

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

**CLINICAL EVALUATOR HANDBOOK  
AND  
STANDARDIZED ASSESSMENT PROTOCOL**

**Revised  
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California Department of Mental Health  
Sacramento, California

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## INTRODUCTION

The California Sexually Violent Predator (SVP) law is contained in Welfare and Institutions Code Section (WIC) 6600 et seq. (see Appendix A). This law was enacted in October 1995 and became effective January 1, 1996. It established a new category of civil commitment for persons found, upon release from prison, to be sexually violent predators. The SVP commitment term is two years, and may be renewed through the filing of a new petition for civil commitment. The SVP commitment is ended if the Department of Mental Health determines that the individual's diagnosed mental disorder has so changed that he or she is not likely to commit future acts of sexual violence. The statute has been amended numerous times since its enactment. A current version is contained in the appendix of this handbook.

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

Under this statute, DMH assigns two clinical evaluators (psychiatrists and/or licensed 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. These initial evaluators may also be state government employees. If these two evaluators agree that the inmate meets the criteria, the Director of DMH will request the designated counsel, in the county of the most recent judicial commitment, file a petition for civil commitment. If the initial evaluators are split in their opinion, DMH will assign two additional, but independent, evaluators, to evaluate the identified inmate. These independent evaluators must also be a psychiatrist or a licensed psychologist, cannot be state government employees, and must have at least five years of experience in the diagnosis and treatment of mental disorders. If criteria are met, a letter of recommendation recommending civil commitment may be sent to the district attorney in the county of last commitment to CDC.

Enclosed with the DMH recommendation are all evaluations (positive and negative) completed by the initial and/or independent clinical evaluators, additional material collected by DMH, as well as all background information originally provided to DMH by the California Department of Corrections (CDC). If the district attorney concurs with the recommendation, a petition for civil commitment is filed in that county's Superior Court.

## **STANDARDIZED ASSESSMENT PROTOCOL**

WIC Section 6601(c) requires that a person referred from CDC be evaluated in accordance with a standardized assessment protocol, developed and updated by the DMH. This clinical evaluator handbook is the centerpiece of that protocol. This handbook may be supplemented by additional instructions to clinical evaluators as necessary. This handbook and all supplemental instructions to DMH staff and contractors in the implementation of the SVP law is the required standardized assessment protocol.

## **EVALUATOR PANEL**

The DMH utilizes state employees and contractors as its clinical evaluators. All evaluations are assigned, supervised, and submitted to the SOCP Evaluation Unit in Sacramento in accordance with instructions contained in this handbook. The address and phone number for the SOCP Evaluation Unit is located on the Table of Contents page at the front of this handbook.

State contract evaluators are selected, trained and supervised by the SOCP Evaluation unit. Evaluators are required to interview and evaluate persons in accordance with the protocol contained within this handbook, as well as present their findings in court when necessary. In accordance with the requirement for independent evaluations (WIC 6601(e)), state contractors are the sole resource for the Department when there is a split opinion in the first two evaluations.

## **EVALUATOR LIABILITY**

In Section 1618 of the Penal Code, the following statement addresses liability for staff or contractors who perform evaluations and provide court testimony in SVP cases:

The administrators and the supervision and treatment staff of the Forensic Conditional Release Program shall not be held criminally or civilly liable for any criminal acts committed by the persons on parole or judicial commitment status who receive supervision or treatment. This waiver of liability shall apply to employees of the State Department of Mental Health, the Board of Prison Terms, and the agencies or persons under contract to those agencies, who provide screening, clinical evaluation, supervision, or treatment to mentally ill parolees or persons under judicial commitment, or considered for placement under a hold by the Board of Prison Terms.

## CASE REFERRAL FROM DEPARTMENT OF MENTAL HEALTH

Upon acceptance of a case referral by the evaluator, SOCP sends a referral package. This package contains:

- The CDC material which was sent to DMH.
- Additional supporting documentation obtained by SOCP record reviewers.
- A cover letter that includes the name of the CDC inmate, the inmate's location, the date the completed evaluation is due, and the name and phone number of the responsible record reviewer.

Before the case is referred for evaluation, DMH record review staff have reviewed the material to ensure basic SOCP legal criteria are met (i.e., number of convictions, victims, etc.). However, the evaluator should independently confirm this information since it will be included in the final report. Should any additional information be needed regarding the case referral, contact the responsible record reviewer.

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

- The previous evaluators may be provided with any new information contained in the re-referral, and asked to consider whether this information would be likely to result in a change of the last given opinion. If so, the case will be assigned to that evaluator to perform a new evaluation.
- If a previous evaluator is no longer available, the case may be assigned to a new evaluator. Evaluations from the evaluator who is no longer available will become part of the case record and will be available to any and all evaluators handling that case.

Evaluators may read the past evaluations of those evaluators who are not currently assigned to the case, as these reports are considered part of the individual's history. Evaluators are not provided with, nor should they review, reports of active evaluators on the same case. Until the SVP case is resolved in some fashion, the DMH recommends that there is no discussion among the current evaluators regarding the case. This caution is not intended to restrict necessary consultation with designated consultants.

## SCHEDULING AN EVALUATION

The evaluator is responsible for scheduling the evaluation at the prison or facility where the inmate is housed. The majority of the inmates are in CDC institutions, although some inmates may be in local custody or at Atascadero State Hospital (ASH). The SOCP Unit recommends the evaluator confirm the inmate's location when the interview appointment is scheduled. SOCP staff will assist in locating the individual, if necessary.

Procedures for gaining access to these facilities are as follows:

### ***Access to the Prisons***

1. Call the Classification and Parole Representative (C&PR) at the prison where the inmate is housed to schedule the evaluation. The C&PR, or a designee, will schedule the interview and usually be the contact person at the prison.
2. Tell the C&PR that the following are needed:
  - a. Gate clearance to get into the prison, unless you possess a CDC ID card.
  - b. Time to review the Central and Medical files prior to the interview. Specify the amount of time needed.
  - c. Someone to make copies of relevant records from the files.
  - d. Quiet interview room with an optimal amount of privacy.
  - e. Time for the clinical interview of the inmate. Specify the amount of time needed.
  - f. Appropriate supervision to ensure safety.
3. Once you arrive at the prison, enter through the main gatehouse. Inform the gate officer who your assigned contact person is. Your contact person will assist you in the logistics of moving through the prison and in the file review process. It is helpful to have the contact person's phone number with you, as the gate officers sometimes do not have this information.
4. Do not wear jeans, any denim-type material, or any light blue shirt with navy colored pants. This is the inmates' attire and CDC staff needs to be able to identify visitors as separate from the inmate population.
5. If you experience any difficulty, including lengthy waiting prior to an interview, please call DMH at (916) 653-0673 for assistance.

### ***Access to Atascadero State Hospital***

As a reminder, ASH is a forensic facility with rules that must be followed. Evaluators log in at the main lobby, then proceed to the visitor's room.

1. Call the Health Information Management Department, Legal Section, to schedule the interview. (Staff appreciates at least one day's notice, if possible.) ASH operates on a reservation system. If a reservation is made to interview a patient, it is extremely important to notify the hospital if the appointment cannot be kept.
2. The individual's CDC file will be retained at the California Men's Colony (CMC) and a separate visit must be made for its review.
3. Check in at the main reception area for directions to the Health Information Department. ASH records may be reviewed at this location prior to the interview.
4. Return to the main reception area to check into the secured area of the hospital for the actual interview.
5. Do not wear khaki or any similar colored material.

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

### ***Access to County Jails***

The evaluator should call the jail to arrange for the interview. If necessary, access to individual county jails can be facilitated through the SOCP record review staff.

## DEFINITIONS RELEVANT TO SOCP

WIC 6600 sets forth several legal definitions. These are the definitions that are used in evaluations and in court.

**"Sexually violent predator"** - A person who has been convicted of a sexually violent offense against two or more victims and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior.

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

- B. **"Sexually violent offense"** - One of several specified crimes committed by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, and that are committed on, before, or after the effective date of this article and result in a conviction. "Sexually violent offenses" consist of the following Penal Code sections:

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 Section 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 by Force and Violence
PC 289(a)	Rape with Foreign Object by Force and Violence
PC 288a	Oral Copulation

- (a) Lewd acts on a child under 14 years of age, convicted under PC 288(a), are deemed to be sexually violent when they involve "Substantial sexual conduct."



- (b) **“Substantial sexual conduct”** means penetration of the vagina or rectum of either the victim or the offender by the penis of the other or by any foreign object, oral copulation, or masturbation of either by the victim or the offender.
- C. **“Diagnosed mental disorder”** - A congenital or acquired condition affecting the emotional or volitional capacity that predisposes the person to the commission of criminal sexual acts in a degree constituting the person a menace to the health and safety of others.
- D. **“Danger to health and safety of others”** - Does not require proof of a recent overt act while the offender is in custody.
- E. **“Predatory”** - An act directed toward a stranger, a person of casual acquaintance with whom no substantial relationship exists, or an individual with whom a relationship has been established or promoted for the primary purpose of victimization. Initial screening based upon the definition of predatory was discontinued in January 2002 based upon a California Appellate Court Decision (“Torres”).
- F. **“Prior Juvenile Adjudication”** – The juvenile was 16 years of age or older at the time he or she committed the offense; the juvenile was adjudged a ward of the court; the offense committed by the juvenile was one of the offenses listed in WIC 6600(b); and the juvenile was committed to the California Youth Authority for the sexually violent offense.

## BEGINNING THE SVP CLINICAL EVALUATION

The role of the clinical evaluator is that of fact finder. The only objective is to determine if the case facts match the sexually violent predator legal criteria. The evaluator must maintain a neutral position throughout the process, and be open to reconsideration of a conclusion based on new information.

The evaluation outcome decision is based on several factors including, but not limited to: 1) a review of records, 2) a clinical interview, if possible, 3) diagnostic formulation and 4) a risk assessment targeting sexual recidivism. Only after all available data is reviewed should the clinical evaluator arrive at a conclusion.

The evaluation begins by reviewing available data including CDC central, medical and psychiatric files (if available) in the prison where the inmate is housed. Pertinent information will be contained throughout the CDC files, but the Probation Officers Report (POR), Arrest Reports if available, Disciplinary Reports, Parole Reports the CII Report (rap sheet) and any psychiatric evaluations are essential to review. Many of the inmates to be evaluated will have had only brief mental health screenings or not have had a psychiatric evaluation, while others have had prior admissions to state and county psychiatric facilities. All psychiatric and criminal records available from both inside and outside of California should be reviewed prior to completing the clinical evaluation. 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:

- A) Has the inmate been convicted of a sexually violent criminal offense specified in WIC 6600 against two or more victims?
- B) Does the inmate have a diagnosed mental disorder that predisposes the person to the commission of criminal sexual acts?
- C) Is the inmate likely to engage in sexually violent criminal behavior as a result of his or her diagnosed mental disorder without appropriate treatment and custody?

## 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 reports that the DMH evaluators and independent evaluators generate will be a primary resource for district attorneys to determine if they will file a petition for commitment on an individual. They will be read by attorneys and judges, and may be presented to juries in the form of expert testimony. These evaluations need to provide the courts with more than just summary professional conclusions. Key facts must be included in the body of the evaluation and must clearly state the reasoning that led the evaluator to his or her conclusions.

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). The inmate may want to interview without signing the Notification, which is permissible since the purpose of the Notification is to provide information about WIC 6600 to the inmate, rather than to serve as a legal informed consent. If the inmate refuses the interview, use the space provided on the Notification document for "decline" and obtain the inmate's signature. If the inmate refuses to attend the interview and the Notification cannot be signed, the evaluator should make a notation on the Notification regarding the inmate's refusal and should report the refusal in the evaluation.

If a language barrier exists, a translator or interpreter may be required and, if possible, should be arranged in advance by the evaluator. The preferred method is to contact the court in the county where the institution housing the inmate is located and arrange for a court certified language interpreter.

In "update" or "replacement" interviews, the court may issue an order that the interview be tape-recorded, and/or an attorney be allowed to be present. The evaluator should comply with that order. Court-ordered tape recording/attorney presence does not apply to initial interviews of prison inmates, or initial interviews of persons being evaluation for extension of commitment.

There may be an obligation, under California's child and elderly abuse reporting laws, to report specific new crimes that the inmate reveals if they involve child victims or elderly victims if the crimes have not previously been reported, and/or there is a person who has been abused or is likely to suffer continuing abuse. The inmate should be informed of this reporting requirement prior to the evaluation as stated in the Notification document.

Limits of confidentiality should be explained to the inmate. The inmate should be notified that the evaluation report will be provided to the DMH, court officers in the county of CDC commitment in accordance with the statute, the Board of Prison Terms, and, in some cases, CDC Parole. Also, information from the evaluation may be entered into evidence in court or be the subject of court testimony and consequently may become available to the press and the community.

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 the safety of all concerned in a community setting, you should do the same in the prison setting. If the inmate becomes a threat, immediately notify custody staff. Each prison has medical and/or psychiatric staff either present or on call who are designated to deal with this type of emergency. Report your clinical findings verbally to the designated prison clinician who should write a progress note to be included in the inmate's CDC medical file. Inform state hospital staff if the evaluation is conducted at a state hospital. In your note, address 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 this Evaluator Handbook protocol specifies the questions that must be answered and formats to be used, it does not address everything an evaluator may need 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 DMH makes available to evaluators an interview schedule that may be used in whole or part. The evaluator may tailor the interview to best fit his or her interview procedure. Since it contains the PCL-R interview, it is not attached as addendum.

### **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, criminal history, 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 decision making in SVP evaluations. The examiner can then integrate this information with data gained from the clinical interview.

### **DRAWING CLINICAL CONCLUSIONS**

The evaluator needs to consider each of the three major clinical questions and offer clear and unambiguous opinions regarding these 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 judgment. Clearly stated definitive opinions with a YES or NO answer to each clinical question are required. 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**.

## REPORT WRITING

An evaluation is properly completed when it clearly describes how each of the criteria are, or are not, met. The evaluation report must comport with the SVP statute, be internally consistent, and be written in a length and style that will allow parties to any later legal proceedings to understand the evaluator's reasoning and conclusions. With the exception of diagnostic terms, evaluators should avoid unnecessary technical language from psychology, psychiatry and the law. The format for the report is provided in this handbook.

## SUBMITTING THE REPORT

After the evaluator has formed his/her conclusion, a clinical evaluation summary (see Appendix C) must be completed and faxed as soon as possible to DMH. This summary should represent the final conclusion of the evaluator. The final report, with original signature, must be delivered to DMH by the due date assigned by the scheduling staff. It is critical that timelines be met. The SOCP program will call the evaluator if a report has not been submitted on time.

## UPDATING REPORTS

This is a summary of requirements for updating a report:

- The District Attorney who filed the SVP petition must request updates of reports through the DMH SOCP Unit.
- Evaluators must re-interview an SVP respondent if the respondent will voluntarily interview, or there is a court order for an interview.
- Evaluators may use medical and non-medical information to update reports, and to apply risk assessment tools to assess the SVP respondent.
- Questions about updates should be addressed to the District Attorney who filed the SVP petition.
- Updated reports are to be forwarded to the DMH SOCP Unit.
- The update report must be tape-recorded if ordered by a court.

If the evaluator, through whatever means, obtains significant new information regarding a previously completed SVP report, a contact should be made with the DMH SOCP Unit in Sacramento, usually the record reviewer. The record reviewer will determine if the other evaluators on the same case should be provided the information. Evaluators should not do a formal update of their report unless requested to do so by the district attorney.

## COURT TESTIMONY

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

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

## SUBPOENAS AND DEPOSITIONS

Clinical evaluators must to comply with subpoenas for appearances in relation to cases they have evaluated. Subpoenas may also require evaluators to produce documents. Some documents, such as training materials provided to all evaluators, are kept at the SOCP office in Sacramento. The evaluator may contact the SOCP staff regarding assistance in obtaining past training materials. When the SOCP responds to a subpoena, every effort is made to notify the evaluator of what materials are sent to courts and attorneys. If subpoenas hold conflicting appearance dates, the first subpoena to arrive generally takes precedence. Communication with the issuers of the subpoenas is recommended. It is essential to respond to any subpoena.

Evaluators should not rely on the SOCP for all materials. It is the responsibility of the evaluator to keep sufficient records to be able to respond to subpoenas. Each evaluator should be aware of and be able to respond to questions regarding their income from doing contract SVP evaluations, a common subpoena request. The evaluator should also be prepared to provide copies of any other materials, not provided to him/her by the SOCP Unit, that were used in his or her formulation of evaluation findings. Sometimes, subpoenas request that confidential information be provided. Examples of such items include names or evaluations of other SVP cases you have evaluated for the DMH and all income for specified tax years. If you receive such a subpoena, notify DMH who will advise you on how to proceed. DMH may consult with the Attorney General's office.

A subpoena may require production of "raw data" from psychological tests administered to the person evaluated. If ethical guidelines require such data to be provided only to a person appropriately trained to interpret the it, the recommended

response is that the data will be provided to a trained person, or to the court for appropriate distribution. If the court orders production of the data, it must be provided.

**SEX OFFENDER COMMITMENT PROGRAM  
CLINICAL EVALUATION PROTOCOL  
(Synopsis)**

**I. IDENTIFYING INFORMATION**

**II. FINDINGS (WIC 6600 criteria)**

- A. Has the inmate been convicted of sexually violent criminal offenses against two or more victims? (Yes/No)
- B. Does the inmate have a diagnosed mental disorder that predisposes the person to the commission of criminal sexual acts? (Yes/No)
- C. Is the inmate likely to engage in sexually violent behavior as a result of his/her diagnosed mental disorder without appropriate treatment and custody? (Yes/No)

**III. CONCLUSION**

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



## SEX OFFENDER COMMITMENT PROGRAM CLINICAL EVALUATION PROTOCOL (Annotated)

### I. IDENTIFYING INFORMATION

- A. Inmate Name
- B. California Department of Corrections Number (CDC number)
- C. Criminal Identification and Investigation number (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

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

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

### SOURCES OF INFORMATION

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

## PSYCHOLOGICAL TESTING

List any psychological tests administered.

### II. FINDINGS (WIC 6600 Criteria)

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

Always quote the source of your information regarding the offense and then list each arrest and conviction for 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 288) that make a subject eligible for referral under WIC 6600. An example from a report illustrates this documentation.

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

List dates and provide narrative descriptions of the crimes involved. Descriptions of the crimes are contained in Arrest Reports, Probation Officer's Reports and Preliminary Hearing Transcripts. If you have inadequate information describing the crimes, contact the Record Review staff member at the Department of Mental Health who is responsible for the case and request additional records.

A thorough description of the sexually violent offenses (see page 7) is necessary for several reasons. First, you will need to have an accurate account of the circumstances of the offense for court testimony. Second, this is often the only way one can untangle the complex circumstances that often arise, especially where multiple victims are involved. Use first names and last initial to identify the victims. Never use victims' full names in the evaluation report.

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

Additionally, when the victim is under the age of 14, evaluators must note whether the behavior involved "**substantial sexual conduct**." If it did, the offense is countable as a "sexually violent offense" *whether or not* it contained "force, violence, duress, menace or fear of immediate or unlawful bodily injury on the victim or another

person.” However, substantial sexual conduct is not necessary for an offense to qualify if there were elements of force, violence, menace, duress and fear. Substantial sexual conduct never applies to cases where the victim is 14 years or older, such as in cases of adult rape.

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

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

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

“Diagnosed 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.

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

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

If a clinical interview is conducted, the diagnosed mental disorder offered should be based on psychiatric history, the mental status examination, psychological testing, if conducted and current findings from the clinical interview. If a clinical interview is not conducted, a diagnostic impression can be offered if adequate records are available to confirm a diagnostic impression. While an evaluation completed using a record review

alone and based on adequate records is both clinically and ethically appropriate when an interview is not conducted, limitations of a record review only should be clearly stated in the clinical evaluation.

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

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

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

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

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

The obtained sexual history should therefore be considered in the light of demonstrated sexual behaviors as noted in the records. If an offender engages in the same sexually deviant behavior many times, then an interest or preference is easily established. In instances where the activity has occurred only once, it is more difficult to determine if it is really a sexual preference, and hence a paraphilia. Basically, the

longer the pattern of sexually deviant behavior, the stronger the preference. Data indicates that an identified deviant sexual preference is associated with a higher risk for sexual reoffense. The Hanson and Bussiere (1998) meta-analysis identified variables associated with sexual deviance that were significant correlates with sexual recidivism including, deviant sexual preference, phallometric assessment indicating arousal to children and specifically to boys.

### **Psychological testing**

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

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

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

Criterion C requires a determination of the inmate's likelihood to engage in future sexual re-offense based upon the presence of a diagnosed mental disorder. While evaluators may organize their risk assessment in their own unique way, they must rely on the guidelines of this protocol and include the following elements of risk assessment.

#### **Approaches to Risk Assessment.**

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

To date, there are no pure actuarial rating scales that incorporate all risk factors for sexual re-offense. Additionally, each offender may present case specific factors that affect his risk for sexual reoffense. Consequently, the SVP evaluation is more accurately termed an adjusted actuarial approach. The adjusted actuarial approach begins by identifying an initial risk classification (e.g., low, medium, or high), which is derived from the actuarial risk scale being used. Then, expert evaluators may choose

to adjust the actuarial-derived estimate of risk after considering other factors that are associated with sexual recidivism, but were not included in the actuarial measure (Quinsey, Lalumiere, Rice, & Harris, 1995; Hanson, R. K. 1998).

### Actuarial Risk Assessment.

Since January 2000, the STATIC-99 risk assessment tool has been used by DMH in sex offender risk assessments. The STATIC-99 combined items from the Rapid Risk Assessment for Sexual Offense Recidivism (RRASOR)(Hanson, 1997) and an English actuarial instrument, the Structured Anchored Clinical Judgment (SACJ-Min) (Grubin, 1998). Since the combination of items from these two rating scales showed improved predictive accuracy over either scale alone, the STATIC 99 is recommended for use by evaluators in California's SOCP.

### Adjusting an Actuarial Risk Score.

Because an adjusted actuarial approach for risk assessment of sex offenders is being used, it is sometimes appropriate to adjust the base rate prediction from the actuarial instrument either up or down, depending upon the presence of protective factors or aggravating factors for sexual recidivism. When adjusting actuarial scores evaluators should consider whether there are external factors that can reasonably be considered to aggravate or mitigate the risk estimate provided by the actuarial instrument(s). External factors are those that are related to sexual offense recidivism but are not already incorporated into the scale. Evaluators should exercise caution in utilizing risk factors that may be highly intercorrelated with each other.

The adjustments can either increase or decrease the likelihood of recidivism presented by the actuarial scale. Moreover, the presentation of factors which support risk, as well as those which mitigate risk, offers a balanced risk assessment and goes toward the basic purpose of the SVP evaluation as a neutral fact-finding process. The basic question is whether the numbers of external risk factors are more or less than would be expected for an offender with a given actuarial score. Before adjusting an actuarial risk score, the evaluator should consider how many external risk factors would be expected based on the individual's risk classification. Some external risk factors would always be expected and their presence does not, in itself, justify an adjustment. Adjustments are most easily justified when there are a greater number of risk factors, risk factors are more prominent, or when there are pertinent individual risk factors.

### Static Risk Factors to Consider Outside the Static-99.

A static risk factor for sexual reoffense refers to a variable associated with sexual reoffense recidivism that usually does not change over time. The following are some static risk factors that are not scored in entirety on the Static-99, but have been shown to be significantly related, through research, to sexual recidivism. It should be noted that those variables most likely to have a high degree of intercorrelation have been

grouped together in clusters. The evaluator should consider whether the following empirically derived risk factors are present or absent and adjust the actuarial risk assessment accordingly. Since the Static-99 considers several variables that are measures of sexual deviance such as number of prior sex offenses, sex of the victim and relationship to the victim the evaluator should increase risk over the actuarial measure for deviant sexual preference when deviance is more severe. The same is true for the criminological variables

- Sexual Deviance Variables
  - Phallometric assessment (child molesters only)
  - Sexually deviant preference/paraphilias (diverse sex crimes)
  - Wide range of potential victims (male and female and/or children and adults)
  - Early onset of sexual offending
- Treatment
  - Dropping out of sex offender specific treatment
  - Limited or no participation in sex offender treatment program
- Criminologic Variables
  - Antisocial personality disorder or other moderately severe to severe personality disorder
  - Psychopathy (Hare Psychopathy Checklist-Revised (PC-R))
- Developmental Factors
  - Separation from parents prior to age 16
  - Negative relationship with mother during childhood
- Protective Factors
  - Having been in the community sex offense free for a significant period of time.
  - Less than 15 years left in the offender's time at risk due to age or poor health

#### Dynamic Risk Factors.

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

The Sex Offender Need Assessment Rating (SONAR) (Hanson & Harris, 2001) was recently developed to evaluate dynamic risk factors for sexual reoffense. The SONAR includes six relatively stable factors (significant social influences, intimacy deficits,

sexual self-regulation, attitudes tolerant of sex offending, cooperation with supervision and general self-regulation) and seven acute factors (victim access, emotional collapse, collapse of social supports, hostility, substance abuse, sexual preoccupations, and rejection of supervision. The instrument can be scored if necessary information is available or it may be used as an empirically guided assessment of the dynamic risk factors.

The reader should be cautioned that the SONAR was developed with sexual offenders who were being studied in a community setting. Therefore, currently incarcerated offenders cannot be rated on these variables in exactly the same way as the community sample since many offenders have been in custody for lengthy periods of time. With these limitations in mind, researchers still recommend rating incarcerated individuals on these items even though some of the information may have to be rated in light of the individual's prior behavior while in the community or their behavior in an institutional setting. While the stable dynamic risk factors can reasonably be assessed in community or custody settings, the acute dynamic risk factors are more appropriately examined in community supervision settings. Further, the stable risk factors are more relevant to the assessment of long-term risk potential than acute risk factors, which can change rapidly and, if present, are more indicative of imminent risk. Although a discussion of both types of variables are potentially important to address in a risk assessment, the acute risk factors are generally less relevant to the assessment of long-term risk for sexual reoffense.

Below is a list of dynamic risk factors scored on the SONAR and operational definitions contained in the SONAR-2000 Scoring Manual (Hanson & Harris, 2001).

**1. Significant Social Influences:** The nature of an offender's social network is one of the most well established predictors of criminal behavior. Name all the individuals in the offender's life who are not paid to be with him. For each one, determine whether the influence of those individuals is positive, negative or neutral. High levels of negative social influences would be associated with overtly deviant peer groups (e.g., substance abusers, others with paraphilias, criminals).

**2. Intimacy Deficits:** This section has five parts, each representing a potential problem area for sexual offenders.

- A. Lovers/intimate partners: Individuals without intimacy deficits will have a stable romantic relationship with an appropriate partner, and several constructive long-term friendships. Higher risk is associated with relationships that may be short-term, conflicted or problematic or marked by infidelity. Highest risk is associated with having no intimate relationships.
- B. Emotional identification with children: Child molesters may be attracted to children based on feeling emotionally close or intimate with them. They may feel that children are their peers or equals and may feel that they can relate to children more easily than to adults. When the offender has no obvious identification with children they pose low risk on this factor. Higher risk is



associated with adults who have immature relationships or see children as having special qualities of understanding or communication that adults do not. Highest risk is associated with offenders who obviously feel more comfortable with children than adults and have children as "friends."

- C. Hostility towards women: Low risk on this factor is associated with offenders who do not have conflicts with women or who are comfortable with women and have female friends with whom the offender is not sexually involved at the time. Risk increases as the offender has uneasy interactions with more than one woman in more than one environment. Highest risk is associated with offenders who are frequently in conflict with women, believe women are "only good for sex" and distrust women.
  - D. General social rejection/Loneliness: Offenders are low risk on this item when they are generally well integrated socially considering their level of social standing and the process of social upheaval inherent in having been convicted of a serious sexual criminal offense. Higher risk is associated with individuals with some weak connections with others, but their relationships are short-term casual relationships. Highest risk is associated with individuals who feel lonely and rejected or lack social supports or have serious interpersonal deficits.
  - E. Lack of concern for others: Low risk on this factor is associated with individuals who have a normal range of emotional expression or those who may be callous/indifferent to some people (e.g., adversaries) in specific circumstances, but are generally emotionally responsive and caring. Risk is increased as the individual typically shows little remorse or concern for others and their interactions are utilitarian with little attachment to others.
3. **Sexual self-regulation:** This need area concerns poorly controlled expressions of sexual impulses. Three aspects of sexual dysregulation should be considered.
- A. Sex drive/Preoccupation: This need area focuses on recurrent sexual thoughts and behaviors that are not directed to a current romantic partner. Examples of sexual pre-occupations include the following:
    - Masturbation more than once a day
    - Regular use of prostitutes, strip bars, massage parlors, phone-sex
    - Sex-oriented internet use, such as sexually explicit sites, chat rooms
    - Pornography collection
    - Cruising for impersonal sex
    - Excessive sexual content in typical conversations
    - Pre-occupations with own/other's sex crimes
    - Self-report of difficulty controlling sexual impulses
    - Any disturbing sexual thoughts
    - A history of multiple sexual partners (e.g., 30 or more)
  - B. Sex as coping: When faced with life stress or negative emotions, some sex offenders start thinking sexual thoughts or engage in sexual behavior in

efforts to manage their emotions. Increased risk is associated with occasional lapse into sexual fantasy when stressed, but it is not the typical reaction. Highest risk is associated with offenders for whom negative emotions or life events typically invoke sexual thought or behaviors and offenders who act out sexually when impaired by alcohol or drugs.

- C. **Deviant sexual interests:** This factor is present when the offender is sexually aroused by or sexually interested in people, objects or activities that are illegal, inappropriate or highly unusual. These interests could include but are not limited to sexual interest in children, non-consenting adults, voyeurism, exhibitionism, cross-dressing, and fetishism. Increased risk is associated with some behavioral history of deviant sexual behavior, but insufficient to establish a pattern or preference. Highest risk is associated with repeatedly engaging in specific type of deviant sexual behavior, self-reported deviant sexual interests or phallometric assessment indicating deviant sexual preferences.
4. **Attitudes tolerant of sexual assault:** Sex offender risk is increased if the offender hold attitudes or values that excuse, permit or condone deviant sexual behavior. Attitudes associated with higher risk include those that minimize hurt and harm caused the victim, victim blaming, or entitle the offender to act on their deviant sexual interests. The offenders attitudes are examined in three specific areas 1) sex drive /entitlement, 2) attitudes supportive of sexual assault against adults and 3) child molester attitudes. If an offender is sexually entitled they may believe everybody is entitled to sex or that men need sex more than women. They may perceive their sexual drive to be stronger than most men and if they become sexually "turned on" they "just can't stop." These offenders have difficulty going without sex and feel justified in having sex when aroused. Offenders who have attitudes supportive of sexual assault against adults may hold the belief that sex offending is wrong, but suggest that there may be exceptions, such as a woman who dresses in sexy clothing. In the extreme they may clearly view sexual activity with non-consenting adults as acceptable. Offenders with child molester attitudes hold attitudes or values that allow or condone sexual activity between adults and children. They voice familiar excuses that further their deviant sexual behavior such as "some children are old enough to enjoy sex with adults" or "children are not harmed by sexual contact with adults."
5. **Cooperation with supervision:** This area concerns the offender's ability to self-monitor and comply with the rules of community and institutional supervision. Offenders with general criminal lifestyles would be expected to have more supervision problems. Offenders may be disengaged in supervision. These offenders may "just be going through the motions," keep secrets and be less invested in treatment. Some offenders are manipulative by trying to "play the system" or to be your equal. They may lie and be deceptive or ask for special favors. They may play one staff member against another. Higher risk on this factor is associated with offenders who miss scheduled appointments, show up late or frequently reschedule. Poor prognostic indicators are breaking the conditions of

community supervision or conditional release and placing oneself in high-risk situations.

6. **General self regulation:** This construct concerns the offender's ability to self-monitor and inhibit antisocial thoughts and behaviors. Offenders often have unstable lifestyles characterized by behavioral impulsivity, and frequent or poorly thought out changes in work, residences and relationships. The capacity to self-regulate is important for offenders wishing to change their behavior. The three components of general self-regulation include 1) impulsive acts 2) poor cognitive problem solving and 3) negative emotionality/hostility. Impulsivity refers to the extent the offender is easily bored, seeks thrills and has little regard for personal safety or the safety of others in multiple settings. Poor cognitive problem solving is characterized by the offender's failure to identify the problems they have, propose unrealistic solutions (or none at all), a lack of long-term plans and failure to recognize the consequences of their actions. Negative emotionality is a tendency towards feeling hostile, victimized, resentful and vulnerable to emotional collapse when stressed. The offender may engage in hostility, aggression, suspicion, rumination, victim blaming, entitlement, emotional collapse when stressed and explosive expressions of emotion.

Whether the SONAR (stable dynamic factors) is used as an empirically guided instrument or it is scored according to directions from the authors, evaluators should determine the presence or absence of dynamic risk factors for sexual reoffense and whether they increase or decrease or do not change the measured static risk level on the Static-99.

### **Case Specific Risk Factors**

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

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

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

1. Begin by summarizing the contribution of the diagnosed mental disorder(s) to sexual recidivism risk
2. Determine an approximate base rate for sexual reoffense:

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

2. Determine the presence or absence of empirically derived static risk factors for sexual recidivism not included in the actuarial scheme and adjust or retain the risk level as measured in the Static-99.
3. Determine the presence or absence of empirically derived dynamic risk factors not included in the actuarial scheme and adjust or retain the risk level as measured in the Static-99.
4. Identify and consider case specific risk factors to determine if they would aggravate the empirically derived risk for the offender or serve as a protective factor. Adjust or retain the risk level as measured in the Static-99.
5. Formulate your clinical conclusion and level of offender risk. Note if the STATIC-99 risk estimate, in your opinion, represents an accurate estimate, underestimate or overestimate of the inmate's probability of re-offense.
6. Provide a summary statement under Criterion "C" as to whether the offender is, or is not, likely to engage in sexually violent criminal behavior as a result of his or her diagnosed mental disorder without appropriate treatment and custody.

### **"Likely", Defined**

The California Supreme Court in *People v. Superior Court of Marin County* (Patrick Ghilotti, respondent) ruled on April 25, 2002, on the meaning of likely within the context of evaluation for the SVP Act, that is, in the question "Is the inmate *likely* to engage in sexually violent criminal behavior as a result of his or her diagnosed mental disorder without appropriate treatment and custody?"

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

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

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

### **Final Statement in Criteria C**

The final statement in Criteria C must be that the inmate is, or is not, likely to engage in sexually violent criminal behavior as a result of his or her diagnosed mental disorder without appropriate treatment and custody. The report should not end with statements such as "there is not enough evidence to draw positive conclusions." The evaluator must state in the report, in Criteria C, whether the person is likely, or is not likely, to commit future sexual violence, in accordance with the primary question being answered.

### **III. CONCLUSIONS**

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

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

## **SVP COMMITMENT EXTENSION EVALUATIONS**

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

### **Evaluation Responsibility**

The SVP has been committed by a superior court to the care and custody of the state hospital. Therefore, the state hospital is responsible for all medical and evaluation services rendered to an SVP. The extension evaluation assigned to a contract evaluator by the Sex Offender Commitment Program in Sacramento has been requested by the state hospital. For this reason, the extension evaluation original copy is mailed to the state hospital. (At Atascadero State Hospital, this would be the Health Information Management Department.) A copy of the evaluation is provided to the Sex Offender Commitment Program in Sacramento for the purpose of substantiating that the contract work has been performed, and for quality review purposes. The state hospital provides the patient with a slightly modified Notification of Evaluation as a Sexually Violent Predator.

### **Primary Differences from Initial Evaluation**

Criteria "A" involving past qualifying convictions should be noted, but does not require elaboration as may be the case in an initial evaluation. The elements of Criteria A have been proven to be present by virtue of the person's SVP commitment.

The "likely" standard, as defined in this Evaluator Handbook, remains the same for persons evaluated for commitment extension. However, the extension evaluation starts from a different point of view than the evaluation of a prison inmate who has never been committed as an SVP. An SVP being evaluated for extension was found by a court, through a commitment hearing or trial, to meet SVP criteria. The extension evaluation must assess the extent that there has been a change in the person's mental status, or some significant factor relating to the person's likelihood of committing a sexually violent offense. That is, has a shift occurred in Criteria "B" or "C" that clearly demonstrates that the person does not have a mental disorder, or that the person is not likely to commit sexually violent acts as a result of a mental disorder if in not in custody and treatment? In the initial evaluation of a CDC prison inmate (not yet an SVP), the evaluator starts the evaluation not knowing whether the person meets any of the legally required elements. In the extension evaluation, the evaluator starts with the knowledge

that the person was previously found by a court to meet SVP criteria. As in the initial evaluation of a prison inmate, the tools provided in the Evaluator Handbook are used in arriving at an extension conclusion and recommendation, but the focus is on whether a significant change has occurred.

### **State Hospital Treatment Consideration**

Like the initial evaluation, the evaluator's assignment is not treatment, but to evaluate static and dynamic information about the patient against legal criteria. In so doing, the hospital treatment record must be considered. The treatment provided to an SVP at a state hospital is provided in a Sex Offender Commitment Program (SOCP). The SOCP is based on a Relapse Prevention model, delivered in five phases of treatment. These phases are:

**Phase I Treatment Readiness** - an educational overview of the treatment program. Requires no participation by a patient as he is allowed to simply be present and listen to information being presented.

**Phase II Skills Acquisition** - involves the patient identifying significant events that led to past sexual offending. Participants also identify thinking errors that led to past sexual offending and they identify the consequences of sexual offending on victims of sexual abuse. During this phase, participants complete an autobiography that helps them identify situations and risks that may lead to future sexual offences.

**Phase III Skills Application** - Participants attempt to apply coping responses to previously identified high risk situations. Patients also participate in a more advanced level of identifying thinking errors that contributed to their sexual crimes, improve their ability to recognize the consequences of sexual abuse on victims, and use a journal to become more aware of other factors that could lead to reoffense.

**Phase IV Skills Transition** - Patients begin to focus on transitioning from the hospital environment to the Conditional Release Program (CONREP) environment.

**Phase V Community Outpatient Treatment** - Phase V is admission to and participation in a community-based-CONREP.

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

## Obtaining Documents to Review

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

1. Contact the record review desk at Atascadero (805) 468-2679) and arrange a date and time to review the ASH record. This is the time to identify the patient's hospital treatment unit.
2. Contact the unit (either the nurses station, the psychologist, or social worker) and let them know that you have been asked to complete a recommitment evaluation. Have the patient contacted to determine whether he or she will interview. As in the initial SVP evaluation of a prison inmate, if the person will not interview, you must perform the evaluation based on documentation only. Determining this up front may allow you to more effectively use your time.
3. If necessary, call CMC-East and arrange to review the Central File of the patient(s) you are planning to evaluate at ASH.

After reviewing the relevant records and interviewing or attempting to interview the patient, it is recommended that you contact a member of the patient's treatment team to review relevant issues and clarify the information in the chart. Normally, you would call the patient's Case Manager (either a psychologist or social worker). You may also make contact with the treating psychiatrist.

The evaluator will assess the patient's involvement in treatment, behavior within the hospital, results of hospital assessments, and will conduct a mental status exam.

## Patient Plans for Voluntary Treatment Post-Commitment

The patient may suggest that he or she has a voluntary plan for continued relapse prevention, or treatment, if released from the SVP commitment. You may consider information into account in your decision as to whether the person is likely to commit future sexual violent acts without treatment and custody. However, the California Supreme Court specifically stated that evaluators must weigh the possibility of voluntary post-commitment treatment with requisite care and caution. In other words, the evaluator should be convinced or have a high degree of confidence that the person's expressed desire to continue treatment, even without the SVP commitment, is meaningful, sincere, and sufficiently significant. It further stated that the pertinent factors to consider include (1) the availability, effectiveness, safety, and practicality of community treatment for the particular disorder the person harbors, (2) whether the person's mental disorder leaves him or her with volitional power to pursue such treatment voluntarily, (3) the intended and collateral effects of such treatment, and the



influence of such effects on a reasonable expectation that one would voluntarily pursue it, (4) the person's progress, (5) the person's expressed intent, in any, to seek out and submit to any necessary treatment, whatever its effects, and (6) any other indicia bearing on the credibility and sincerity of such an expression of intent.

This guidance regarding consideration of voluntary treatment is taken from the April 25, 2002 California Supreme Court decision of *People v. The Marin County Superior Court, Patrick Henry Ghilotti*, real party in Interest. This court case is required reading for all sexually violent predator evaluators.

### **Evaluation Recommendation**

The conclusion of an extension evaluation must reflect whether the person currently meets criteria as a sexually violent predator as described in Sec. 6600(a) of the Welfare and Institutions Code. The recommendation should not be that the individual should, or should not be extended or recommitted. That is a decision first for the county attorney who may file a petition for extended commitment, and second, for court adjudication.

### **REQUIRED REPORT FORMAT FOR RECOMMITMENT EVALUATION**

#### **IDENTIFYING DATA:**

Age, Marital Status, County of Commitment, AT #, CDC #, admission date, commitment date, current housing unit.

#### **SOURCES OF INFORMATION:**

Cite sources used in the preparation of the report, patient interview, treatment team input, medical chart, any original WIC 6604 evaluations and trial documents.

#### **QUALIFYING OFFENSES/HISTORY:**

##### Qualifying offenses

Provide reference to the original evaluations, POR, police reports, etc.

**This section must include the following statement:** "It has been determined by the original committing court that the patient has been convicted of two or more qualifying offenses."

##### Criminal history

Include age criminality started in the individual's life pattern; patterns of offending; use of weapons or accomplices; level of sophistication; non qualifying sex offenses.

##### Psychosocial history

Include developmental history, educational level attained, substance abuse history, marital history, and vocational/work history.

## **TREATMENT PROGRESS:**

Include a review of the treatment plans, current and completed groups, medications, behavioral incidents, parole revocations while in SVP custody, extent of patient's involvement in treatment, and results of any psychometric testing and phallometric assessment and/or behavioral treatments.

## **FINDINGS AND CONCLUSIONS MUST INCLUDE:**

A statement specifying whether or not the patient continues to have a diagnosed mental disorder that includes a DSM-IV –TR multi-axial diagnosis. Follow this up with a review of data which supports this diagnosis, including both current and historical diagnoses. This statement will include a rationale exploring why this diagnosis captures his/her present level of functioning.

A statement specifying whether the patient is, as a result of the mental disorder, likely to engage in sexually violent predatory criminal behavior in the future. This statement shall include a discussion of any risk factors known to be associated with risk of re-offense among sex offenders.

An actuarial risk assessment tool shall be used and attached.

## **RECOMMENDATION:**

**The recommendation must include one of the following statements:**

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

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

## **VII. SIGNATURE:**

## **Appendices:**

- A. Welfare and Institutions Code 6600
- B. Notification of Evaluation as a Sexually Violent Predator
- C. Clinical Evaluation Summary Form
- D. References

## APPENDIX A

### WELFARE AND INSTITUTIONS CODE SECTION 6600-6609.3

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

(a) (1) "Sexually violent predator" means a person who has been convicted of a sexually violent offense against two or more victims and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior.

(2) For purposes of this subdivision any of the following shall be considered a conviction for a sexually violent offense:

(A) A prior or current conviction that resulted in a determinate prison sentence for an offense described in subdivision (b).

(B) A conviction for an offense described in subdivision (b) that was committed prior to July 1, 1977, and that resulted in an indeterminate prison sentence.

(C) A prior conviction in another jurisdiction for an offense that includes all of the elements of an offense described in subdivision (b).

(D) A conviction for an offense under a predecessor statute that includes all of the elements of an offense described in subdivision (b).

(E) A prior conviction for which the inmate received a grant of probation for an offense described in subdivision (b).

(F) A prior finding of not guilty by reason of insanity for an offense described in subdivision (b).

(G) A conviction resulting in a finding that the person was a mentally disordered sex offender.

(3) Conviction of one or more of the crimes enumerated in this section shall constitute evidence that may support a court or jury determination that a person is a sexually violent predator, but shall not be the sole basis for the determination. The existence of any prior convictions may be shown with documentary evidence. The details underlying the commission of an offense that led to a prior conviction, including a predatory relationship with the victim, may be shown by documentary evidence, including, but not limited to, preliminary hearing transcripts, trial transcripts, probation and sentencing reports, and evaluations by the State Department of Mental Health. Jurors shall be admonished that they may not find a person a sexually violent predator based on prior offenses absent relevant evidence of a currently diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior.

(4) The provisions of this section shall apply to any person against whom proceedings were initiated for commitment as a sexually violent predator on or after January 1, 1996.

(b) "Sexually violent offense" means the following acts when committed by force, violence, duress, menace, 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 or a finding of not guilty by reason of insanity, as provided in subdivision (a): 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 288, or subdivision (a) of Section 289 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, a person of casual acquaintance with whom no substantial relationship exists, or an individual with whom a relationship has been established or promoted for the primary purpose of victimization.

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

(g) Notwithstanding any other provision of law and for purposes of this section, no more than one prior juvenile adjudication of a sexually violent offense may constitute a prior conviction for which the person received a determinate term if all of the following applies:

(1) The juvenile was 16 years of age or older at the time he or she committed the prior offense.

(2) The prior offense is a sexually violent offense as specified in subdivision (b). Notwithstanding Section 6600.1, only an offense described in subdivision (b) shall constitute a sexually violent offense for purposes of this subdivision.

(3) The juvenile was adjudged a ward of the juvenile court within the meaning of Section 602 because of the person's commission of the offense giving rise to the juvenile court adjudication.

(4) The juvenile was committed to the Department of the Youth Authority for the sexually violent offense.

(h) A minor adjudged a ward of the court for commission of an offense that is defined as a sexually violent offense shall be entitled to specific treatment as a sexual offender. The failure of a minor to receive that treatment shall not constitute a defense or bar to a determination that any person is a sexually violent predator within the meaning of this article.

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

(b) A permanent facility for the housing and treatment of persons committed pursuant to this article shall be located on a site or sites determined by the Director of Corrections and the Director of Mental Health, with approval by the Legislature through

a trailer bill or other legislation. The State Department of Mental Health shall be responsible for operation of the facility, including the provision of treatment.

6600.1. (a) If the victim of an underlying offense that is specified in subdivision (b) of Section 6600 is a child under the age of 14 and the offending act or acts involved substantial sexual conduct, the offense shall constitute a "sexually violent offense" for purposes of Section 6600.

(b) "Substantial sexual conduct" means penetration of the vagina or rectum of either the victim or the offender by the penis of the other or by any foreign object, oral copulation, or masturbation of either the victim or the offender.

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

(2) A petition may be filed under this section if the individual was in custody pursuant to his or her determinate prison term, parole revocation term, or a hold placed pursuant to Section 6601.3, at the time the petition is filed. A petition shall not be dismissed on the basis of a later judicial or administrative determination that the individual's custody was unlawful, if the unlawful custody was the result of a good faith mistake of fact or law. This paragraph shall apply to any petition filed on or after January 1, 1996.

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

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

(d) Pursuant to subdivision (c), the person shall be evaluated by two practicing psychiatrists or psychologists, or one practicing psychiatrist and one practicing

psychologist, designated by the Director of Mental Health. If both evaluators concur that the person has a diagnosed mental disorder so that he or she is likely to engage in acts of sexual violence without appropriate treatment and custody, the Director of Mental Health shall forward a request for a petition for commitment under Section 6602 to the county designated in subdivision (i). Copies of the evaluation reports and any other supporting documents shall be made available to the attorney designated by the county pursuant to subdivision (i) who may file a petition for commitment.

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

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

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

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

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

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

(k) If the person is otherwise subject to parole, a finding or placement made pursuant to this article shall not toll, discharge, or otherwise affect the term of parole pursuant to Article 1 (commencing with Section 3000) of Chapter 8 of Title 1 of Part 3 of the Penal Code.

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

6601.1. (a) The Department of Justice, in cooperation with the Youth and Adult Correctional Agency and the State Department of Mental Health, shall report to the Legislature, on or before January 1, 2002, all of the following with regard to petitions to declare persons to be sexually violent predators filed pursuant to Section 6601 between July 1, 1999 through June 30, 2001:

(1) The number of cases in which, despite a later judicial or administrative finding that a person's custody was unlawful, a petition filed under Section 6601 is not dismissed pursuant to paragraph (2) of subdivision (a) of Section 6601 because the unlawful custody was the result of a good faith mistake of fact or law.

(2) The circumstances in each case in which a petition filed pursuant to Section 6601 went forward despite a good faith mistake of fact or law that resulted in the unlawful custody of the person.

(b) This section shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2003, deletes or extends that date.

6601.3. Upon a showing of good cause, the Board of Prison Terms may order that a person referred to the State Department of Mental Health pursuant to subdivision (b) of Section 6601 remain in custody for no more than 45 days beyond the person's scheduled release date for full evaluation pursuant to subdivisions (c) to (i), inclusive, of Section 6601.

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

6602. (a) A judge of the superior court shall review the petition and shall determine whether there is probable cause to believe that the individual named in the petition is likely to engage in sexually violent predatory criminal behavior upon his or her release. The person named in the petition shall be entitled to assistance of counsel at the probable cause hearing. Upon the commencement of the probable cause hearing, the person shall remain in custody pending the completion of the probable cause hearing. If the judge determines there is not probable cause, he or she shall dismiss the petition and any person subject to parole shall report to parole. If the judge determines that



there is probable cause, the judge shall order that the person remain in custody in a secure facility until a trial is completed and shall order that a trial be conducted to determine whether the person is, by reason of a diagnosed mental disorder, a danger to the health and safety of others in that the person is likely to engage in acts of sexual violence upon his or her release from the jurisdiction of the Department of Corrections or other secure facility.

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

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

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

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

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

(d) This section shall be implemented in Los Angeles County superior court of Los Angeles County pursuant to subdivision (b) shall be governed by the letter of agreement.

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

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

(c) (1) If the attorney petitioning for commitment under this article determines that updated evaluations are necessary in order to properly present the case for commitment, the attorney may request the State Department of Mental Health to perform updated evaluations. If one or more of the original evaluators is no longer

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

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

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

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

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

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

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

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

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

6604. The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court shall direct that the person be released at the conclusion of the term for which he or she was initially sentenced, or that the person be unconditionally released at the end of parole, whichever is applicable. If the court or jury determines that the person is a sexually violent predator, the person shall be committed for 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 petition for extended 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.

6604.1. (a) The two-year term of commitment provided for in Section 6604 shall commence on the date upon which the court issues the initial order of commitment pursuant to that section. The initial two-year term shall not be reduced by any time spent in a secure facility prior to the order of commitment. For any subsequent extended commitments, the term of commitment shall be for two years commencing from the date of the termination of the previous commitment.

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

6605. (a) A person found to be a sexually violent predator and committed to the custody of the State Department of Mental Health shall have a current examination of his or her mental condition made at least once every year. The 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 (i) of Section 6601 shall represent the state and shall have the right to demand a jury trial and to have the committed person evaluated by experts chosen by the state. The committed person also shall have the right to demand a jury trial and to have experts evaluate him or her on his or her behalf. The court shall appoint an expert if the person is indigent and requests an appointment. The burden of proof at the hearing shall be on the state to prove beyond a reasonable doubt that the committed person's diagnosed mental disorder remains such that he or she is a danger to the

health and safety of others and is likely to engage in sexually violent criminal behavior if discharged.

(e) If the court or jury rules against the committed person at the hearing conducted pursuant to subdivision (d), the term of commitment of the person shall run for 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.

6609. Within 10 days of a request made by the chief of police of a city or the sheriff of a county, the State Department of Mental Health shall provide the following information concerning each person committed as a sexually violent predator who is receiving outpatient care in a conditional release program in that city or county: name, address, date of commitment, county from which committed, date of placement in the conditional release program, fingerprints, and a glossy photograph no smaller than 3 1/8 X 3 1/8 inches in size, or clear copies of the fingerprints and photograph.

6609.1. (a) When the State Department of Mental Health makes a recommendation to the court for community outpatient treatment for any person committed as a sexually violent predator, it shall notify the sheriff or chief of police, or both, the district attorney, or the county's designated counsel, that have jurisdiction over the following locations:

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

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

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

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

The notice shall be given at least 15 days prior to the department's submission of its recommendation to the court.

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

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

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

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

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

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

(c) If the court orders the release of a sexually violent predator, the court shall notify the Sexually Violent Predator Parole Coordinator of the Department of Corrections. The Department of Corrections shall notify the State Department of Mental Health, the sheriff or chief of police, or both, and the district attorney, that have jurisdiction over the following locations:

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

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

The Department of Corrections shall make the above notifications regardless of whether the person released will be serving a term of parole after release by the court.

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

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

(f) The time limits imposed by this section are not applicable when the release date of a sexually violent predator has been advanced by a judicial or administrative process or procedure that could not have reasonably been anticipated by the State Department of Mental Health and where, as the result of the time adjustments, there is less than 30

days remaining on the commitment before the inmate's release, but notice shall be given as soon as practicable. In no case shall notice required by this section to the appropriate agency be later than the day of release.

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

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

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

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

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

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

SEC. 12. No reimbursement is required by Section 1 of this act pursuant to Section 6 of Article XIIIB of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or



changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

## APPENDIX B

### NOTICE OF EVALUATION AS A SEXUALLY VIOLENT PREDATOR

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

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

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

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

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

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Inmate's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Evaluator's Signature

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

## APPENDIX C

### CLINICAL EVALUATION SUMMARY

#### WIC 6600 CIVIL COMMITMENT

#### I. IDENTIFYING INFORMATION

Inmate Name: \_\_\_\_\_

CDC# \_\_\_\_\_

#### II. FINDINGS (WIC 6600 criteria)

YES

NO

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

Convicted of a qualifying offense(s)?.....1.

☐☐

Use of force, fear, etc., and/or substantial sexual conduct?.1a.

☐☐

Against two or more victims?.....2.

☐☐

- B. Does the inmate have a diagnosable mental disorder that predisposes person to the commission of criminal sexual acts?

(If YES, specify).....4.

☐☐

Axis I

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Axis II

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

5.

☐☐

#### III. CONCLUSION

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

☐ MEETS

☐ DOES NOT MEET

the criteria as a sexually violent predator as described in section 6600(a) of the Welfare and Institutions Code.

(If a NO response is marked for any of the above questions (1-5), then the inmate **does not meet** criteria)

SIGNATURE \_\_\_\_\_

DATE \_\_\_\_\_

PRINT NAME \_\_\_\_\_

LICENSE NUMBER \_\_\_\_\_

## APPENDIX D

### REFERENCES

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