

**SVP Commitments**

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**Anticipating The Issues**

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**Current Case Considerations**

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- Sexual charges
- Sexually related charges
- History of sexual misconduct
- Prior Sexual convictions

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**Common Misconceptions**

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- Non-violent sexual crimes
  - Statutory definitions
  - “Other information”
  - Evaluator opinion
- Not a sex crime commitment

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## Since 2006

- A felony violation of Section 261, 262, 264.1, 269, 286, 288, 288a, 288.5, or 289 of the Penal Code,
- Any felony violation of Section 207, 209, or 220 with intent to commit enumerated those crimes
- At this point attempts do not count, **but only at this point**

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## Need Not Be Committing Offense

- Welf. & Inst. Code § 6600 (a)(2)
- (A) A prior or current conviction – determinate
- (B) indeterminate prison sentence.
- (C) A prior conviction in another jurisdiction for an offense that includes all of the elements
- (E) A prior conviction - grant of probation
- (F) A prior NGI for specified offense
- (G) A conviction resulting in MDSO
- (H) A specified prior with commitment to CYA (16 yr)
- (I) A Prior indeterminate prison sentence.

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## Primary Source Material

- Record of Conviction
- Probation Officer's reports
- Police Reports
- CDCR mental health evaluations
- Defense mental health evaluations
- 288.1 evaluations
- Anything that happens to be in file, i.e. letters from family, friends, employer

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## Additional Material

- ❑ Current statements of victims/witnesses
- ❑ Unadjudicated accusations
- ❑ Statements from hospital staff
- ❑ Hospital records
- ❑ Treatment records

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## What About Hearsay?

- ❑ People vs. Otto and 6600(a)
- ❑ Expert opinion
  - Qualifying offenses = truth
  - Other conduct = diagnosis/danger
- ❑ Probation report for qualifying offense may come in for the truth in some cases

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## Facts From Other Cases

- ❑ Probation reports
- ❑ Expert Opinions
- ❑ Crawford issues - Civil vs. Criminal
- ❑ Do not let anything in without objection if not proven
- ❑ Remember if it is not material or relevant now it is not trivial

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## Talk With Client Before Interview

- ❑ If your expert is talking to client talk to expert too!
- ❑ Client must understand that statements in mitigation may later lead to diagnosis
  - “I could not help myself”
  - Suffering from any kind of condition that affects client’s volition

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## Drug Issues

- ❑ History of drug abuse not necessarily bad
  - Be careful of ASPD
- ❑ Drugs lower inhibitions in everyone
- ❑ If client was under the influence at time of offense, make sure that gets in the record

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## Statements To Avoid

- ❑ I could not help myself
- ❑ I do not know what came over me
- ❑ Lack of remorse may hurt at sentencing, but too much remorse may be a symptom of a mental disorder years later

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## 288.1 Evaluations

- ❑ Remember that amenability to treatment in the community means that there is something there to treat
- ❑ Clients who have denied any wrongdoing up to the time of plea and take a deal to avoid prison must be especially careful

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## Probation Reports

- ❑ All factual assertions are important!
- ❑ Move to strike anything that is false or cannot be proven
- ❑ Otto says this is the time to challenge errors, not in subsequent SVP proceeding
- ❑ Move to strike any fact or statement that is not relevant to the current proceeding
- ❑ Counter every factual error on the record

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## Hearsay and Non-Predicates

- ❑ If the probation officer is citing some source that is in error do not let it pass without objection i.e. relationship with mother
- ❑ If you have documents that counter factual assertions in probation report, try to get them made a part of the court file as well by attaching them to pleadings or motions
- ❑ Be careful of letters from family, pleas for understanding can be dangerous

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## Client's Sexual History

- Avoid it where possible
- Be careful about portraying client as victim of sexual abuse
  - Issues of early sexualization
  - Though not predictive of future abusing, DMH evaluators have a tendency to turn this around
- Even interaction with other children of same age can be damaging

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## If You Must Show Remorse

- "I did not think about consequences when I did it"
- "I knew it was wrong, I just did not care, I am sorry now"
- "Jail has given me time to think about what harm I did, I never considered it before"
- Any other thing that shows criminal behavior at time of offense, that is only now reflected upon

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## Antisocial Personality

- Check DSM for list of factors
- Generally a continuous pattern of disregard to the rights of others over life span beginning with evidence of conduct disorder prior to age 15
- Try to avoid personality disorder diagnosis

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## Psychological Testing

- Avoid it if at all possible
- If you have to have a mental health expert it is best to have a conclusion the conduct was the result of aberrant behavior and does not reflect any psychiatric diagnosis

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## This Is A Wish List

- Aberrant behavior
- Opportunistic in nature
- Client was under the influence at the time
- Client is now in recovery from substance use
- Stable supportive environment
- Good relationship that is long lasting

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## Static-99 Coding Rules

STATIC-99 Coding Form

Question Number	Risk Factor	Codes	Score
1	Young (S9909)	Age 25 or older Age 18 - 24.99	0 1
2	Ever Lived With Any Convictions (S9910)	Ever lived with lover for at least two years? Yes No	0 1 1
3	Index non-sexual violence - Any Convictions (S9904)	No Yes	0 1
4	Index non-sexual violence - Any Convictions (S9905)	No Yes	0 1
5	Index sex Offenses (S9901)	Charges Convictions None None 1-2 1 3-5 2 6+ 3	0 0 1 2 3
6	Index sentencing date (including intake) (S9902)	3 or less 4 or more	0 1
7	Any convictions for non-contact sex offenses (S9903)	No Yes	0 1
8	Any Unlawful Victims (S9906)	No Yes	0 1
9	Any Stranger Victims (S9907)	No Yes	0 1
10	Any Male Victims (S9908)	No Yes	0 1
	<b>Total Score</b>	<b>Add up scores from individual risk factors</b>	

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## Some Additional Factors

- Intimacy deficits
  - Two year relationships
- General self regulation
- Sexual self regulation
- Poor cooperation with supervision
- Treatment drop out
- Negative social influences

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## Things To Take Away

- Sex offense commitments may be life sentences
- Mitigating factors may later create a diagnosed mental disorder
- Factual background information may later be additional risk factors
- Innocuous factual errors may later become extremely important to the client

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