

FINDING OF EMERGENCY

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

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

B. Description of Specific Facts Which Constitute The Emergency

Emergency regulation is necessary to support a new standardized assessment protocol to determine whether appropriate state prisoners should be determined to be Sexual Violent Predictors pursuant to Welfare and Institutions Code Sections 6600 et seq.

Welfare and Institutions Code Section 6601 (c) requires the Department of Mental Health to develop and update a standardized assessment protocol to be used to evaluate whether a person should be deemed a sexually violent predator as such term is defined in Welfare and Institutions Code Section 6600 (a)(1). On August 15, 2008, the Office of Administrative Law (OAL) issued 2008 OAL Determination No. 19 which concluded that the challenged provisions in the Department of Mental Health's Clinical Evaluator Handbook and Standardized Assessment Protocol (2007) meet the definition of a "regulation" as defined in Government Code Section 11342.600.

On January 6, 2009, the Superior Court of the County of Sacramento stayed the proceedings in the matter of People v. Joseph M. Maggard (No. CR 59230 Dept. 22) because of the OAL determination regarding the Department of Mental Health's Clinical Evaluator Handbook and Standardized Assessment Protocol (2007). The Court stayed for 30 days the Sexually Violent Predator (SVP; Welfare and Institutions Code Sections 6600 et seq.) proceedings pending against Mr. Maggard to await the Department of Mental Health's filing of emergency regulations to adopt the required protocol.

A regular non emergency rulemaking action would not be in compliance with the Superior Court's order. These emergency regulations will support the Department of Mental Health's updated standardized assessment protocol that will be used to properly assess whether a person is deemed a Sexually Violent Predator that should be confined and treated at a state mental hospital, and prevent the inappropriate release into society of persons that pose a threat to the preservation of the public peace, health and safety, or general welfare.

C. Authority and Reference Citations

Authority: Welfare and Institutions Code Section 4027

Reference: Welfare and Institutions Code Sections 6601 (c)

D. Informative Digest and Policy Statement Overview

Policy Statement

The objective of the proposed action is to create regulations to support a standardized assessment protocol required by law essential for the preservation of the public peace, health and safety, or general welfare.

Existing Law

Welfare and Institutions Code Section 6601 (c) requires the Department of Mental Health to develop and update a standardized assessment protocol to be used to evaluate whether a person should be deemed a sexually violent predator as such term is defined in Welfare and Institutions Code Section 6600 (a)(1). Section 6601 (c) reads as follows:

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.

E. Summary of Proposed Regulations

Section 4000

Section 4000 states that the new Chapter 15 applies to evaluators performing an assessment to determine whether a person is a sexually violent predator pursuant to Welfare and Institutions Code Sections 6600, et seq.

Section 4005

Section 4005 sets forth the responsibilities of evaluators, according to their professional judgment, to apply tests or instruments, along with other status and dynamic risk factors that are appropriate to the particular patient on a case-by-case basis.

F. Technical, Theoretical, and Empirical Study or Report

None

G. Determinations

The Proposed Substantial Differentiation from Existing Comparable Federal Regulation or Statute: None

Mandates on Local Agencies or School Districts: None

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

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

Nondiscretionary cost or savings imposed on local agencies: None

Costs or savings to any state agency: None

Costs or Savings in Federal Funding to the State: None

Costs or Savings to Individuals or Businesses: None