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STATE OF CALIFORNIA
DEPARTMENT OF MENTAL HEALTH

WIC 6600 CIVIL COMMITMENT
PROGRAM

EVALUATOR HANDBOOK

INTRODUCTION

As a result of legislative concerns regarding the risk to public safety that results from the release from prison of violent, mentally disordered sex offenders, the provisions of WIC 6600 (see Appendix A) went into effect on January 1, 1996. This statute, created by Chapter 793, Statutes of 1995 (AB 888, Rogan) established a new category of civil commitment for persons found, upon release from prison, to be sexually violent predators. The initial term of commitment is two years and may be renewed until the individual's diagnosed mental disorder has so changed that he or she is not likely to commit an act of sexual violence.

The statute calls for the Department of Mental Health (DMH) to designate two evaluators (licensed psychiatrists and/or psychologists) to determine if an identified inmate has a diagnosed mental disorder such that he or she is likely to engage in acts of sexual violence without appropriate treatment and custody. This determination must be unanimous. If there is a difference of opinion between DMH evaluators then examinations by two independent evaluators are required. The independent evaluators must also be licensed as either a psychiatrist or psychologist, cannot be state government employees, and shall have at least five years of experience in the diagnosis and treatment of mental disorders. The Director may only request a petition for commitment be filed if both the independent evaluators concur that the inmate meets WIC 6600 criteria. The decision to file the petition or not will be made by the local designated counsel.

BEGINNING THE EVALUATION

The evaluators will begin by reviewing available data including the Department of Corrections (CDC) central, medical and psychiatric (if available) files in the prison where the inmate is housed. Pertinent information will be contained throughout the files, but the Probation Officer's Report (POR), the CII report (rap sheet) and psychiatric evaluations are essential to review. Many of the inmates to be evaluated will not have had a psychiatric evaluation, in which case the clinical interview will be critical to the process. Evaluators should be sure to pay special attention to documents such as the POR which contain victim information. While the evaluations require review of a substantial amount of material, the scope of the questions to be answered is narrow. The review of files and the clinical interview should be done with the specific forensic task in mind, namely, to answer the three questions that are included in WIC 6600:

- 1) Has the inmate been convicted of sexually violent predatory offenses against two or more victims?
- 2) Does the inmate have a diagnosable mental disorder?
- 3) Is the inmate likely to engage in sexually violent criminal behavior as a result of his/her diagnosed mental disorder?

RELEVANT DEFINITIONS

WIC 6600 sets forth several legal definitions that apply to the clinical evaluations. The evaluator should write the report to accurately reflect its legal purpose. When the statute or the evaluation protocol provides a definition, alternative personal or clinical definitions should not be substituted. For example, the definition of "diagnosed mental disorder" for the purposes of the WIC 6600 evaluation does not include V Codes contained in the DSM-IV. Also, clinicians may have their own concepts of what constitutes a "sexually violent offense", but they must keep in mind that only a limited set of specific penal code offenses qualify as sexually violent within this statute.

The following terms are defined in WIC 6600:

a. **"sexually violent predator"** - a person who has been convicted of a sexually violent offense against two or more victims for which he or she received a determinate sentence 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.

b. **"sexually violent offense"** - is defined as one of several specified crimes when 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 and a determinate sentence: "Sexually violent offenses" consist of the following Penal Code Violations:

PC 261(a)(2)	Rape by Force and Violence
PC 262(a)(1)	Rape of Spouse by Force and Violence
PC 264.1	Defendant Acted in Concert with Another Person to Commit and Act in Sections 261, 262, or 289
PC 286	Sodomy
PC 288(a)	Lewd Act on Child Under 14 Years
PC 288(b)	Lewd Act on Child Under 14 Years by Force and Violence
PC 289(a)	Rape with Foreign Object by force and Violence
PC 288a	Oral Copulation

c. **"diagnosed mental disorder"** - means 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" - means an act is directed toward a stranger or individual with whom a relationship has been established or promoted for the primary purpose of victimization.

THE CLINICAL INTERVIEW

Although the inmate may view the clinical interview as adversarial, the evaluation is in fact one of several steps required before a court considers the matter of a civil commitment. The evaluator should begin the interview by describing the interview process and responding to questions from the inmate. The inmate should be asked to sign a "Notification of Evaluation as a Sexually Violent Predator" (Appendix B). If the inmate refuses the interview then a space is provided on the Notification for "decline" and a signature should be obtained. If the inmate refuses to attend the interview and the Notification cannot be signed, this should be reported in the evaluation.

There may be a legal obligation to report specific new crimes that the inmate reveals if they involve child victims, if the crimes have not previously been reported, and/or there is a child who has been abused or is likely to suffer continuing abuse. This falls under the child abuse reporting laws in California and may require the evaluator to make a report to Child Protective Services. The inmate should be fully informed of this reporting law, written on the Notification, prior to the evaluation. Additionally, the inmate should be told that the evaluation report will be provided to court officers in the county of CDC commitment in accordance with the statute.

In rare instances an inmate may become a threat to him/herself, others or you during the clinical interview. Just as you would make every effort to provide for patient safety in a community setting, you should do so in the prison setting. If this occurs, immediately notify custody staff and ensure your own safety. Each prison has medical and/or psychiatric staff either present on site or on call who are designated to deal with these emergencies. Report your clinical findings verbally to this clinician and write a progress note which contains the name of the clinician you spoke with, your assessment of inmate risk of self harm or danger to others, and how the situation was resolved.

There are various approaches to interviewing sex offenders, and the determination of how to approach and structure the interview is made by the evaluator. While the evaluation protocol provides guidance regarding the questions that must be answered, it does not include everything one needs to consider. The interview will vary depending on many factors such as the type of offense, the inmate's history, and his/her willingness to discuss case factors.

THE USE OF HISTORICAL INFORMATION

As in other clinical situations, the evaluator may not always be able to confirm information given by the inmate. This will often be the case with inmates who believe their self-interests are best served by denying their sexual disorder or psychiatric symptoms and attempting to present themselves in a favorable light. Reliable history and

prior clinical evaluations from the inmate's records should be used to provide a basis for clinical decisions. The evaluator can then integrate this information with data gained from the clinical interview. Evaluators must avoid borrowing another evaluator's conclusions; as each WIC 6600 evaluation should reflect independent professional thought and clinical decision making.

DRAWING CLINICAL CONCLUSIONS

Inmate case histories rarely present a perfect fit with DSM-IV diagnoses, and almost always contain irrelevant as well as pertinent information. However, evaluators need to consider each of the three criteria and offer clear and unambiguous opinions regarding the WIC 6600 criteria. It is in the nature of clinical evaluation that qualified professionals will sometimes draw different conclusions from the same data or emphasize some data over other data in formulating their opinions. Each evaluator should produce a report that represents his or her best clinical judgment. While evaluators will undoubtedly feel more confident about their decisions in some cases than they do in others, clearly stated definitive opinions with a YES or NO answer to each clinical question are needed. At times the facts may be conflicting or incomplete, making an unequivocal clinical opinion impossible.

If, after review of all the information available, you are unable to support an affirmative conclusion regarding a criterion, then that criterion has not been met and the answer is NO.

SUMMARY

The mental health professional plays a critical role in implementing WIC 6600. The reports that the DMH evaluators and independent evaluators generate will be a primary resource for the district attorneys and county counsels in their review to determine if they will file proceedings for commitment on an individual. They will be read by attorneys and judges and will sometimes be presented to juries in the form of expert testimony in superior court. These evaluations need to provide the county courts with more than just summary professional conclusions. It is essential to include key facts in the body of the evaluation and clearly state the reasoning that lead the evaluator to his or her conclusions. Usually, the decision makers will not have professional mental health backgrounds. Therefore, the evaluator must relate clinical findings in plain language that can be understood by the lay person. With the exception of diagnostic terms, evaluators should avoid technical language from psychology, psychiatry and the law. Remember, the evaluator may receive a subpoena from an inmate's county of commitment and be required to testify on the basis of your evaluation. See Appendix C for sample evaluations.

**SEXUALLY VIOLENT PREDATOR CIVIL COMMITMENT
CLINICAL EVALUATION PROTOCOL
(Synopsis)**

I. IDENTIFYING INFORMATION

II. FINDINGS (WIC 6600 criteria)

A. Has the inmate been convicted of sexually violent predatory offenses against two or more victims? (Yes/No)

B. Does the inmate have a diagnosable mental disorder? (Yes/No)

C. Is the inmate likely to engage in sexually violent criminal behavior as a result of his/her diagnosed mental disorder? (Yes/No)

III. CONCLUSION

**SEXUALLY VIOLENT PREDATOR CIVIL COMMITMENT
CLINICAL EVALUATION PROTOCOL
(Annotated)**

I. IDENTIFYING INFORMATION

- A. Inmate name
- B. California Department of Corrections Number (CDC #)
- C. CII #
- D. Date of Birth (DOB)
- E. Earliest Possible Release Date (EPRD), or
Revocation Release Date (RRD), or
Parole Revocation Release Date (PRRD), or
Controlling Discharge Date (CDD)
- F. Facility
- G. County of Commitment
- H. Date of Evaluation

II. FINDINGS (WIC 6600 criteria)

- A. Has the inmate been convicted of a sexually violent predatory offense against two or more victims? (Yes/No)

Always quote the source of your information regarding the offense and then list each conviction of the relevant PC violations (i.e., PC 261(a)(2); PC 262(a)(1); PC 264.1; PC 288(a); PC 288(b); PC 289(a); PC 286; or PC 288a that make a subject eligible for referral under WIC 6600. An example from a report illustrates this documentation.

On 10-2-94, the inmate was convicted of two counts of PC 288(a) as noted in the Legal Status Summary Sheet contained in the Central File. Information contained in the Probation Officer's Report (POR), Court #12345, written by Jane Smith indicates that on 3-4-89 the Los Angeles Police Department was contacted in response to a possible child molest.

List dates and provide narrative descriptions of the crimes involved. A thorough description of the commitment offense is necessary for several reasons. First, you will need to have an accurate account of the circumstances of the offense for court testimony. Second, sex offenses that involve penetration, violent behaviors, and longer time periods of offending indicate an inmate who is at greater risk for sexual reoffense. These details of the crime need to be specified for the reader. Finally, a detailed discussion of the offense helps the reader to better understand the relationship between the victim and the perpetrator as it pertains to this statute. Do not use victims' names in the descriptions of the offenses.

Indicate whether each offense was "predatory" in nature, i.e., involved either a stranger or an individual with whom a relationship was established or promoted for the primary purpose of victimization. This example from an evaluation describes the relationship between an inmate and his two young female victims as it pertains to the WIC 6600 statute:

This inmate manipulated circumstances so he would have the opportunity to be alone with the young girls. The primary focus for these relationships was to establish sexual contact. The inmate was able to separate himself and his two victims from the other six youngsters so that he could be alone with the victims. Such activity shows forethought with an intention to sexually violate unsuspecting victims. By gaining their trust in assisting in construction of a play fort an opportunity arose for his real reason for this activity -- sexual gratification. In this way the inmate was able to establish and promote a relationship with his two victims for the purpose of victimization.

Indicate whether force, violence, duress, menace or fear of immediate and unlawful bodily injury on the victim or another person was involved. An example from an evaluation illustrates this discussion.

The POR dated November 10, 1992 clearly suggests that force was used during the commission of the offense. Specifically, the report stated, "He would put his hand under the girl's blouse and fondle her breast area. The victim reports that during these incidents the defendant would scare her by yelling at her and "ordering her" to do things of a sexual nature." Ordering can easily be defined as forcing this young girl to participate in sexual activity.

Note that in all cases in which the offense was predatory in nature, a PC 288(a) conviction should be considered a sexually violent offense for the purpose of determining whether an individual meets this criterion.

A summary statement should be made to address whether or not the conditions of criterion A are met. An example of a summary is given below:

In summation, the inmate does meet the first criterion for a sexually violent predator. He has been convicted of two crimes with very similar circumstances. Both victims were 7 or 8 years old, and the crimes were of a sexual nature. Also, he used force to achieve his goals. Finally, although the victims were not strangers, the inmate's primary purpose of promoting the relationships was victimization, i.e., sexual gratification.

B. Does the inmate have a diagnosable mental disorder? (Yes/No)

"Diagnosable mental disorder" is defined in WIC 6600 as 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.

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.

The basic definition of "diagnosed mental disorder" encompasses all DSM-IV diagnostic categories on AXIS I and AXIS II except V Codes, which are specifically excluded. The diagnosis offered should be based on psychiatric history and current findings.

The psychiatric history should be thoroughly outlined under criterion B and include any history of cognitive deficits, substance abuse, psychosexual abnormality, and major mental illness. For inmates with a documented psychiatric history in CDC, a chronological account of pertinent incidents should be documented under this criterion, along with the source of the information, date and contents.

During the evaluation the evaluator should perform a mental status examination and note behavioral observations and current attitude of the inmate. This clinical information with historical data will form the basis for the differential diagnosis on Axis I and Axis II according to DSM-IV. Given the nature of these sexual disorders, be sure to question the inmate on specific symptoms and behaviors listed in the differential diagnosis of paraphilia in the DSM-IV. Primarily this would be sexual fantasies, sexual urges or behaviors of a deviant type. Also determine the period of time over which these have occurred, since most paraphilias require a duration of at least 6 months.

Although narrative on diagnostic impressions is appropriate, all evaluations must include a separate section that lists the specific diagnoses that are being made on Axis I and/or Axis II.

C. Is the inmate likely to engage in sexually violent criminal behavior as a result of his/her diagnosed mental disorder? (Yes/No)

In your clinical opinion is the inmate more likely than not to commit a new sexually violent crime? Describe each factor that was used to make this determination.

In making this determination the evaluator should consider and describe several different factors including the actuarial data from the WIC 6600 record review, clinical indicators, institutional behaviors and elements of the past and/or current offenses.

The WIC 6600 record review (see Appendix D) contains actuarial predictors found in the research literature to correlate with sexual reoffense. The evaluator is encouraged to use these data to support findings in regard to the likelihood of the inmate committing a new sexually violent crime. Record review items include prior offense history, age at onset of various offenses, and some social and diagnostic items. High numbers on the prior offense items, young ages of onset, and answers of "yes" on the yes/no items have been statistically associated with a greater likelihood of sexual reoffense in earlier studies. A Rater's Guide (next page) is provided to aid evaluators in using the record review information.

Evaluators should note that actuarial risk scores were developed as a result of their correlation with reoffenses in samples and populations of research subjects; they do not provide the entire picture of reoffense-risk for a given individual. It is possible that an individual with few risk indicators on the record review will be determined to be likely to reoffend because of qualitative, sometimes unique individual factors outside the domain of actuarial items. Conversely, there might be qualitative and personalized information about an individual which would somewhat ameliorate the presence of several risk indicators on the record review form. This is why clinical indicators are important, and why the clinical evaluation is the final step before cases are referred to the counties by the Director of DMH.

Clinical indicators include several factors that can help the evaluator determine the level of risk for sexual reoffense. Factors the evaluator should consider include the following:

- The level of responsibility or lack of responsibility the inmate assumes for his/her behavior.
- The inmate's use of defense mechanisms such as denial, rationalization and minimization in an effort to avoid taking responsibility for his behavior.
- The ability of the inmate to provide honest disclosure about offenses. The evaluator should always use records and documents for accurate information regarding the offense. Inmate self-report is often unreliable as a basis for clinical decisions. The evaluator should note discrepancies between records and self-reports. This is particularly important if the inmate's description of the offense minimizes his/her responsibility or places him/her in a favorable light compared with the Probation Officer's Report (POR).
- Evidence of victim empathy and the inmate's awareness of the negative consequences to the victim. Try to ascertain if the inmate's empathy is genuine or has he/she learned to voice a superficial and socially acceptable response? For example, how does the inmate feel that the victim has been damaged by his/her sexual assault? Has the inmate attempted to make restitution to the victim?

RATER'S GUIDE: WIC 6600 Record Review Form

Meaning of Scores

Values in the "lower risk" and "higher risk" columns mark the extreme 25th percentiles of scores among two criterion-groups in a recent followup of CDC sex offenders. For example, 25% of these who did not sexually reoffend had three or fewer prior arrests (question 1); 25% of those who sexually reoffended had seven or more prior arrests. For age related items, younger ages were associated with sexual reoffending. For yes/no items, answers of "yes" were associated with sexual reoffending.

SVP Record Review Items	Lower Risk for Sexual Reoffense	Higher Risk for Sexual Reoffense
1. Number of all prior arrests:	3	7
2. Number of all prior convictions:	-	-
3. Number of admissions to correctional facilities (not counting parole revokes):	-	-
4. Number of prior arrests for violent offenses (not counting sex offenses):	2	5
5. Number of prior convictions for violent offenses (not counting sex offenses):	-	-
6. Age at first offense:	33	19
7. Number of parole or conditional release failures:	-	-
8. Age at first arrest for sex offense:	35	21
9. Age at most recent arrest for sex offense:	39	23
10. Number of prior arrests for sex offenses:	2	5
11. Number of prior convictions for sex offenses:	-	-
12. Number of rape arrests:	0	2
13. Number of rape convictions:	-	-
14. Number of molestation arrests:	1	2
15. Number of molestation convictions:	-	-
16. Child victim(s) are male <i>only</i>	no	yes
17. Child victim(s) are both male and female	no	yes
18. Does inmate have a documented juvenile offense record?	no	yes
19. Check yes if inmate has never been married.	no	yes
20. Ever diagnosed <i>antisocial personality disorder</i> ?	no	yes
21. Ever diagnosed any other personality disorder?	no	yes
22. Ever committed as an MDSO?	no	yes
23. Psychopathy score above median?	no	yes
Score:	-	-
24. Evidence of cognitive/intellectual deficits?	no	yes
Score:	-	-
25. Specify any diagnoses previously given (specify date and source):	N/A	N/A

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- Whether the inmate has a severe mental illness and to what extent it may impair his/her reality testing, affective stability, judgment, insight, impulsiveness and future behavior. For example, a symptom of mania and hypomania is excessive involvement in pleasurable activities that have a high potential for painful consequences, such as sexual indiscretions. This impulsive behavior may increase an inmate's risk for sexual reoffense. In another case, the painful feelings experienced as symptoms of depression may lead one to seek out comfort or relief through deviant sexual activity.
- Indications of problematic institutional behavior. The CDC central file should be reviewed for the existence of California Department of Corrections (CDC) 115 disciplinary reports (correctional rules violations). These violations range in severity, but for the purpose of this evaluation, those of a sexual or violent nature indicate greater risk of criminal or violent behavior.
- Any treatment obtained by the inmate. Most prisons do not offer specific treatment for sex offenders; however, some specialized group psychotherapy is offered at a few institutions. In these cases it is clinically relevant to determine if the inmate chose to participate and, if so, what he/she gained from that experience. Additionally, some inmates have early convictions which resulted in Mentally Disordered Sex Offender (MDSO) treatment at Atascadero or Patton State Hospital. Others have participated in the Sex Offender Treatment and Evaluation Project at Atascadero State Hospital. In either case, ascertain what the inmates gleaned from the treatment experience. Did they actively participate in treatment? Do they have a viable relapse prevention plan for the community? Do they know what mistakes led to their sexual reoffending? Inmates will have a higher risk of sexual reoffense if they have reoffended after substantial treatment.
- Elements of the past and/or current offenses which indicate the degree of danger, such as violence and callousness, impulsiveness, preplanning, predatory and grooming behaviors and number of victims. Unlike criterion A, in which only WIC 6600 offenses are relevant, criterion C allows the evaluator to consider past crimes the inmate is suspected of committing, or those for which he was not convicted because of a plea bargain. Sometimes crimes were not prosecuted because the victim would not testify, but the arrest has historical importance in predicting risk. Include all evidence in the record and clinical interview that indicates the inmate may be a future risk for sexual reoffense.

In summary, the evaluator should discuss specific symptoms of the inmate's diagnosed mental disorder and how those symptoms and associated behaviors increase the likelihood that the inmate will commit a new sexually violent offense. The evaluator must establish a connection, if any, between the diagnosed mental disorder that makes the

inmate a danger to the health and safety of the community and the probability the inmate will reoffend.

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.

After the evaluator has formed his/her conclusion, a clinical evaluation summary (see Appendix E) must be completed and faxed as soon as possible to the WIC 6600 unit in Sacramento.

APPENDICES

- A. Sexually Violent Predator Statute**
- B. Notification of Evaluation as a Sexually Violent Predator**
- C. Sample Evaluations**
- D. Record Review Form and User's Guide**
- E. Clinical Evaluation Summary Form**

APPENDIX A

Sexually Violent Predator Statute

Assembly Bill No. 888

CHAPTER 763

An act to amend Section 6250 of, and to add Article 4 (commencing with Section 6600) to Chapter 2 of Part 2 of Division 6 of, the Welfare and Institutions Code, relating to sexual predators.

(Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.)

LEGISLATIVE COUNSEL'S DIGEST

AB 888, Rogan. Sexually violent predators. Existing law sets forth specified punishments for sex crimes, including, among others, rape, sodomy, oral copulation, penetration with a foreign object, and lewd and lascivious conduct. This bill would provide that 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 sentence or whose parole has been revoked, may be a sexually violent predator, he or she shall, at least 6 months prior to, that individual's scheduled date for release from prison, refer the person for evaluation and, under specified circumstances, request that a petition for commitment be filed, and the proceedings be handled, by either the district attorney or the county counsel of the county in which the person was convicted of the offense for which he or she is under the jurisdiction of the Department of Corrections. The bill would require the Department of Corrections and the Board of Prison Terms to screen the person 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 before referring the person to the State Department of Mental Health for a full evaluation.

This bill would set forth procedures and standards for the review of the petition for commitment and would provide that a person who is the subject of the petition is entitled to a trial by jury, the assistance of counsel, the right to retain experts or professional persons to perform an examination on his or her behalf, and access to all relevant medical and psychological records and reports.

This bill would require a court or jury to 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 would be required to 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. If the court or jury

determines that the person is a sexually violent predator, the person would be committed for 2 years 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 that is located on the grounds of an institution under the jurisdiction of the Department of Corrections until his or her diagnosed mental disorder has so changed that he or she is not likely to commit an act of sexual violence.

This bill would require annual evaluations of those individuals committed as sexually violent predators.

The bill also would set forth procedures and standards for requesting and hearing petitions for conditional and unconditional release.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares that a small but extremely dangerous group of sexually violent predators that have diagnosable mental disorders can be identified while they are incarcerated. These persons are not safe to be at large and if released represent a danger to the health and safety of others in that they are likely to engage in acts of sexual violence. The Legislature further finds and declares that it is in the interest of society to identify these individuals prior to the expiration of their terms of imprisonment. It is the intent of the Legislature that once identified, these individuals, if found to be likely to commit acts of sexually violent criminal behavior beyond a reasonable doubt, be confined and treated until such time that it can be determined that they no longer present a threat to society.

The Legislature further finds and declares that while these individuals have been duly punished for their criminal acts, they are, if adjudicated sexually violent predators, a continuing threat to society. The continuing danger posed by these individuals and the continuing basis for their judicial commitment is a currently diagnosed mental disorder which predisposes them to engage in sexually violent criminal behavior. It is the intent of the Legislature that these individuals be committed and treated for their disorders only as long as the disorders persist and not for any punitive purposes.

SEC. 2. Section 6250 of the Welfare and Institutions Code is amended to read:

6250. As used in this part, "persons subject to judicial commitment" means persons who may be judicially committed under this part as mentally disordered sex offenders committed pursuant to Article 1 (commencing with Section 6300), sexually violent predators pursuant to Article 4 (commencing with Section 6600), or mentally retarded persons pursuant to Article 2 (commencing with Section 6500) of Chapter 2 of this part.

Nothing in this part shall be held to change or interfere with the provisions of the Penal Code and other laws relating to mentally disordered persons charged with crime or to the criminally insane.

This part shall be liberally construed so that, as far as possible and consistent with the rights of persons subject to commitment, those persons shall be treated, not as criminals, but as sick persons.

SEC. 3. Article 4 (commencing with Section 6600) is added to Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, to read:

Article 4. Sexually Violent Predators

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

(a) "Sexually violent predator" means a person who has been convicted of a sexually violent offense against two or more victims for which he or she received a determinate sentence 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.

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. 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.

(b) "Sexually violent offense" means the following acts when 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 and a determinate sentence: a felony violation of paragraph (2) of subdivision (a) of Section 261, paragraph (1) of subdivision (a) of Section 262, Section 264.1, subdivision (a) or (b) of Section 268, or subdivision (a) of Section 269 of the Penal Code, or sodomy or oral copulation in violation of Section 286 or 288a 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 or 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.

6601. (a) 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.

(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 such 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.

(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 is under 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. 6602. 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. If the judge determines there is not probable cause, he or she shall dismiss the petition. If the judge determines that there is probable cause, the judge shall order that a trial be conducted to determine whether the person is, by reason of 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.

6603. (a) A person subject to this article shall be entitled to a trial by jury, the assistance of counsel, the right to retain experts or professional persons to perform an examination on his or her behalf, and 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) If no demand is made by the person subject to this article or the petitioning attorney, the trial shall be before the court without jury.

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

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 two years 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, and the person shall not be kept in actual custody longer than two years unless a subsequent extended commitment is obtained from the court incident to the filing of a new petition for commitment under this article or unless the term of commitment changes pursuant to subdivision (e) of Section 6605. Time spent on conditional release shall not count toward the two-year term of commitment, unless the person is placed in a locked facility by the conditional release program, in which case the time in a locked facility shall count toward the two-year term of commitment. The facility shall be located on the grounds of an institution under the jurisdiction of the Department of Corrections.

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 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) The director shall provide the committed person with an annual written notice of his or her right to petition the court for conditional release under Section 6608. The notice shall contain a waiver of rights. The director shall forward the notice and waiver form to the court with the annual report. If the person does not affirmatively waive his or her right to petition the court for conditional release, the court shall set a show cause hearing to determine whether facts exist that warrant a hearing on whether the person's condition has so changed that he or she would not be a danger to the health and safety of others if discharged. The committed person shall have the right to be present and to have an attorney represent him or her at the show cause hearing.

(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 (f) 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 a period of two years 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.

(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.

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 and subsequent 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.

APPENDIX B

Notification of Evaluation as a Sexually Violent Predator

NOTIFICATION OF EVALUATION AS A SEXUALLY VIOLENT PREDATOR

You have been referred for clinical evaluation as a possible sexually violent predator under Section 6600 et seq. of the California Welfare and Institutions Code. The purpose of this examination is not treatment, but to determine whether you have a mental condition that makes you likely to engage in sexually violent criminal behavior in the future. If it is determined that you meet these criteria, you could be referred to court for involuntary commitment proceedings under this law. If you are found to be a sexually violent predator, you could be committed for treatment to a program conducted by the California Department of Mental Health in a state psychiatric facility.

This evaluation will include a review of criminal and institutional records, as well as clinical interviews with licensed psychiatrists or psychologists. Any information you provide during these clinical interviews could be included in the written reports and testimony on your case.

If, during the course of the clinical interviews, you provide information that suggests child or elder abuse that has not been previously investigated, the evaluators are legally required to report this information to the appropriate authorities.

These interviews are conducted subject to your consent. You may wish to review this matter with your legal counsel. If you decline these interviews, the evaluation will be completed using only other sources of information. Declining to be interviewed is a factor that might be considered in the court proceedings.

I have received and been provided a copy of the above information regarding my clinical evaluation as a sexually violent predator, and:

_____ I agree to be interviewed by Dr. _____ for
the purpose of evaluating me as a sexually violent predator.

_____ I decline to be interviewed by Dr. _____ for
the purpose of evaluating me as a sexually violent predator.

Date

Signature

Date

Evaluator

APPENDIX C

Sample Evaluations

WELFARE AND INSTITUTIONS CODE SECTION 6600
CIVIL COMMITMENT CLINICAL EVALUATION

February 22, 1996

I. IDENTIFYING INFORMATION

Name:	Doe, John
CDC #:	Z-99999
CII #:	X-999999999
DOB:	2-22-56
RRD:	2-19-96
Facility:	Folsom State Prison
County of Commitment:	San Francisco
Date of Evaluation:	1-23-96

Sources of information: Inmate John Doe is a 39-year-old, divorced, Puerto Rican inmate who was interviewed at Folsom State Prison for approximately one hour on 1-23-96. For the purpose of this evaluation the inmate's California Department of Corrections (CDC) Central File and Medical File were thoroughly reviewed. The inmate was verbally informed that any information he provided during the clinical interview could be included in the written report and testimony on his case. He agreed to participate in a clinical interview after the nature and purpose of the interview was explained to him, and he signed a Notification of Evaluation as a Sexually Violent Predator.

II. FINDINGS (WIC 6600 Criteria)

- A. Has the inmate been convicted of a sexually violent offense against two or more victims? YES.

The Probation Officers Report (POR) from the County of San Francisco (Superior Court Case # 120513), dated 2-10-93 and authored by Sharon L. Bretz, Probation Officer, indicates that the inmate was convicted of two counts of PC 286(c), Sodomy and PC 207, Kidnapping, and sentenced to prison for a total of twelve years on a determinate sentence. The circumstances contained in the POR are detailed below.

Victim #1 was a 12-year-old male. The incident occurred on 5-24-86 on the victim's way to school. Inmate Doe approached the victim, talked to him, and asked the victim to call his girlfriend, for unknown reasons. Inmate Doe deposited money in the pay phone, dialed the number and handed the phone to the victim. The girlfriend wasn't home and inmate Doe escorted the victim half a block away to a residence. The inmate entered through a steel gate and opened the door to the right and told the victim to enter. When the victim refused, inmate Doe pushed him into the house. He told the victim to call him "Joe." Inmate Doe then told the victim that he would give him some money later to buy some candy and soda. At this point, inmate Doe

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escorted the boy to the bathroom, ordered him to lay down on a towel and told him to remove his clothing. Inmate Doe rubbed some type of cream on the victim's anus and put his penis inside the victim's anus. This sexual assault lasted approximately an hour. The victim complained that "it hurt a lot" and asked him to stop. An hour later inmate Doe put his clothing back on and told the victim to do the same. Inmate Doe then walked the victim to the door, tapped him on the stomach and said, "You better not tell your mother or anybody, if you do I'll kill you." The victim left and went straight home crying to his mother, who called police.

This predatory sexual assault was committed on a stranger to the inmate, and the forced act of sodomy on this 12-year-old male was one of force and violence. The victim complained that this forced act "hurt a lot," and was tearful in recounting it to his mother. Additionally, the inmate threatened the victim that he would kill him, and the victim experienced fear of unlawful bodily injury.

Victim # 2 (See POR, Case # 120513, dated 2-10-93) was also a 12-year-old male. On 6-4-86 the victim reported that he was taken against his will and held for several hours by an unknown male at a residence. The victim was approached at 9:00 A.M., dragged to the house and held until 2:30 P.M. The victim indicated that inmate Doe said hello and asked him to go to a card shop with him and help him pick up a graduation card for a friend. They both went to the card shop, looked around but did not purchase anything. Inmate Doe then asked the victim to carry a bag of beer for him. The victim was then led to the residence where inmate Doe went through and opened an iron gate. The victim followed, carrying the bag of beer to inmate Doe's door. Inmate Doe then pulled the gate closed and the victim asked him what he was doing, stating that he had to go to school. Inmate Doe then opened the door to the residence and pulled the victim in. The victim held on to the iron gate and screamed for help, to no avail. Inmate Doe put his hand over the victim's mouth and told him to shut up or he would be hurt. The victim was escorted to a bedroom, where he was first ordered to sit on the bed. He was then told to stand up and inmate Doe removed the victim's clothing. The inmate got on the bed and began touching the victim's penis and orally copulated him. Inmate Doe then rolled him onto his stomach and put his penis in the victim's anus causing penetration. Over the next couple of hours, inmate Doe repeatedly sodomized, fondled and orally copulated the victim during his imprisonment. Inmate Doe only released the victim when the victim made up a story that he would be in trouble at home if he did not leave. Inmate Doe threatened to "get" the victim if he told anyone what happened.

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This sexual assault was committed on a stranger to the inmate and clearly involved repeated acts of force, violence and fear of unlawful bodily injury. This victim was forced to commit repeated unwanted acts of sexual penetration over several hours.

In summary, this inmate has committed a sexually violent predatory offense on two victims.

B. Does the inmate have a diagnosable mental disorder?
YES.

This inmate reports no psychiatric history in the community or psychiatric hospitalizations. This inmate has an extensive juvenile criminal history beginning on 11-9-75, when he pled guilty to PC 12022.5, Use of a Firearm on 3-18-76. On 4-29-76, he was sentenced to the California Youth Authority-Perkins (CYA-Perkins), for seven years for committing PC 459 First Degree Burglary. He paroled on 10-15-76 and was discharged from CYA Parole on 8-7-78. This conviction occurred at age 19, and the inmate did not admit to prior contacts with the law.

He admitted to using alcohol and drugs beginning at age 14, including the use of marijuana and cocaine. He began the use of alcohol at the age of 23, by self-report. He said that he would drink a lot on pay days. He stated he began to use "crank" while in the community on parole. His adult criminal history includes a conviction for PC 242, Battery, for which he received two years formal probation and a \$100.00 fine on 7-26-79. The POR in the Central File, Superior Court of San Francisco, # 148527, indicates that the inmate stated a 13-year-old boy was stealing tapes from his car. The inmate stated he got into the car and slapped the boy. He was reluctant to reveal other details of the offense, and self-report given to this examiner is similar to the story given to the probation officer. The inmate then committed the sexually violent offense detailed earlier, two counts of PC 286, Sodomy with Force.

On 9-27-92, he was convicted of PC 288.2, Harmful Matter to Minors/Seduce. In this case, according to the POR, Superior Court # 148527, a 12-year-old boy reported to his parents that a man named "Carlos" had talked to him a few times. The victim went to the inmate's apartment and had a Coca-Cola. The inmate then turned on a television and VCR and removed a tape from a box that had pictures of naked people on it and played the tape for a few minutes. The victim stated that he saw footage of a man and women engaging in sex with genital display. The victim stated he did not like watching this tape and he had never seen one before. The victim reported that the inmate did not remove his clothes, nor display his genitals, nor did he ask the victim

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to do so. The victim noted that he remembered the day of the occurrence as the day before his birthday. The victim stated that the inmate took him in his car and purchased a pair of shoes for him. The victim denies any touching between himself and the inmate. The police responded to the inmate's apartment and confiscated the tapes. The District Attorney dismissed this case due to a guilty plea on the offense PC 288.2(a), Showing Harmful Matter to Children.

In this case, on 11-22-92, the victim's father stated that his son came home screaming and crying that a man had grabbed him, and covered his mouth when he tried to yell for help. Police officers spoke with the eight-year-old victim, who was upset and gave sketchy details. The victim stated that he was playing with his friend, another eight-year-old at their "fort" that was located behind an apartment building and consisted of numerous cut trees. While at the fort, the inmate came up to the two boys and introduced himself as "Bruno" and started asking both boys about the fort. During the conversation, the inmate stated that he had a child and would like to bring the child to play at the fort. The inmate also stated that he was a gangster and showed both boys a knife he carried around to "kill cops." After spending an unknown amount of time with the two boys, the inmate then asked them to go to the store with him to get some beer. Both boys refused and the inmate repeatedly tried to persuade them. The inmate left alone, returned with beer and an alcoholic drink in a can. One boy sipped a can of beer and the other boy drank from one of the other cans. After drinking the drinks, the inmate put the second eight-year-old on his shoulders and carried him around. While doing this, the inmate removed the knife from his rear pocket and stuck it in the ground near the fort. He then asked the boys if they wanted to see a Playboy magazine. The inmate then left the area and returned ten minutes later with three Hustler magazines. The eight-year-old said that all three looked at the magazines but he was made to feel uneasy as it was getting late. The eight-year-old stated that he had to leave to go home and started walking away. After walking a few yards from the fort, the inmate came up to him from behind and put a hand over his mouth. The inmate told him not to tell anyone what had gone on. The victim dropped to the ground and begged the inmate not to hurt him. The inmate told the victim to shut up and picked him up from the ground. The second boy now appeared from the fort and asked what was going on. The first victim asked the inmate to let him go and pulled away from him. He then ran and climbed a fence that separated the golf course from the apartments where the fort was located. As he was climbing the fence, he told the inmate to let the second boy go. The second boy who was standing next to the inmate also ran to the fence and climbed over it.

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The inmate then threw the Hustler magazines over the fence at the two boys. The second victim picked up the magazines and gave them to his mother. The first boy went home crying and screaming to his father. The first victim's father then went to the second victim's home, secured the Hustler magazines and turned them over to the police. When police returned to the "fort" they found evidence of alcoholic drinks, a knife in the ground, a pack of cigarettes and a pair of eye glass frames that belonged to the inmate. The second boy confirmed what the first boy had reported to police. Visible on the first victim's hands, arms, and legs were visible scratches that had occurred when he climbed over the fence in his attempt to escape from the inmate. The second boy was not injured. On 12-2-92 a warrant was issued for the inmate's arrest and officers went to his apartment and arrested him. In an interview with the inmate after his arrest, he stated that he was sorry for the offense and that he has a reoccurring problem with sexually molesting boys. He stated he believed this is due to his own sexual molest when he was 10 to 12 years of age by two separate boy friends of his mother. The inmate stated he had been attending therapy with Dr. Gaffin, at the Parole Outpatient Clinic in San Francisco. He had seen Dr. Gaffin four times prior to this incident. He also reported seeing a second doctor associated with Dr. Gaffin, four times prior to the incident.

Additionally, this inmate has demonstrated poor compliance with parole and his three separate parole violations on 12-4-92, 3-23-94, and 5-25-95. On his first parole violation his criminal offenses included Contact with Children, Giving Harmful Matter to a Child, Annoying Children, False Imprisonment, and Possession of a Knife With a Blade Exceeding Two Inches. On his second parole violation his criminal behaviors included Use of Methamphetamines, Failure to Attend Parole Outpatient Clinic and Violation of Special Conditions of Parole, No Contact with Children. In this case, on 3-24-94, the inmate's parole agent learned that inmate Doe had befriended a 15-year-old male youth who's street name was "Little Albert." Inmate Doe was seen on several occasions with Albert in his truck. According to witnesses, inmate Doe permitted Albert to drive the truck alone and other witnesses reported that inmate Doe brought Albert to work with him on one occasion. Conditions of his third parole violation are not contained in his Central File.

In summary, this inmate has exhibited numerous criminal behaviors since approximately age fourteen beginning with the use of illicit drugs and alcohol, escalating to an armed robbery at age 19. He has had numerous convictions for sexually related offenses beginning in 1986, and continuing while on parole as recently as 3-24-94 when he violated the Conditions of Parole

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prohibiting contact with children. This inmate denies sexual fantasies, or urges about young boys between the ages of eight and twelve, however, he has numerous documented incidents of sexual activity with male youths of that age.

On Mental Status Examination the inmate presented as a neatly groomed, Hispanic male of medium height and build with brown hair and a mustache. He was alert and oriented in four spheres. His speech was normal and his answers were typically relevant and coherent. His mood was neutral and his affect was broad and appropriate. He denied difficulties with sleep, appetite, or energy. He denied suicidal or homicidal ideation. There was no evidence of delusional thinking. He denied auditory or visual hallucinations or other unusual perceptions. His immediate recall, recent and remote memory were good. The inmate reported however, that at times he feels he has memory lapse from his extensive use of illicit drugs. Brief testing indicates he is in the borderline to low average range of intellectual functioning, however further intellectual testing would be needed to verify this. He demonstrated good abstract reasoning on proverbs. He was unable to perform Serial Sevens or Serial Threes from Twenty. He exhibited some distractibility in the interview. In regard to his sexual disorder the inmate generally denied typical symptoms of sexual fantasies and urges toward prepubescent children. He gave numerous excuses and reasons why he would be showing pornographic material to children and he minimized his sexual behavior in his commitment offense. He stated "He's always been into women" and reports being married for six years, primarily while incarcerated and was divorced in 1992. He apparently lived with his wife for a brief time in the community before they split up. In regard to his multiple sex offenses he stated "It's been ten years and they keep trying to blow this up. The system keeps trying to dig this thing up." He reported that he did not attend Parole Outpatient Clinic because he could not find it. He also reported that in spite of having a Special Condition of Parole that prohibited him from being in the presence of children that he "had permission to be around kids." His social judgment in simple social situations is adequate, however regarding his sexual behavior it is severely impaired. His insight into his current situation is limited.

The diagnosis of pedophilia requires that for over a period of at least six months, recurrent, intense sexually arousing fantasies, sexual urges or behaviors involving sexual activity with a prepubescent child or children have occurred. This inmate has committed either sexual assaults, has threatened his victims, has engaged in behaviors of exposing children to pornographic material, and purchased goods for them in an attempt to groom them for sexual molestation. The inmate himself

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reported to the probation officer that he believed he had a sexual disorder involving children. Of note is the brief period of time that the inmate is able to remain in the community before violating parole or committing a new type of sexual crime. In his first parole violation he was in the community approximately six months before violating. On his second and third parole violation he remained in the community only two months and three months respectively.

Additionally, to meet the criteria of pedophilia the fantasies, sexual urges, or behaviors must cause clinically significant distress or impairment in social, occupational, or other important areas of functioning. For this man, these molestations and other deviant sexual behaviors have caused him a lengthy period of incarceration and impaired his freedom. It has interfered with his ability to maintain or seek gainful employment and prevented him from maintaining normal interpersonal relationships. It has impaired his ability to communicate and be with members of his family.

Not a great deal is known about the inmate's antisocial behavior prior to age fifteen. It is known that he began the use of illicit drugs and began to get into antisocial type behaviors at approximately age fourteen and this behavior has exacerbated over time. Personality disorders are the enduring patterns of an individuals which are exhibited in a wide range of life pursuits. This inmate's antisocial personality disorder has caused significant impairment to his interpersonal functioning, his sexual functioning and the management of his behavior. Antisocial personality disorder involves irresponsible and unlawful behavior and is often associated with criminality and long-term institutionalization. In the case of inmate Doe we see the following indications of his antisocial personality traits.

He has failed to conform to social norms with respect to lawful behavior.

He has been violent and forceful and engaged in numerous sexual assaults on child victims.

He was deceitful and manipulative in pursuing his child sexual assault victims.

He has shown a reckless disregard for the safety of himself and others and continues to repeat these criminal type behaviors as an on-going sign of irresponsibility in the community.

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He has shown a lack of remorse as indicated by rationalizing his sexually assaultive behaviors toward his child victims.

Diagnostic Impression: (DMS-IV)

Axis I	303.2	Pedophilia, sexually attracted to males, non-exclusive type
	304.90	Other substance dependence (marijuana, heroin, methamphetamines)
	303.90	Alcohol dependence
Axis II	301.7	Antisocial personality disorder

- C. Is the inmate likely to engage in sexually violent criminal behavior as a result of his diagnosed mental disorder? YES.

In my clinical opinion this inmate is more likely than not to commit a new sexually violent crime. Several factors were involved in coming to this conclusion and they are as follows.

1. This inmate has committed antisocial behavior over a lengthy period of time including sex offenses, property offenses and illicit drug use. His sexual offenses involved considerable violence, force and brutality. This man has demonstrated that he will continue to commit both sex offenses and other criminal offenses such as illicit drug use even while on parole. According to actuarial data, the number of all prior arrests and convictions correlate with sexual reoffense. In this case, this inmate has had five prior arrests and three prior convictions and the numbers in this case correlate with a higher risk for sexual reoffense. Also, the number of arrests and convictions for violent offenses correlate with risk for sexual reoffense. In this case, the inmate has had two prior arrests and convictions for violent offenses which, according to actuarial data indicates a lower risk for sexual reoffense.

2. Actuarial data indicate that a younger age at first offense correlates with a higher risk for sexual reoffense. In this case, the inmate's age of 20 at his first sex offense indicates a higher risk for sexual reoffense.

3. The number of parole or conditional release failures is also an indicator of increased risk for sexual reoffense. In this case, the inmate has had three parole violations in a brief time after release to the community. This inmate has shown an unwillingness or inability to live within the rules of parole or release to the community which were designed to provide community safety. Given his propensity to violate parole repeatedly for reasons of sexual deviancy and inability to follow rules, he would be at higher risk for sexual reoffense if released to the community again.

4. The number of arrests for sex offenses in this case is two. According to actuarial data this would indicate a lower risk for sexual reoffense, however this man has exhibited numerous behaviors on parole that indicate he was escalating towards sexual reoffense, and would pose a higher risk for sexual reoffense.

5. This inmate's victims of sexual assault and sexual behavior are male victims. Research indicates that sex offenders with male victims are more likely to reoffend than those with female victims only.

6. Clinically, this inmate has shown little understanding of the seriousness of his behavior or the traumatic impact on his victims and has demonstrated little remorse for his conduct. This is a clinical indicator that places him at higher risk for sexual reoffense. This inmate has had numerous opportunities for treatment of his sexual disorder in the Parole Outpatient Clinic. This inmate has chosen not to attend treatment for his problem, and he has not received treatment for his sexual disorder in the institution. This indicates that the inmate is not willing to address his sexual deviancy and does not understand the seriousness of his sexual disorder. Additionally, he does not currently have a viable relapse prevention plan to stop him from committing a new sex offense in the community.

7. This inmate has a long-standing drug and alcohol dependence, and has participated in the use of illicit drugs, during the commitment offense, and while in the community on parole. He has not received treatment for his chemical dependency. He has the propensity to engage in the use of drugs and alcohol which lowers inhibitions and controls, and indicates a higher risk for sexual reoffense.

8. The nature of this man's diagnosed mental disorders (pedophilia and antisocial personality disorder) are long-standing and chronic in nature. They are the disorders which predispose this man to commit sexually violent predatory

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offenses. It is unlikely that as a result of the passage of time by itself or through incarceration itself, one would expect a decrease in the severity of these disorders. There is no significant information in the record to suggest that this man has undergone significant changes in his behavior, personality, attitude or belief which would suggest a change or decline in his risk for reoffense. His parole failures indicate these disorders may have worsened. It is because of the pervasive nature of his diagnosed mental disorder he is predisposed to engage in sexually violent criminal behavior again.

III. CONCLUSION

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

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grabbed her from behind, and put a knife to her throat. He then dragged the victim back to his car and forced her into the passenger side of the vehicle. According to the victim, the inmate then forced her to orally copulate him. This occurred while the defendant was driving on the highway. During the ride, the victim could still feel the defendant holding a knife in his right hand against her side. Eventually, he drove to his apartment. With the knife still at her side, he made the victim exit the vehicle and led her to his apartment. Once inside, the victim stated that the inmate twice had forced sexual intercourse with her. The victim stated that she was able to keep calm and noticed her surroundings. He eventually dropped her off at her car and drove away. The victim then drove home and told her husband what had occurred. They reported the rape to the police. The victim was able to remember the location of the apartment which helped them find the inmate and arrest him.

According to the inmate, he was stopped at a traffic light next to the victim's car. Initially, the inmate stated that he asked the victim if she wanted some cocaine and whether she liked to "party." He stated they pulled their cars over and the victim voluntarily got into his car. Then, they proceeded to the inmate's apartment whereupon they used cocaine and had consensual sexual intercourse. Afterwards, he drove the victim back to her car. At the time, when asked why the victim would accuse him of rape, he stated that he felt the victim wanted to have an excuse for her husband as to why she arrived home so late.

2. 07-78 & 03-78 PC 261(a)(2), Rape by Force and Violence.

This offense occurred while inmate Doe was at the Aberdeen Proving Ground in the U.S. Army and was eventually dishonorably discharged as a result of this incident.

According to the current POR, Court No. 1234, dated 3-2-78, the victim, a female soldier, described the crime as follows:

She was walking between two buildings when the defendant called to her and then grabbed her right arm and asked "do you want to get high?" The defendant put his free arm around her neck and dragged her across the street. The defendant said he had a knife and said he was going to kill her. He threw her under the air conditioner and "punched me in the face about six times then he banged my head

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on the ground a couple of times." The defendant told her to take off her pants, and when she fumbled with this, the defendant took all her clothes off her left leg. . . . The intercourse lasted approximately fifteen seconds. He then forced the victim to commit fellatio on him while he performed cunnilingus on her by biting her vagina. Inmate Doe was initially sentenced to a five-year prison term.

Do these convictions meet the requirements needed for inmate Doe to be judged as a sexually violent predator? To answer this question, elements of the criteria for sexually violent predators under WIC 6600 will be delineated below.

Sexual: Both of inmate Doe's convictions involve Penal Code violations contained in the WIC 6600 statute.

Violence: Violence, according to WIC 6600 is defined as acts committed by force, violence, duress, menace, or fear of immediate unlawful bodily injury on the victim or another person.

The description above obtained from the POR clearly indicates that violence was used during the commission of the offense. In the 1982 conviction, inmate Doe forced the victim into his car and held a knife at her side during the sexual acts. Moreover, he was convicted of two counts of 261(2), which is defined as Rape with Force and Violence.

Regarding the offense in the military in 1978, the victim stated that inmate Doe pulled a knife and threw her into an air conditioner, punched her in the face six times and banged her head on the ground. He also forced her to perform intercourse and fellatio. This description indicates extreme violence was used in the commission of this offense. Moreover, he was convicted of PC 261(a)(2), Rape by Force and Violence.

Predatory: According to WIC 6600, predatory means an act directed toward a stranger or individual with whom a relationship has been established or promoted for the purpose of victimization.

There are no indications that Inmate Doe knew these two victims prior to the crimes. Upon his own admission, he first met the victim in the 1982 crime on the night of the offense. Regarding the 1978 offense, the POR stated "the victim squinted

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Inmate Doe has also been accused of several other sexual assaults. According to Mr. Herron's report, inmate Doe, on December 28, 1981 was accused of rape. This rape was not prosecuted. Mr. Steppe, Deputy Probation Officer, referred to this rape in his POR on September 14, 1984. He described the incident as follows:

On 12-28-81 at 1:35 a.m., the defendant forcibly entered the victim's residence by threatening her with a knife. The defendant then forced the victim to lie on the floor, while he raped her.

Inmate Doe also incurred additional charges in 1978 while in the Army. Mr. Steppe, in the same report, referred to these charges as follows:

Additional charges were initiated on August 17, 1978 when the defendant assaulted and attempted to rape another female member of his unit. The victim resisted the defendant, and he left. However, ten minutes later he attempted to rape another woman in the area. The second rape was also unsuccessful when a soldier near the scene responded to the victim's shouting. The defendant fled to a nearby barracks, where he threatened the pursuing soldier with a knife.

More recently in prison, inmate Doe has been accused of demanding sexual favors by force on March 18, 1993. He was found guilty of this charge and received a 90-day suspension. Similarly, on January 10, 1991, he was accused of threatening an inmate for sexual favors.

Thus, there are indications in the record that inmate Doe has a pattern of obtaining sexual pleasure through forceful non-consenting sex with women. Such accusations began when he was a juvenile and have continued up until the last two years. Most likely, such desires have not abated. Rather, inmate Doe has not been caught in any such behaviors since that time. Since these behaviors are long-standing and not considered part of the normal arousal activity patterns of adults, inmate Doe would classify as having a Paraphilia, NOS, rape. Since the objects of inmate Doe's affections are non-consenting persons and he has acted upon these urges, he clearly meets [the] criteria for Paraphilia as defined by DSM-IV.

Mental Status Examination: Inmate Doe is a tall, slightly underweight, African-American male who was neatly dressed for the examination procedure. He was wearing sunglasses

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which were positioned well above his eyes so he could make eye contact. Inmate Doe also had a slight mustache. On approach, he seemed like a calm individual with average intelligence. His mood could be described as euthymic and affect appropriate as to content. He denied any history of severe depressive symptoms such as sleep or appetite disturbance or suicidal ideation. At no time did he display any signs of a thought disorder. His verbalizations were logical and clear with the absence of loosening of associations. In addition, he did not display any gross neurological deficits. His skills in abstract reasoning, judgement, attention, concentration, and memory all seemed intact.

What was striking about the interview was inmate Doe's inability to admit responsibility for any of the accusations leveled against him since he was a juvenile. In addition, inmate Doe denied responsibility for even disciplinary measures brought against him while incarcerated. The only thing he admitted to was some minor rules violations that he had incurred while incarcerated over the last 14 years. When asked about all these accusations, inmate Doe tended to become quite verbose in explaining his position. While talking about past accusations, he would talk repeatedly about "needing to get on with his life." While discussing the offenses, inmate Doe did not make eye contact with the examiner. He seemed to be very focused on describing his version of past events. Towards the end of the interview, he became somewhat agitated about the possibility of remaining incarcerated. His voice would seem more intense and he became more irritated. Nevertheless, he did not show any inappropriate behaviors and left the interview after being prompted by the examiner.

Background History: Inmate Doe reported a fairly unremarkable background history. Born in Virginia, he was "raised up and down the East Coast," since he grew up in a military family. He has three brothers and four sisters and he is the oldest male. Initially, he described a fairly happy childhood. When asked about a note in a report suggesting he came from a "broken family," inmate Doe went on to explain the discrepancy. He stated that his parents separated when he was a child but kept a very congenial relationship. Despite their separation and eventual divorce, he maintained frequent contact with his father. Also, his mother remarried in 1975, but inmate Doe stated he also had a good relationship with his step-father.

Inmate Doe denied ever being subjected to any physical or sexual abuse. He consistently described his family as "close-knit."

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Academically, inmate Doe stated he was an average student. He graduated high school in 1976 and had various scholarship offers due to his athletic ability. Initially, he relocated to Boston to live with his father. In 1976, he joined the military and went into the Army.

Due to his first convicted offense in the Army, he was given a Dishonorable Discharge. Afterwards, he moved to San Diego and worked on a military base. It was here, while working as a janitor and going to school in business administration at night, inmate Doe was arrested for the instant offense.

Socially, inmate Doe described himself as a popular individual. Due to his athletic ability, he stated he always had numerous girlfriends. He reported dating at an early age, i.e., 13 or 14 and lost his virginity about that time. He denied ever experiencing any sexual problems. Nevertheless, he admitted that he always had more than one girlfriend. When asked, he stated he would have sexual relations approximately four or five times a week. He denied ever having any unusual sexual fantasies.

Inmate Doe also denied having any significant drug or alcohol dependency problems. He admitted to smoking marijuana when he was much younger. At the height of use, he stated he used marijuana approximately four or five times per week. He denied ever using any other drugs, including cocaine. When asked about alcohol, he stated he only used to drink while in the military. He denied ever having a DUI or denied ever experiencing any blackouts from alcohol use.

Inmate Doe denied any past psychiatric history. The medical chart also confirms his statement. He has not seen a mental health professional independently unless required by the institution.

In regards to criminal history, inmate Doe has no listed crimes in the record other than the allegations and convictions for sexual offenses. There are no indications in the records that he was ever convicted of assault (i.e., not related to sexual crimes).

In summation, inmate Doe's criminal history clearly classifies him as suffering from Paraphilia, NOS, rape. He has a long-standing history of sexual activity with non-consenting adults. Such urges have resulted in his incarceration over the last 14 years. Furthermore, there are documented incidents while incarcerated that inmate Doe continues to have incidents as recent as 1993 where he requested sexual favors by force or threat. On the other hand, inmate Doe has no other psychiatric

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disturbance. He is free of any major mood or thought disorder. There are some indications that he may have traits of an Antisocial Personality Disorder for an Axis II diagnosis. Nevertheless, without indications that inmate Doe has participated in any other illegal activity, this examiner feels there is not enough evidence to assign him this diagnosis.

- C. Is the inmate likely to engage in sexually violent criminal behavior as a result of his diagnosed mental disorder? YES.

There are several reasons why inmate Doe is likely to re-offend.

1. This inmate's history of sexually violent activity dates back to 1978. One must keep in mind that inmate Doe's two convictions are not an indication of how many sexually violent acts he has committed. As noted in Mr. Herron's report, inmate Doe admitted to being involved in two aggravated assaults for attempted rape as a juvenile which were never reported. Also, he was accused of at least three other rapes besides these two convictions. While in the Army in 1978, he was accused of raping two women (besides his convicted charge) and assaulting another soldier with a knife when the soldier attempted to pursue inmate Doe. Furthermore, in 1981, he was accused of entering a victim's residence, threatening her with a knife and forcing her to lie on the floor while he raped her. Finally, the CDC Central File indicates two incidents in 1991 and 1993 in which he was charged with threatening other inmates for sexual favors. Since past behavior is one the best predictors of future behavior, one must assume that inmate Doe is likely to engage in future acts of sexual violence.

2. Inmate Doe has been accused of violent aggressive action as recently as 1994. A Chrono, which was dated November 16, 1994, accused inmate Doe of assaulting another inmate. Initially, inmate Doe was placed in "Administrative Segregation" for such actions. The victim in this assault was observed spitting out blood soon following the incident. Since no immediate medical examination was conducted, charges against inmate Doe were eventually dropped due to the lack of evidence. Nevertheless, the charges do suggest that there is a likelihood inmate Doe continues to use violence to express his anger.

3. Inmate Doe's crimes can be characterized as extremely cruel or inhumane. This would suggest a lack of an inability to empathize with the victim and thereby use self-restraint. Such cruelty was demonstrated as follows:

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a. The victim in the 1982 offense stated that inmate Doe forced her to perform oral copulation for almost 40 minutes. During the entire time, he had a knife at her side. According to the POR, she described the incident as follows, "several times she tried to lift her head to see where they were going but each time the defendant would force her head back down with his hand, forcing her to continue to orally copulate him."

b. The POR for the 1982 crime also discusses the cruelty of inmate Doe. This 1984 report states the following:

The defendant, by actions disclosed a high degree of cruelty, viciousness, and callousness in that, during the rape, the defendant grabbed the victim's ankles and pulled her feet forward in such a manner that her ankles were up around her ears, causing great pain to her back, hips, and the back of her legs. The defendant was completely insensitive to the victim's pain.

c. In the 1978 offense, inmate Doe used extreme violence. According to the 1984 POR, he dragged her across the street, threatened her with a knife, threw her against an air conditioner, punched her in the face about six times, and banged her head on the ground repeatedly.

The degree of violence used in these crimes suggest that inmate Doe is not inhibited by observing any trauma to the victim.

4. There are also numerous clinical factors observed during my interview on January 15, 1996 and past interviews which suggest future sexually violent activity is possible. Such factors are as follows:

a. Inmate Doe continues to deny responsibility in any of the sexual assaults. If he were at least beginning to admit to committing these crimes, this could be a starting point for psychological intervention. Yet, despite a pattern of violent sexual activity dating back to 1978, inmate Doe continues to maintain his innocence. Yet, he pled guilty to the 1978 offense. According to the 1984 POR, when referring to the reason why he pled guilty, he stated "the witnesses were all shipped out and when he was offered two years to plead guilty, he took the deal because he felt he could not fight the government." By continuing to deny any culpability in past sexually violent activity, inmate Doe's probability for future violent activity is increased.

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b. Inmate Doe still has no insight into how to avoid such activity in the future. On January 15, 1996, this examiner asked inmate Doe why he continues to be accused of sexually violent activity and he stated, "when you walk in a bad door, you have a hard time getting out." This is an inadequate explanation for why multiple victims who have no relationship to one another would continue to accuse inmate Doe of similar activity. Clearly, he has no understanding as to the causes of his past violent actions and would have a hard time understanding what measures need to be taken in the future to prevent such activity from re-occurring.

c. Inmate Doe continues to lie about past behavior. In this examiner's opinion, his lies are most evident when he continues to change his story especially in regards to the 1982 offense. For example, he has had several explanations as to how he met the victim in this offense. According to the 1984 POR, when first interviewed by police, inmate Doe denied knowing the victim. Later, he recanted his story and when asked why he did so inmate Doe stated, "he didn't want to tell the police what he had been doing that evening because he wasn't sure why he was being questioned."

In another change of story, inmate Doe told me on January 15, 1996, that he met the victim when he was stopped at a stop light.

According to the 1984 POR, his sister stated that inmate Doe told her he met the victim at her place of employment and they decided to meet later that evening.

Inmate Doe has also changed his story as to why the victim decided to enter his car that evening. The initial statement he gave to the police on the night of the instant offense was reported as follows in the 1984 POR supplemental report.

He asked her if she wanted to party and informed her he had some cocaine. The defendant states that the two then pulled their cars over to the side and the victim got into his car . . . The defendant told the victim to accompany him to his apartment to get cocaine. . . The defendant states that he and the victim did cocaine in the bedroom.

In my interview with inmate Doe on January 15, 1996, he denied offering the victim cocaine. Indeed, inmate Doe denied ever using cocaine in his life. When asked why this

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statement conflicts with his original statement, inmate Doe stated as follows, "the attorney wanted me to say that. I didn't know anything about trials. Otherwise, how else would a white girl go with a black guy in his car."

Inmate Doe was asked why a victim would make up such an elaborate story. Inmate Doe, in my interview on January 15, 1996 stated, "if you are married and you had to come home at 4:00 a.m. in the morning, you'd have make up a story." That may be true, i.e., if a person was having an affair they would have to make up a story. But why would the victim use this in which she would have to put herself through a trial on a witness stand and experience that much trauma. To this examiner, this rationalization simply does not make sense. What is clear, is that inmate Doe has a long history of not being honest about his past actions.

Finally, the more recent examples of his deception was during our interview. Inmate Doe denied charges of forcing other inmates to have sex with him in 1991. Yet, the examiner showed a piece of paper in the Central File which was supposedly written in inmate Doe's handwriting and detailed his threats for sexual favors from other inmates. Despite such evidence, inmate Doe continued to deny such activity ever occurred. Therefore, inmate Doe's consistent tendency to abdicate responsibility for past behavior further increases the likelihood of future violent sexual activity. By not taking responsibility for his actions, he can convince others and possibly himself that he has done nothing wrong. Therefore, he will not use any forethought to avoid similar situations once they occur after his release into the community.

d. Inmate Doe continues to show a lack of remorse for his victims. When asked if he remembered the victim's name in 1982 he stated her name in an angry tone. He said, "I'll never forget her." Indeed, he believes that the victim was the one who ruined his life. By not taking responsibility for his actions, he can convince himself that he is the victim of the crime. Indeed, he was able to win a successful appeal initially and put the victim through another trial. Also, according to the 1984 POR, the victim has stated that a woman keeps calling her demanding that she recant her "lies." The victim believes that this is inmate Doe's sister. Apparently, inmate Doe has convinced his sister he had not raped the victim. Such behavior further suggests that inmate Doe has no remorse for what he has done despite the trauma he has caused the victim and her family. According to the 1984 POR, the victim stated:

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Her daughter was awake when she arrived home after the attack and since that time her daughter has not been able to sleep through the night for fear that something will happen to her mother. The victim indicated that the ordeal has also been a strain on her marriage and if not for her husband's strength, they probably would have split up. At one point, the victim was so depressed she attempted suicide and her husband stopped her.

Most likely, inmate Doe is not even aware of the type of trauma he may have caused this victim and past victims of his crimes. He truly believes that he is the victim of injustice. This fuels his anger which can further act to increase his anger towards women once he returns to the community. Without being able to gain some insight into how his actions have caused others to suffer, inmate Doe can keep a safe emotional distance which could help foster future criminal activity.

In conclusion, inmate Doe is more likely than not to repeat sexually violent behavior in the future. He continues to deny responsibility for numerous crimes he has been committing in the past. Moreover, he even denies responsibility for threatening sexual favors while in prison despite evidence to the contrary. His continued need to lie about past behavior and his lack of remorse for victims, suggest that he has kept a safe emotional distance from his past activities. By not dealing with his emotions in this regard, inmate Doe increases the probability of future sexually violent activity once he is released into the community. He blames the female victims for his actions which can easily result in violent activity against future female victims he meets in a community setting.

Inmate Doe's diagnosed mental disorder of Paraphilia, Not Otherwise Specified (NOS), rape, leads to the likelihood that he will engage in sexual violence, specifically rape, in the future. In this case, Paraphilia refers to intense sexual arousing fantasies, sexual urges, or behaviors generally involving non-consenting partners. Indeed, inmate Doe has displayed sexual activity with non-consenting partners for over 25 years.

Individuals not familiar with the dynamics of a rapist might construe inmate Doe's current and past activity as an inability to obtain consensual sexual relationships. On the contrary, even inmate Doe may disagree with this notion. During our interview on January 15, 1996, he consistently maintained

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that he was a very popular individual who had never displayed any problems obtaining girlfriends. Indeed, he is a good-looking man and presents himself quite well. Also, he stated he was an athlete in high school and therefore quite popular with his female peers. At the time of the instant offense, inmate Doe had a fiancée. Inmate Doe also stated that he had another girlfriend in the local area at the time of the instant offense. He seemed to pride himself as never having difficulty finding girlfriends, and for that matter sexual relationships. Therefore, one must conclude that inmate Doe prefers non-consensual, forced sexual relationships. As noted, he has a long-standing pattern of engaging in these types of activities. Since the last documented activity of attempt of forced sexual contact was in 1993, one must assume that his paraphilia has not abated. Certainly, inmate Doe has not had any treatment for this disorder so there is no psychological reason why such urges could have subsided.

Inmate Doe received a brief psychological evaluation in 1982. The results of the MMPI were found in the medical chart. Such results do give some slight clues as to part of inmate Doe's problems. He scored highest on a clinical scale that measures mania. This does not mean that inmate Doe is manic but, the moderate elevation does suggest that inmate Doe is an impulsive, restless, impatient individual. Combining these traits with an individual who seeks out violent non-consensual sexual activity is certainly a dangerous mix.

Another disturbing bit of information is that inmate Doe is quite skilled at premeditating his actions. According to the 1984 PCR, the victim stated that she first noticed inmate Doe's yellow car driving by the restaurant as she was sitting in the parking lot warming up her engine. When she got onto the freeway, the victim stated that the car began to follow her and drive closely behind her. Inmate Doe was also able to use a very successful ploy of telling the victim that her "wheel was falling off." Such actions suggest premeditation on inmate Doe's part. This information is substantiated in the 1984 POR:

"the defendant's stalking of the victim and following on the freeway, indicates premeditation. In addition, the defendant used the ruse of her wheel falling off to get the victim to pull her car over and get out of her vehicle."

An individual who is able to plan his actions ahead of time is generally more dangerous than those individuals who commit impulsive crimes. Therefore, inmate Doe can be more calculating than others which can assist him in avoiding detection if released to the community in the future. Most

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likely, he was experiencing his urges for rape that evening or perhaps even days before this incident. He was able to seek out his victim and manipulate her into being alone so he could satisfy his own desire.

In conclusion, inmate Doe's Paraphilia, NOS, is still present as noted by his 1993 threat for sexual favors as documented in the clinical record. He also has been accused of an assault as recently as 1994. Thus, despite being incarcerated since 1982, inmate Doe still has desires for non-consensual and violent sexual activity. He continues to desire such activity despite, upon his own admission, he has numerous avenues to obtain and find consensual sexual partners. One must only conclude that he has a preference for rape. Furthermore, the fact that he continues to deny such facts in the past, despite overwhelming evidence, further increases the likelihood that he will participate in such activity in the future. Of most concern is that inmate Doe is an intelligent individual who can premeditate his actions and thereby avoid detection for some of his crimes. Therefore, it is the opinion of this examiner, if inmate Doe is released into the community, he is quite capable of committing rapes and escaping detection. Inmate Doe has never received any treatment for his deviant sexual desires and continues to deny that such desires even exist. As a result, his diagnosed mental disorder will likely lead him to engage in sexually violent criminal behavior in the future.

III. CONCLUSION

Based on the above information, in my opinion the inmate does meet the criteria as a sexually violent predator as described in Section 6600(a) of the Welfare and Institutions Code.

APPENDIX D

Record Review Form and User's Guide

WIC 6600 RECORD REVIEW FORM:

Background and Guide for Users

Studies of predicting future violence have consistently found that empirical or "actuarial" methods more accurately estimate the likelihood that an individual will reoffend than do the judgments of clinicians (e.g. Monahan, 1981; 1984; 1988). For this reason, it is important in the WIC 6600 commitment process to gather and consider items of information found to be predictors of future sexual violence.

"Actuarial" is a term most commonly used in the insurance industry. Items of information are used in formulas to predict the chance of early death such as age, weight, whether an individual smokes, etc. The insurance industry has found that good actuarial formulas translate directly to appropriately priced policies, and the company makes more money than if each insurance salesperson simply used a "gut-feeling" about a client's life span and set prices accordingly. Actuarial methods of computing risk have the advantage of being dispassionate indicators that are not susceptible to whim, the impression a client makes during an interview, and other

subjective and possibly distorting stimuli available to the person(s) doing the rating.

Criminological risk formulas work identically to those of insurance formulas. They compute probabilities of recidivism based on factors found to have correlated with recidivism in prior follow-ups of similar offenders. Regarding the specific prediction of sexually violent recidivism, unfortunately there are not as many available prediction instruments as there exist for predicting "any" recidivism. But because policy concerns related to sexually violent offenders seems to be on the increase worldwide, there have been some recent developments in sexual violence risk assessment that we can benefit from.

Considerations. A risk screening tool should be accurate, feasible, and defensible. "Accurate" means that each item should have empirical validity in being a statistically significant predictor of sexual reoffense. This does not imply that for every individual to whom screening is applied, each item will have great predictive meaning. Rather, the notion is probabilistic and indicates that the item was a statistically significant predictor of sexual recidivism in populations of similar inmates.

"Feasible" means that the information on which to screen must be consistently available for raters. Some items found to be accurate predictors had to be rejected from consideration due to feasibility problems. For example, some researchers and theorists have placed emphasis on early developmental factors, such as parental abuse or behavior in elementary school. Such information is sometimes in offender files in the pre-sentence investigation report sections addressing "social history." Unfortunately, the information is often years old, may have been gained by interviewing the offender himself, and might be suspect due to possible exaggeration, withholding, forgetting, and other distortions. While such information might be fine for research purposes, as factors leading to a legal commitment they are likely to be inadequate.

"Defensible" means that items cannot discriminate on civil rights grounds (e.g. racial origin), nor can information used to complete the items be based on conjecture or hearsay. The information on which risk ratings are made must be operationalized and likely to yield the same score by different raters.

The process of instrument development. With the above considerations in mind, the research literature on predicting sexual

recidivism was searched for possible risk-instrument domains and items. Of the many documents reviewed, the single most useful one was Hanson and Bussiere's (1995) "meta-analysis" of other such studies. A meta-analysis is a systematic compilation and re-analysis of exhaustive lists of studies on a particular topic. The meta-analyst uses certain criteria for including studies, such as a certain sample size and standards of experimental rigor. The results of each included study then become units in the much larger study. Statistical techniques are used to average the size and significance of effects across many studies.

Hanson and Bussiere's meta-analysis reviewed 77 studies having a combined sample of 24,299 sex offenders. The authors selected predictors of sexual violence that had been examined by three or more independent follow-up studies, then subjected the resulting list of predictors to various statistical tests per Hedges and Olkin's Statistical Methods for Meta-Analysis (1985). In brief, these methods: (1) averaged the correlations found by other researchers between each predictor and sexual recidivism; (2) computed a new test of (overall meta-analysis) significance for each predictor; and (3) tested the significance of differences in variances as a gauge of the similarity of findings across studies.

Application of meta-analysis findings to California sex offenders.

Predictors for use in the risk checklist were derived from the Hanson and Bussiere meta-analysis tables based on being statistically significant predictors of sexual recidivism, reasonably available in California Department of Corrections and Department of Justice files and rapsheets, and not likely to discriminate along racial or ethnic lines. Predictor-items were then tested for their validity in predicting sexual reoffense using Sex Offender Treatment and Evaluation Project (SOTEP) data.

Initially, the entire SOTEP sample was screened by types of prior sex offenses, by whether or not victims had been family members, and by whether or not victims had been strangers. Approximately 600 SOTEP participants were found by this method to have approximated the legal criteria relating to offense types and victims. Then, using only the data from these "SOTEP qualifiers," correlations between predictors and SOTEP sexual reoffense were computed.

As a guide to the individual or committee reviewing individual offenders' scores on the form, the distributions of items found to significantly correlate with sexual recidivism in the SOTEP dataset were examined to locate the low and high extremes of the two criterion groups in

question, specifically, those who did not commit sexual reoffenses and those who did commit sexual reoffenses. Low and high quartile values were identified within the non-recidivist and recidivist groups respectively. By simple visual inspection, reviewers can compare the scores of WIC 6600 candidates and see whether they fall closer to the lower/higher ranges of scores of SOTEP cases who did not vs. did become sexual reoffenders. Because the scores thus displayed on the attached "Rater's Guide: WIC 6600 Record Review Form" (see Appendix) represent extremes, an individual's score on an item that is at or below the "Low Risk" value can be viewed as quite solidly within the non-reoffender range. Conversely, a score at or above the "High Risk" value can be interpreted as solidly within the sexual reoffender range.

Careful data gathering and periodic research using actual WIC 6600 referral documents, their scores on this form, and their community performances can produce a more refined Record Review Form as California's experience with this program becomes greater.

References

- Hanson, R. K., and Bussiere, M. (1995). Predictors of sexual offender recidivism. Presented to the First Joint International Conference of the National Association for the Development of Work with Sex Offenders and The Association for the Treatment of Sexual Abusers, Cambridge University, September 1995. (Note: this study included 77 previous works on the prediction of sexual reoffense.)
- Hare, R.D. and McPherson, L.M. (1984). Violent and aggressive behavior by criminal psychopaths. International Journal of Law and Psychiatry, 7, 35-50.
- Harris, C.T., Rice, M.E., and Cormier, C.A. (1989). Sex offender recidivism: A review. Psychological Bulletin, 105, 3-30.
- Quinsey, V.L., Rice, M.E. and Harris, C.T. (in press). Actuarial prediction of sexual recidivism. Journal of Interpersonal Violence.
- McGrath, R.J. (1991). Sex-offender risk assessment and disposition planning: A review of empirical and clinical findings. International Journal of Offender Therapy and Comparative Criminology, 35(4), 328-349.
- Monahan, J. (1981). The clinical prediction of violent behavior. Washington, DC: Government Printing Office.
- Monahan, J. (1984). The prediction of violent behavior: Toward a second generation of theory and policy. American Journal of Psychiatry, 141, 10-15.
- Monahan, J. (1988). Risk assessment of violence among the mentally disordered: Generating useful knowledge. International Journal of Law and Psychiatry, 11, 249-257.
- Rice, M.E. and Harris, G.T. (1995). Cross-validation and extension of an actuarial instrument for the prediction of recidivism among sex