release if necessary to protect public safety or the safety of the person. If a hearing on the emergency is set by the court or requested by either party, the hearing shall be held as soon as practicable. The department, its designee, and the parties shall endeavor to resolve routine matters in a cooperative fashion without the need for a formal hearing.

(e) Notwithstanding any provision of this section, including, but not limited to, subdivision (d), matters concerning the residential placement, including any changes or proposed changes in residential of the person, shall be considered and determined pursuant to Section 6609.1.

6609. Within 10 days of a request made by the chief of police of a city or the sheriff of a county, the State Department of Mental Health shall provide the following information concerning each person committed as a sexually violent predator who is receiving outpatient care in a conditional release program in that city or county: name, address, date of commitment, county from which committed, date of placement in the conditional release program, fingerprints, and a glossy photograph no smaller than 31/8 X 31/8 inches in size, or clear copies of the fingerprints and photograph.

6609.1. (a) (1) When the State Department of Mental Health makes a recommendation to the court for community outpatient treatment for any person committed as a sexually violent predator, or when a person who is committed as a sexually violent predator pursuant to this article has petitioned a court pursuant to Section 6608 for conditional release under supervision and treatment in the community pursuant to a conditional release program, or has petitioned a court pursuant to Section 6608 for subsequent unconditional discharge, and the department is notified, or is aware, of the filing of the petition, and when a community placement location is recommended or proposed, the department shall notify the sheriff or chief of police, or both, the district attorney, or the county's designated counsel, that have jurisdiction over the following locations:

(A) The community in which the person may be released for community outpatient treatment.

(B) The community in which the person maintained his or her last legal residence as defined by Section 3003 of the Penal Code.

(C) The county that filed for the person's civil commitment pursuant to this article.

(2) The department shall also notify the Sexually Violent Predator Parole Coordinator of the Department of Corrections, if the person is otherwise subject to parole pursuant to Article 1 (commencing with Section 3000) of Chapter 8 of Title 1 of Part 3 of the Penal Code. The department shall also notify the Department of Justice.

(3) The notice shall be given when the department or its designee makes a recommendation under subdivision (e) of Section 6608 or proposes a placement location without making a recommendation, or when any other person proposes a placement location to the court and the department or its designee is made aware of the proposal.

(4) The notice shall be given at least 15 days prior to the department's submission of its recommendation to the court in those cases in which the department recommended community outpatient treatment under Section 6607, or in which the department or its designee is recommending or proposing a placement location, or in the case of a petition or placement proposal by someone other than the department or its designee, within 48 hours after becoming aware of the petition or placement proposal.

(5) The notice shall state that it is being made under this section and include all of the following information concerning each person committed as a sexually violent predator who is proposed or is petitioning to receive outpatient care in a conditional release program in that city or county:

(A) The name, proposed placement address, date of commitment, county from which committed, proposed date of placement in the conditional release program, fingerprints, and a glossy photograph no smaller than 3 1/8 X 3 1/8 inches in size, or clear copies of the fingerprints and photograph.

(B) The date, place, and time of the court hearing at which the location of placement is to be considered and a proof of service attesting to the notice's mailing in accordance with this subdivision.

(C) A list of agencies that are being provided this notice and the addresses to which the notices are being sent.

(b) Those agencies receiving the notice referred to in paragraphs (1) and (2) of subdivision (a) may provide written comment to the department and the court regarding the impending release, placement, location, and conditions of release. All community agency comments shall be combined and consolidated. In addition, a single agency in the community of the specific proposed or recommended placement address may suggest appropriate, alternative locations for placement

within that community. The State Department of Mental Health shall issue a written statement to the commenting agencies and to the court within 10 days of receiving the written comments with a determination as to whether to adjust the release location or general terms and conditions, and explaining the basis for its decision. In lieu of responding to the individual community agencies or individuals, the department's statement responding to the community comment shall be in the form of a public statement.

(c) The agencies' comments and department's statements shall be considered by the court which shall, based on those comments and statements, approve, modify, or reject the department's recommendation or proposal regarding the community or specific address to which the person is scheduled to be released or the conditions that shall apply to the release if the court finds that the department's recommendation or proposal is not appropriate.

(d) (1) When the State Department of Mental Health makes a recommendation to pursue recommitment, makes a recommendation not to pursue recommitment, or seeks a judicial review of commitment status pursuant to subdivision (f) of Section 6605, of any person committed as a sexually violent predator, it shall provide written notice of that action to the sheriff or chief of police, or both, and to the district attorney, that have jurisdiction over the following locations:

(A) The community in which the person maintained his or her last legal residence as defined by Section 3003 of the Penal Code.

(B) The community in which the person will probably be released, if recommending not to pursue recommitment.

(C) The county that filed for the person's civil commitment pursuant to this article.

(2) The State Department of Mental Health shall also notify the Sexually Violent Predator Parole Coordinator of the Department of Corrections, if the person is otherwise subject to parole pursuant to Article 1 (commencing with Section 3000) of Chapter 8 of Title 1 of Part 3 of the Penal Code. The State Department of Mental Health shall also notify the Department of Justice. The notice shall be made at least 15 days prior to the department's submission of its recommendation to the court.

(3) Those agencies receiving the notice referred to in this subdivision shall have 15 days from receipt of the notice to provide written comment to the department regarding the impending release. Those comments shall be considered by the department, which may modify its decision regarding the community in which the person is scheduled to be released, based on those comments.

(e) (1) If the court orders the release of a sexually violent predator, the court shall notify the Sexually Violent Predator Parole Coordinator of the Department of Corrections. The Department of Corrections shall notify the Department of Justice, the State

Department of Mental Health, the sheriff or chief of police or both, and the district attorney, that have jurisdiction over the following locations:

(A) The community in which the person is to be released.

(B) The community in which the person maintained his or her last legal residence as defined in Section 3003 of the Penal Code.

(2) The Department of Corrections shall make the notifications required by this subdivision regardless of whether the person released will be serving a term of parole after release by the court.

(f) If the person is otherwise subject to parole pursuant to Article 1 (commencing with Section 300) of Chapter 8 of Title 1 of Part 3 of the Penal Code, to allow adequate time for the Department of Corrections to make appropriate parole arrangements upon release of the person, the person shall remain in physical custody for a period not to exceed 72 hours or until parole arrangements are made by the Sexually Violent Predator Parole Coordinator of the Department of Corrections, whichever is sooner. To facilitate timely parole arrangements, notification to the Sexually Violent Predator Parole Coordinator of the Department of Corrections of the pending release shall be made by telephone or facsimile and, to the extent possible, notice of the possible release shall be made in advance of the proceeding or decision determining whether to release the person.

(g) The notice required by this section shall be made whether or not a request has been made pursuant to Section 6609.

(h) The time limits imposed by this section are not applicable when the release date of a sexually violent predator has been advanced by a judicial or administrative process or procedure that could not have reasonably been anticipated by the State Department of Mental Health and where, as the result of the time adjustments, there is less than 30 days remaining on the commitment before the inmate's release, but notice shall be given as soon as practicable.

(i) In the case of any subsequent community placement or change of community placement of a conditionally released sexually violent predator, notice required by this section shall be given under the same terms and standards as apply to the initial placement, except in the case of an emergency where the sexually violent predator must be moved to protect the public safety or the safety of the sexually violent predator. In the case of an emergency, the notice shall be given as soon as practicable, and the affected communities may comment on the placement as described in subdivision (b).

(j) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

6609.2. (a) When any sheriff or chief of police is notified by the State Department of Mental Health of its recommendation to the court concerning the disposition of a sexually violent predator pursuant to subdivision (a) or (b) of Section 6609.1, that sheriff or chief of police may notify any person designated by the sheriff or chief of police as an appropriate recipient of the notice.

(b) A law enforcement official authorized to provide notice pursuant to this section, and the public agency or entity employing the law enforcement official, shall not be liable for providing or failing to provide notice pursuant to this section.

6609.3. (a) At the time a notice is sent pursuant to subdivisions (a) and (b) of Section 6609.1, the sheriff, chief of police, or district attorney notified of the release shall also send a notice to persons described in Section 679.03 of the Penal Code who have requested a notice, informing those persons of the fact that the person who committed the sexually violent offense may be released together with information identifying the court that will consider the conditional release, recommendation regarding recommitment, or review of commitment status pursuant to subdivision (f) of Section 6605. When a person is approved by the court to be conditionally released, notice of the community in which the person is scheduled to reside shall also be given only if it is (1) in the county of residence of a witness, victim, or family member of a victim who has requested notice, or (2) within 100 miles of the actual residence of a witness, victim, or family member of a victim who has requested notice. If, after providing the witness, victim, or next of kin with the notice, there is any change in the release date or the community in which the person is to reside, the sheriff, chief of police, or the district attorney shall provide the witness, victim, or next of kin with the revised information.

(b) At the time a notice is sent pursuant to subdivision (c) of Section 6609.1 the Department of Corrections shall also send a notice to persons described in Section 679.03 of the Penal Code who have requested a notice informing those persons of the fact that the person who committed the sexually violent offense has been released.

(c) In order to be entitled to receive the notice set forth in this section, the requesting party shall keep the sheriff, chief of police, and district attorney who were notified under Section 679.03 of the Penal Code, informed of his or her current mailing address.

APPENDIX B

NOTICE OF EVALUATION AS A SEXUALLY VIOLENT PREDATOR

You are being evaluated to determine whether you may be a Sexually Violent Predator (SVP) under Section 6600 of the California Welfare and Institutions Code. The purpose of the evaluation and interview is to decide if you have a mental condition that makes you likely to commit sexual crimes in the future. If you are determined to meet the criteria for the SVP law, you could be sent to court for trial. If the court finds you to be an SVP, you would not be released from custody. You would be sent to a treatment program at a state mental hospital. This would be an involuntary commitment to a sex offender treatment program run by the California Department of Mental Health. If you are currently committed as an SVP, this evaluation may be for the purpose of determining whether you continue to meet the criteria for commitment. The commitment would end and you would be released from the treatment program when the court determines you are no longer likely to commit sexual crimes.

You will be evaluated by two doctors (psychologists or psychiatrists). Their job is to provide an unbiased assessment of your risk to commit future sexual crimes. Both doctors must decide that you meet legal criteria as an SVP for the Department of Mental Health to recommend your commitment to the District Attorney in the county which last sentenced you to prison. If the District Attorney decides not to file the case, you will be paroled, or released from custody. If the District Attorney decides to file a petition for commitment, your case will go to court. A defense attorney would then be appointed to defend you and protect your rights under the law. Based on the outcome of the court proceedings, you may be paroled or committed to the treatment program.

If the two doctors disagree whether you qualify as an SVP, one or two additional doctors will evaluate you. The doctors conduct their evaluations independently, and do not consult with each other while preparing their evaluations.

The evaluation includes review of your records, an interview, and sometimes psychological testing. The interview is voluntary unless required by a court order. The doctors will write reports on your case, and may later testify if your case goes to court. Any information you provide during an interview may be used in the doctor's reports and court testimony. If you give any new information about abuse of children or elders that has not been previously reported, the doctors are legally required to report this information to the authorities. If you do not consent to the interview, the evaluation will be completed using only your records.

I have been informed about my evaluation as a Sexually Violent Predator and I have been offered a copy of this notification. (check) _____

I (circle) **agree / do not agree** to be interviewed by Dr. _____

_____ _____ _____

Date Print Inmate's Name Here Inmate's Signature

_____ _____

Date Evaluator's Signature

Evaluator: Describe any reasonable accommodation provided to the person being evaluated.

AVISO PARA UNA EVALUACION SOBRE CONDUCTA SEXUAL VIOLENTA Y PREDATORIA

Usted esta siendo evaluado para determinar si califica bajo la sección 6600 del Código de las Instituciones de California como una persona que presenta Conducta Sexual Violenta y Predatoria (SVP por sus siglas en Ingles). El propósito de esta evaluación es decidir si usted presenta una condición mental que lo haga propenso a cometer crímenes sexuales en el futuro. Si se determina que usted cumple el criterio establecido por esta ley su caso podría ser enviado a la corte para juicio. Si la corte determina que usted cumple los requisitos para ser considerado como una persona de Conducta Sexual Violenta y Predatoria (SVP), no será dejado en libertad. Seria enviado a un programa de tratamiento en un hospital mental del estado. Este seria un internamiento involuntario en un programa de tratamiento para criminales sexuales dirigido por el departamento de Salud Mental del Estado de California. Si actualmente se encuentra recluido como una persona de Conducta Sexual Violenta y Predatoria (SVP) esta evaluación podría tener el propósito de determinar si sigue cumpliendo el criterio para continuar recluido. Su internamiento podría terminar y ser liberado del programa de tratamiento cuando la corte determine que ya no es probable que cometa crímenes sexuales.

Usted será evaluado por dos doctores (psicólogos o psiquiatras). El trabajo de los doctores es realizar una evaluación imparcial en relación a su riesgo de cometer crímenes sexuales en el futuro. Ambos doctores deberán opinar que usted cumple el criterio legal como un criminal sexual violento (SVP) para que el Departamento de Salud Mental recomiende su reclusión al fiscal de distrito del condado donde se pronuncio su última sentencia.

Si el fiscal de distrito decide no presentar su caso le será otorgada la libertad condicional o será dejado en libertad. Si el fiscal de distrito decide presenta la petición para que usted sea recluido su caso ira a la corte. Un abogado defensor le será asignado para defender y proteger sus derechos bajo la ley. En base al resultado del proceso legal a usted se le podrá otorgar la libertad condicional o recluir en el programa de tratamiento.

Si los dos doctores están en desacuerdo en relación a si usted califica como una persona de Conducta Sexual Violenta y Predatoria (SVP) uno o dos doctores adicionales lo evaluaran. Cada doctor realiza una evaluación independiente sin consultar entre ellos mientras las evaluaciones son realizadas.

La evaluación incluye la revisión de sus expedientes, una entrevista y en ocasiones pruebas psicológicas. La entrevista es voluntaria. Los doctores escribirán los reportes de su caso y podrán testificar si el caso va la corte. Cualquier información que usted provea durante la entrevista podrá ser utilizada por los doctores en sus reportes o testimonio. Si usted provee información nueva acerca del abuso de niños y/o ancianos que no ha sido previamente reportada los doctores están obligados bajo la ley a reportar esta información a las autoridades. Si usted no da su consentimiento para la entrevista, la evaluación será completada en base a sus expedientes.

He sido informado sobre mi evaluación como una persona de Conducta Sexual Violenta y Predatoria y se me ha ofrecido una copia de este aviso. (Marque) _____

Yo (circule) **doy mi consentimiento / no doy mi consentimiento** para ser entrevistado por el Dr. _____.

_____ _____

Fecha Firma del Recluso/Preso

_____ _____

Fecha Firma del Evaluador/Doctor

Evaluator: Describe any reasonable accommodation provided to the person being evaluated.

APPENDIX C

CLINICAL EVALUATION SUMMARY

WIC 6600 CIVIL COMMITMENT

I. IDENTIFYING INFORMATION

Inmate Name:_____ **CDCR#**_____

County of Commitment: _____

II. FINDINGS (WIC 6600 criteria)

			YES	NO
A.	**Has the inmate been convicted of a sexually violent offense against at one or more victim?**			
	Convicted of a qualifying offense(s)?	**1.**	❒	❒
	Use of force, fear, etc., and/or victim < 14 years old?	**2**	❒	❒
B.	**Does the inmate have a diagnosable mental disorder that predisposes person to the commission of criminal sexual acts?**			
(If YES, specify)		**3.**	❒	❒

Axis I _____
_____
_____
_____
_____

Axis II _____
_____
_____
_____

C.	**Is the inmate likely to engage in sexually violent predatory criminal behavior as a result of his/her diagnosed mental disorder without appropriate treatment and custody?**	**4.**	❒	❒

III. CONCLUSION

Based on the above information, in my opinion the inmate:

❒ **MEETS** ❒ **DOES NOT MEET**

the criteria as a sexually violent predator as described in section 6600(a) of the Welfare and Institutions Code.
(If a **NO** response is marked for any of the above questions (1-4), then the inmate **does not meet** criteria)

_____ _____
SIGNATURE DATE

_____ _____
PRINT NAME LICENSE NUMBE

APPENDIX D

SUGGESTED FORMAT FOR EXTENSION EVALUATION

- Name, DOB, marital status, county of commitment, ASH AT# or CSH #, CDCR #, CII #, initial admission date, initial commitment date, current housing unit, interview date and date typed.

- Sources of Information – cite sources used in the preparation of the report (including medical, legal, and institutional documents relied upon), individual's interview, Wellness and Recovery Team input, and psychological testing (if used).

II. FINDINGS (WIC 6600 CRITERIA):

A. Sexually Violent Offenses Found to Qualify Under WIC 6600

- Refer to primary sources to the extent possible.
- This section must include the following statement**:**

"It has been determined by the original committing court that the individual has been convicted of one or more qualifying offenses."

B. Does the individual have a diagnosed mental disorder that predisposes the person to the commission of criminal sexual acts? (Yes or No)

Include a discussion of the following within this section:

- Brief developmental history.
- Relationship history.
- Psychosexual history.
- Criminal history.
  -Include juvenile history, institution adjustment, and behavior on parole/probation.
- Substance abuse history.
- Psychiatric history.
  - Psychiatric history prior to sex offender treatment.
  Treatment Progress in sex offender treatment.
  Include a review of the treatment plan, current and completed groups, medications, behavioral incidents, parole revocation's while in SVP custody, and extent of individual's involvement in treatment, and results of any psychometric testing and phallometric assessment and/or behavioral treatments. Also provide input from individual's Wellness and Recovery Team in this section.

- Mental Status Examination, behavioral observations and attitudes of the individual.
- Psychiatric diagnosis in list format on AXIS I and AXIS II.
- Explanation of psychiatric diagnosis offered.
- Justification for the psychiatric diagnosis.

C. Is the individual likely to engage in sexually violent predatory criminal behavior as a result of his or her diagnosed mental disorder without appropriate treatment and custody? (Yes/No)

- Provide Comprehensive Risk Assessment
- Discuss why future sexual offenses are likely to be predatory per WIC 6600(e).
- Explain whether the individual described a plan for voluntary treatment in the community, and how this was considered in the clinical evaluation.

III. CONCLUSION:

"Based on the above information, in my opinion, the individual meets the criteria as a sexually violent predator as described in section 6600(a) of the Welfare and Institutions Code."

Or,

"Based on the above information, in my opinion, the individual does not meet the criteria as a sexually violent predator as described in Section 6600 (a) of the Welfare and Institutions Code."

Signature

APPENDIX E

REFERENCES – LITERATURE

American Psychiatric Association. (2000). Diagnostic and Statistical Manual of Mental Disorders. Fourth Edition, Text Revision. Washington, DC, American Psychiatric Association.

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Rice M., Harris G. and Quincey V. (1990). A follow-up of rapists assessed in a maximum security psychiatric facility. Journal of Interpersonal Violence 5 (4), 435-448.

APPENDIX F

REFERENCES – COURT DECISIONS

Cooley v. Superior Court of Los Angeles (Paul Marentez, Real Party in Interest), S094676, November 25th 2002 (29 Cal. 4th 228)

Hubbart v. Superior Court of Santa Clara County (People), S052136, January 21st, 1999 (19 Cal. 4th 1138)

Kansas v. Crane (00-0957, 1/22/2002), Supreme Court of the United States, 534 U.S. 407 (151 L.Ed.2d 856, 122 S. Ct. 867)

People v. Burris, E029416, October 10th, 2002 (102 Cal. App. 4th 1096)

People v. Torres, S079575, May 21st, 2001 (25 Cal. 4th 680)

People v. Superior Court of Marin County (Patrick Ghilotti, Real Party in Interest), S102527, April 25th 2002 (27 Cal. 4th 888)

People v. Williams 2003 (31 Cal. 4th 757)

Rose v. Mayberg, July 2006 (454 F.3d 958)

EXHIBIT B.

Panel members and amount of pay (2007)

7. Panel members and amount of pay in 2007

SVP Evaluator	Total Hours_Pay	Total Expenses	Grand Total
Alumbaugh, Mary Jane	451,900.00	14,749.64	466,649.64
Anthony, Annamaria	241,100.00	7,137.12	248,237.12
Arnold, Dale	360,600.00	14,533.93	375,133.93
Barker, James	176,350.00	4,511.95	180,861.95
Broadman, Robbin	83,300.00	1,858.72	85,158.72
Brook, Robert	444,450.00	7,043.96	451,493.96
Cassidy, Robert	108,200.00	2,241.40	110,441.40
Clipson, Clark	178,400.00	2,639.95	181,039.95
Coles, Jeremy	883,300.00	8,489.80	891,789.80
Damon, William	149,600.00	3,742.36	153,342.36
Davis, Beryl	148,100.00	2,989.85	151,089.85
Davis, Jeffrey	270,850.00	4,109.86	274,959.86
Davis, Marianne	139,800.00	2,036.66	141,836.66
Emerick, Katherine	3,800.00	362.82	4,162.82
Essres, Garrett	409,230.00	5,756.36	414,986.36
Ferrant, Susan	184,900.00	9,617.35	194,517.35
Finnberg, Elaine	113,875.00	4,761.39	118,636.39
Flinton, Charles	103,500.00	1,222.59	104,722.59
Fox, Erik	141,400.00	3,971.10	145,371.10
Fricke, Al	267,720.00	4,969.09	272,689.09
Geisler, Richard	114,774.00	1,026.37	115,800.37
Glen, Barrie	125,234.00		125,234.00
Goldberg, Harry	470,900.00	7,918.12	478,818.12
Gould, Jeff	4,400.00	138.23	4,538.23
Grosso, George	81,500.00	2,641.86	84,141.86
Hudak, Koreen	52,450.00	625.41	53,075.41
Hupka, John	598,700.00	13,374.62	612,074.62
Inman, Debra	167,900.00	3,297.64	171,197.64

Jeko, Lisa	258,210.00	2,037.36	260,247.36
Jenkins, Steven	223,800.00	2,869.21	226,669.21
Karlsson, Roger	128,192.00	4,750.22	132,942.22
Koetting, Mark	126,250.00	2,426.07	128,676.07
Korpi, Doug	642,600.00	12,981.86	655,581.86
Longwell, Kathleen	357,950.00	5,242.78	363,192.78
MacSpeiden, Thomas	415,900.00	10,092.95	425,992.95
Malinek, Hy	396,550.00	6,898.59	403,448.59
Maram, Eve	83,500.00	623.45	84,123.45
Maram, Wesley	308,750.00	5,542.25	314,292.25
Matosich, Christopher	229,450.00	9,175.36	238,625.36
Miccio-Fonseca, L.C.	188,600.00	3,310.82	191,910.82
Miculian, Mark	669,490.00	7,735.37	677,225.37
Murphy, Carolyn	213,750.00	2,932.74	216,682.74
Musacco, Michael	795,800.00	7,916.24	803,716.24
Nair, Mohan	949,950.00	27,433.74	977,383.74
North, Christopher	478,750.00	9,059.06	487,809.06
Owen, Robert	1,521,050.00	19,175.35	1,540,225.35
Padilla, Jesus	167,100.00	3,116.59	170,216.59
Patterson, C. Mark	499,650.00	9,721.09	509,371.09
Petracek, Laura	10,500.00	315.94	10,815.94
Phenix, Amy	371,442.00	9,459.63	380,901.63
Prokopis, Andrew	49,000.00		49,000.00
Putnam, Dana	282,700.00	8,823.06	291,523.06
Reed, Michele	194,650.00	5,235.56	199,885.56
Romanoff, Richard	253,400.00	4,744.53	258,144.53
Rueschenberg, Nancy	647,950.00	10,315.17	658,265.17
Scherrer, Mark	392,850.00	12,994.97	405,844.97
Schwartz, Mark	740,350.00	8,167.12	748,517.12

Selby, Michael	278,100.00	3,448.30	281,548.30
Shelley, Andrea	171,450.00	3,167.60	174,617.60
Sheppard, Dennis	125,950.00	7,517.81	133,467.81
Sidhu, Laljit	196,120.00	6,283.38	202,403.38
Simon, Eric	132,800.00	1,128.71	133,928.71
Sims, G. Preston	149,100.00	8,718.65	157,818.65
Smith, Kimberly	282,700.00	2,674.74	285,374.74
Smithstein, Samantha	204,500.00	2,184.99	206,684.99
Sreenivasan, Shoba	868,300.00	9,267.23	877,567.23
Starr, Dawn	1,135,100.00	17,956.81	1,153,056.81
Sussman, Daniel	35,000.00	1,027.23	36,027.23
Teofilo, Craig	152,900.00	5,088.47	157,988.47
Updegrove, Craig	658,100.00	8,150.65	666,250.65
Viglione, Donald	56,250.00	1,174.46	57,424.46
Vognsen, Jack	493,900.00	11,598.44	505,498.44
Walsh, David	132,644.00	869.44	133,513.44
Webber, Nancy	191,750.00	4,263.76	196,013.76
Weiss, Wendy	51,050.00	149.92	51,199.92
Wolkenhauer, Mark	136,100.00	2,137.81	138,237.81
Wornian, Larry	178,100.00	1,961.39	180,061.39
Yanofsky, Bruce	346,050.00	3,019.47	349,069.47
Zinik, Gary	281,400.00	6,934.91	288,334.91

1. Amount paid to Dr. Longwell.

Year	Evaluator	Yearly Total Hours
1999	Longwell, Kathleen	43,200.00
2000	Longwell, Kathleen	87,200.00
2001	Longwell, Kathleen	108,575.00
2002	Longwell, Kathleen	94,600.00
2003	Longwell, Kathleen	96,800.00
2004	Longwell, Kathleen	89,895.00
2005	Longwell, Kathleen	97,150.00
2006	Longwell, Kathleen	120,200.00
2007	Longwell, Kathleen	357,950.00
2008	Longwell, Kathleen	77,750.00

3. Amount paid to Dr. Starr

Year	Evaluator	Yearly Total Hours
1999	Starr, Dawn	62,900.00
2000	Starr, Dawn	190,500.00
2001	Starr, Dawn	279,100.00
2002	Starr, Dawn	352,075.00
2003	Starr, Dawn	285,000.00
2004	Starr, Dawn	243,925.00
2005	Starr, Dawn	285,320.00
2006	Starr, Dawn	396,175.00
2007	Starr, Dawn	1,135,100.00
2008	Starr, Dawn	288,100.00

EXHIBIT C.

PARTIAL LIST OF SVP EVALUATOR PANEL MEMBERS WHO WERE DISCHARGED FOR ALLEGEDLY NOT FOLLOWING "GUIDELINES"

PARTIAL LIST OF SVP EVALUATOR PANEL MEMBERS WHO WERE DISCHARGED FOR ALLEGEDLY NOT FOLLOWING "GUIDELINES"

#	Name
1	Jeffery Bodmer-Turner
2	Rosalee Bradley
3	Shelia Carroll
4	Dean Clair
5	Lloyd Craward
6	Richard Dillman
7	Theodore Donaldson
8	Miles Eastman
9	Jon French
10	Dean Haddock
11	Robert Halon
12	Sheryl Hausman
13	Steven Kaczor
14	Michael Kanla
15	Jeffery Lilly
16	Hanna MacGregor
17	Melvin Macomber
18	Richard Mays
19	Lynn Pallard-Hatch
20	Donald S. Patterson
21	John Podboy
22	Terri Quinn
23	Laurette Schiff-Jennis
24	Art Silva

#	Name
25	David Stubbins
26	Philip Trompetter
27	Douglas Tucker
28	William Vicary
29	Craig Wrath