

**DEPARTMENT OF STATE HOSPITALS
INITIAL STATEMENT OF REASONS**

California Code of Regulations
Title 9. Rehabilitative and Developmental Services
Division 1. Department of Mental Health
Chapter 15. Assessment of Sexually Violent Predators

The Department of State Hospitals (Department) proposes to adopt Sections 4020 - Update Evaluation Definitions and 4020.1 - Update Evaluations, to clarify statutes within the Sexually Violent Predator Act (SVPA).

Section 4020:

Purpose:

This subsection defines the terms “necessary” and “original evaluation” as used in this section.

Problem:

The terms “necessary” and “original evaluation” have not been defined in statutes or prior regulations. Both terms have been interpreted differently by the courts hearing cases related to the SVPA.

Rationale:

Defining these terms in regulations will mitigate confusing or open interpretation of the terms. “Necessary” means once per year. *People v. Albertson* (2001) 25 Cal.4th 796, clarified that evaluations are not considered stale until they were completed over a year ago. “Original Evaluation” is defined due to the fact that as these cases are pending for many years, what is considered the original evaluation gets lost.

Section 4020.1(a):

Purpose:

This subsection clarifies the criteria under which the Department will perform update evaluations.

Problem:

Welfare and Institutions Code section 6603 allows for District Attorneys to request updates on “original” evaluations for trial. However, the statute does not define original. There are numerous patients who have been awaiting trial for many years after the initial evaluation. As time passes, the evaluators that may have performed the initial evaluation may no longer be available to testify in court. Consequently, and the initial evaluators are replaced by subsequent evaluators to perform update evaluations. It becomes unclear who were the “original” evaluators assigned to a particular case when this occurs.

Rationale:

For evaluations conducted pursuant to Welfare and Institutions Code section 6603, it is necessary to clarify that the Department must have sole control over the appointment of experts under its jurisdiction to maintain neutrality and credibility of evaluations conducted by the Departments. This would further clarify who the “original” evaluations are that would need to be updated and would not vary from each county.

Section 4020.1(a)(1):**Purpose:**

This subsection clarifies the limit of updates to the original evaluations and independent evaluations assigned to address a difference of opinion.

Problem:

If an evaluator changes his or her initial opinion in an update evaluation, resulting in a split, independent evaluators are appointed resulting in multiple evaluators being assigned to a case.

Rationale:

Many cases under the SVPA have been awaiting trial for years and causing confusion regarding the evaluator assignments. In practice numerous evaluators have been appointed to particular cases and in theory these cases could have new evaluators appointed to the case ad infinitum. This clarifies that the appointment of new evaluators would not continue indefinitely and clarify the statute according to its intent. This would make it clear for all counties and not allow for various interpretation from each county.

Section 4020.1(b):**Purpose:**

This clarifies when the independent evaluations can be completed to resolve the difference of opinion pursuant to statute.

Problem:

The statute does not provide how many independent evaluations can be completed to resolve the difference of opinion if there are multiple difference of opinions many years later.

Rationale:

Some of these cases go on for years and as a result, as time continues, the Department continues to have a difference of opinion and will need to continue to appoint independent evaluators, where arguably if the case lasts long enough there may not be independent evaluators as they may have all been appointed to the matter. The statute appears to provide that an independent evaluator is allowed if there is a difference of opinion, but not continuously whenever there is a difference of opinion.

Section 4020.1(c):

Purpose:

This clarifies when an evaluator will provide an addendum on behalf of the Department.

Problem:

The statute does not provide clarification as to when an addendum can be provided.

Rationale:

If the Department receives additional information on a SVPA case, the evaluations may need to be modernized based upon the new information. This would allow the Department to provide an addendum to the previously issued current evaluation based solely on the receipt of new information and without the need for an in person interview with the individual being evaluated.

Section 4020.1(d):

Purpose:

This would clarify the Department has sole authority to designate an evaluator to testify and provide updates for the Department.

Problem:

There is a need to clarify who should have sole control over experts to conduct evaluations pursuant to Welfare and Institutions Code section 6603.

Rationale:

The statute provides that the Department shall appoint state experts. This allows the state to use unbiased experts and to allow the Department to keep their neutrality and credibility. The Department should be allowed to formulate an unbiased way to appoint experts, rather than being required to appoint specific experts at the request of the prosecutors or defense attorneys handling the case.

Section 4020.1(e):

Purpose:

This clarifies that only an evaluator designated by the Department has access to a patient's Department of State Hospitals records to conduct an update or replacement evaluation.

Problem:

There is often confusion about when an evaluator may access a patient's records.

Rationale:

This provides clarity to allow the evaluators access to the patient's records in order to allow the evaluators to complete the statutorily required evaluations.

Section 4020.1(f):

Purpose:

This clarifies when an evaluator may not be permitted to perform an update on a past evaluation.

Problem:

The Department is required to appoint evaluators to provide the statutorily required evaluations. Parties have requested that courts appoint doctors that the party finds favorable rather than allowing the department to appoint neutral evaluators.

Rationale:

This allows the Department to keep the responsibility of assignment, without other evaluators being appointed on the Department's behalf. The statute has charged the Department with the responsibility of appointing the evaluators and this further clarifies that role.

Section 4020.1(g):

Purpose:

This clarifies the requirements regarding when an evaluator shall be testifying on behalf of the department for the person subject to commitment.

Problem:

As time passes, evaluators become unavailable for various reasons and the Department may have appointed a new evaluator to replace the evaluator. Sometimes attorneys will try to have an evaluator who is no longer assigned to the matter to testify and make the department pay for their costs.

Rationale:

This does not restrict the parties' ability to obtain another evaluator as an expert, but it helps to clearly and define what evaluators are being assigned by the Department and for a particular case at a particular time.

ANTICIPATED BENEFITS

These regulations will improve public health and safety by implementing and clarifying the evaluations processes under the SVPA. They will also provide transparency in government practices.

NECESSITY

These regulations are necessary to implement and clarify Department policy related to statutes under the SVPA in order to improve the evaluation processes of sexually violent predators.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The Department does not anticipate that these proposed regulations will have any economic impact within the State.

Creation or Elimination of Jobs within the State of California

These regulations are designed to clarify the due process in place for the determination, commitment, and treatment of Sexually Violent Predators (SVPs) under the SVPA. This process is currently being upheld by existing State staff, court staff, and local government staff, and the regulations only clarify their duties and the scope of their work and workload. The regulations affect only State positions already existing. Thus, no jobs will be created or eliminated within the State of California because of these regulations.

Creation of New Businesses or the Elimination of Existing Businesses within the State of California

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Expansion of Businesses Currently Doing Business within the State of California

These regulations are designed to clarify the due process in place for the determination, commitment, and treatment of Sexually Violent Predators (SVPs) under the SVPA. This process is currently being upheld by existing State staff, court staff, and local government staff, and the regulations only clarify their duties and the scope of their work and workload. The regulations affect only State positions already existing. Thus, no businesses will be expanded or eliminated within the State of California because of these regulations.

Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State of California's Environment

These regulations will benefit the health and welfare of California residents by ensuring that a clear due process is in place for the determination, commitment, and treatment of SVPs who are civilly committed pursuant to the SVPA, in large part for the protection of the public. The regulations may also benefit worker safety by ensuring that only those SVPs who have gone through the clearly laid out due process are the ones committed to and treated by DSH employees, evaluators, and other personnel, reducing risk of overworked employees and thus the higher risk of making mistakes when workload is high or excessive. Lastly, the regulations may benefit the State's environment by

making more efficient the evaluations process, (1) potentially reducing evaluator time spent traveling to interview inmates, thus decreasing carbon dioxide emissions; (2) eliminating redundancies in the evaluations process, thus decreasing the need for paper and other office supplies and reducing energy costs; and (3) reducing waste and other costs by ensuring that only those SVPs who have gone through the clearly laid out due process are the ones committed to and treated by DSH.

TECHNICAL, THEORETICAL AND/OR EMPIRICAL STUDY, REPORTS OR DOCUMENTS

The Department has not identified or relied upon any technical, theoretical, or empirical studies, reports, or documents related to these regulations.

EVIDENCE SUPPORTING FINDINGS OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The proposed regulations will not directly affect businesses statewide. The Department concludes that the economic impact, if any, will not be significant. The due process by which SVPs are determined, committed, and treated are upheld by existing court staff, county staff, and State staff. There is potentially effect on the private business of an assigned evaluator, in contrast to an evaluator who is a State employee, but this effect is minimal. The regulations address the limits to the number of evaluations or evaluators that may be necessary in a case, on a case-by-case basis, and do not affect the private business of evaluating patients as a whole.

REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES

The Department has determined that no reasonable alternatives considered by the Department, or that have otherwise been identified and brought to the attention of the Department, would be more effective and less burdensome to affective private persons and equally effective in implementing the statutory policy or other provision of law.

DUPLICATION OR CONFLICT WITH FEDERAL REGULATIONS OR STATUTES

There is no duplication or conflict with federal regulations or statutes.