# **SVP** Commitments

#### **Anticipating The Issues**

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## **Current Case Considerations**

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

# **Common Misconceptions**

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

# **Since 2006**

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

## Need Not Be Committing Offense

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

#### Primary Source Material

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

# Additional Material

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

## What About Hearsay?

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

# Facts From Other Cases

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

#### Talk With Client Before Interview

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

#### Drug Issues

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

## Statements To Avoid

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

10

11

#### 288.1 Evaluations

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

#### **Probation Reports**

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

#### Hearsay and Non-Predicates

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

13

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#### Client's Sexual History

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

16

17

18

# If You Must Show Remorse

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

## Antisocial Personality

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

# **Psychological Testing**

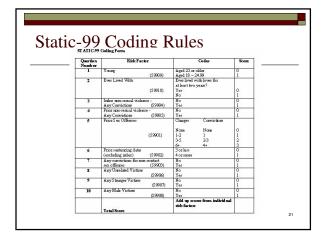
- □ Avoid it if at all possible
- If you have to have an mental health expert it is best to have a conclusion the conduct was the result of aberrant behavior and does not reflect any psychiatric diagnosis

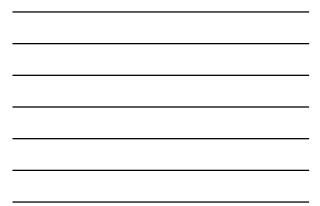
19

20

# This Is A Wish List

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





# Some Additional Factors

- □ Intimacy deficits
  - Two year relationships
- □ General self regulation
- □ Sexual self regulation
- $\hfill\square$  Poor cooperation with supervision

22

23

- □ Treatment drop out
- □ Negative social influences

## Things To Take Away

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

