

DEPARTMENT OF STATE HOSPITALS
INITIAL STATEMENT OF REASONS

Sexually Violent Predator Standardized Assessment Protocol Regulation

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 new sections 4011, 4012, 4013, 4014, and 4015.

PROBLEM STATEMENT

Welfare and Institutions Code sections 6600 et seq. provides how an individual may be committed to the Department as a Sexually Violent Predator (SVP). The statute also provides the steps of the referral and evaluation that needs to occur. Specifically, the Department is to complete an evaluation in accordance with a standardized assessment protocol (protocol). This protocol is to be developed and updated by the Department.

ANTICIPATED BENEFITS

One benefit of the regulations will be to ensure that the due process in place for the determination, commitment, and treatment of SVPs, as laid out in the Sexually Violent Predator Act (SVPA), is clear, detailed, unambiguous, and transparent, thereby ensuring that the rights of those implicated by the SVPA are upheld and that the public health, safety, and welfare of California residents are protected. The Department anticipates that making the SVPA more specific will increase efficiency in the State and county governments, reduce time and costs, and streamline the working relationships among DSH, district attorneys, defense counsel, the courts, and evaluators.

Section 4011. Evaluation Overview.

Purpose: To provide an overview and provide definitions. This regulation will also provide the criteria to be used for the evaluations, when an evaluator is evaluating an individual.

Necessity: This provides the definition of the evaluator and provides clarity of the criterion that needs to be met for an individual to be determined a sexually violent predator.

Section 4012. Record Review.

Purpose: To provide a standard and requirement to review records as a part of the evaluation.

Necessity: This proposed regulation is necessary because it helps ensure that the evaluators use their due diligence in obtaining and reviewing all necessary records that are available to them, in order to conduct a and clinically-sound evaluation. The proposed regulations guide evaluators as to which records to consider without providing any specified limits on the review of additional information at their professional discretion. The more information an evaluator has to inform them about the individual, the more accurate and complete the evaluation will be.

Section 4013, Interview, subdivision (a).

Purpose: To provide the steps in making any necessary accommodations for the interview of the referred individual.

Necessity: It is necessary to ensure that the evaluators are aware of how to obtain the information needed to assess the individual's ability to participate meaningfully in the evaluation. This ensures that the evaluators assess the individual's ability to communicate and provide the proper and necessary accommodations or needs for the interview process, including any language translation services.

Section 4013, Interview, subdivision (b).

Purpose: To provide the standard that the evaluators make reasonable attempts for a face-to-face interview and discuss the nature of the evaluation process.

Necessity: This proposed regulation is necessary to ensure that the evaluators attempt to conduct a face-to-face interview. This regulation also ensures that the evaluators make reasonable attempts to obtain informed consent and explain their mandated reporting requirements as well as ensure that the evaluation is completed in a non-biased and neutral manner. It also requires the evaluator to document interview refusals, explain limits of confidentiality, and not provide feedback to the individual regarding diagnosis or risk level.

Section 4014, Forensic Report, subdivision (a).

Purpose: The proposed regulation provides for the identifying information to be a part of the report produced by the evaluation.

Necessity: It is necessary to ensure that the reports produced by the evaluations and submitted to the courts pursuant to the Sexually Violent Predator Act, contain the same identifying information for all individuals who have been evaluated.

Section 4014, Forensic Report, subdivision (b).

Purpose: The proposed regulation provides for the evaluation report to provide documentation of the proper notification and informed consent.

Necessity: It is necessary to ensure that the reports produced by the evaluators are uniform and that the proper notifications and informed consent of the interviews are provided to the individuals. Also, the proposed regulation specifies evaluators must indicate how it was determined if effective communication was made, and if any modifications or accommodations were needed.

Section 4014, Forensic Report, subdivision (c).

Purpose: The proposed regulation provides for the evaluator to document the documents relied upon to complete the report.

Necessity: It is necessary to ensure that the reports produced by the evaluations and submitted to the courts pursuant to the Sexually Violent Predator Act, contain citations of the documents relied upon. This allows both parties to the action to be aware of what documents the evaluators relied upon to come to their conclusions.

Section 4014, Forensic Report, subdivision (d).

Purpose: The purpose is to have the evaluators document the procedures used, including any risk instruments utilized for the evaluation.

Necessity: It is necessary to ensure that the reports produced by the evaluations and submitted to the courts pursuant to the Sexually Violent Predator Act contain the methodology and procedures used by the evaluator to complete the evaluation.

Section 4014, Forensic Report, subdivision (e)(1).

Purpose: The proposed regulation requires that the evaluators provide the findings of Criterion A of the SVPA. The proposed regulation further clarifies the statute by providing definitions for force, violence, menace, fear, duress, and threats to retaliate.

Necessity: It is necessary to require that the evaluators provide the finding of Criterion A. This also requires that the evaluators list all offenses including the qualifying offenses and to make sure to include any juvenile offenses. The evaluator is to identify the presence of the specified sexually violent elements for all cases meeting penal code requirements for each qualifying victim. The proposed regulation also provides guidance on how to evaluate offenses and how an offense may fit into the criteria.

Section 4014, Forensic Report, subdivision (e)(2).

Purpose: The proposed regulation requires that the evaluators provide the findings of Criterion B, relating to the diagnosed mental disorder. The proposed regulation further clarifies the statute by defining emotional and volitional capacity.

Necessity: It is necessary to require that the evaluators provide the finding of Criterion B. The proposed regulation provides direction of the analysis of the diagnosed mental disorder. It requires evaluators to describe the facts of the qualifying offenses or convictions and indicate the specified sexually violent elements. The regulations require evaluators to include any diagnostic tools and literature used. Also, this regulation provides direction to explain the nexus between the diagnosed mental disorder and the emotional and volitional capacity. The proposed regulation provides guidance of what factors the evaluator should consider to reach their conclusion for Criterion B.

Section 4014, Forensic Report, subdivision (e)(3).

Purpose: The proposed regulation requires that the evaluators provide the findings of Criterion C, and provide guidance of how to analyze Criterion C. The proposed regulation further clarifies the statute and further defines the term likely and provides guidance to the factors to consider in making this assessment.

Necessity: It is necessary to require that the evaluators provide the finding of Criterion C and provide the overall summary of the evaluation. The proposed regulation provides guidance of what to consider and provides clarification on the terms for Criterion C. The Sexually Violent Predator Act does not specify the timeframe in which the evaluator shall consider the assessed individual's likelihood of engaging in sexually violent criminal behavior and the proposed regulation makes it clear that this is the case. The evaluator is to use their professional judgment to determine whether an individual seeking supervision and treatment in the community is meaningful, sincere, and sufficiently addresses the individual's risk.

Section 4014, Forensic Report, subdivision (f).

Purpose: The proposed regulation ensures that the evaluators provide a clear conclusion in the report and provide a summary of the entire evaluation.

Necessity: It is necessary to be able to ensure that the reports produced by the evaluations and submitted to the courts pursuant to the Sexually Violent Predator Act contain uniform information including a conclusion and a summary of the conclusion. This ensures that the evaluator provides a conclusion to the courts, and parties to the action.

Section 4015: Special Considerations.

Purpose: To provide direction when there has been an individual that has been evaluated previously, and found to not be a Sexually Violent Predator by the court.

Necessity: Provides clarity to evaluators when they encounter a situation where an individual has previously found to not be a Sexually Violent Predator by the court. It specifies the conditions in which the evaluator may still provide an opinion that the individual is a SVP. This also provides clarification as to how to explain their current evaluation in relation to the previous court finding and how the evaluator is to provide an explanation as to why the new evaluation is sufficiently different.

TECHNICAL, THEORETICAL OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The Department relied on the following:

Association for the Treatment of Sexual Abusers (ATSA)

- *Civil Commitment of Sexually Violent Persons*
 - o <http://www.atsa.com/civil-commitment-sexually-violent-predators>
(accessed 11/14/2017)
- *Practice Guidelines for the Assessment, Treatment, and Management of Male Adult Sexual Abusers*, 2014, pages 11-29.
- *Risk Assessment*
 - o <http://www.atsa.com/risk-assessment> (accessed 11/14/2017)

ECONOMIC IMPACT ASSESSMENT / ANALYSIS

DSH does not anticipate any non-discretionary costs or savings imposed on any local agency, as a result of the proposed regulations, during the current fiscal year and the two subsequent fiscal years.

DSH does not anticipate any additional costs to the Department or any other state agency.

Creation or elimination of jobs within the State of California

These regulations are designed to make uniform the evaluations process of SVPs. This evaluation process is currently being managed by DSH evaluators who are existing State staff or State contractors, and these proposed regulations only enhance and clarify their job duties. As such, these proposed regulations affect only State positions already existing. Because SVP evaluations are conducted only by State staff or State contractors and DSH does not anticipate creating or eliminating any DSH positions, the Department does not anticipate that there will be any creation or elimination of jobs within the State of California.

Creation of new businesses or the elimination of existing businesses within the State of California

These regulations are designed to make uniform the evaluations process of SVPs. This evaluation process is currently being managed by DSH evaluators who are existing State staff or State contractors, and these proposed regulations only enhance and clarify their job duties. As such, these proposed regulations affect only State positions already existing. While these proposed regulations implicate the private businesses of psychiatrists or psychologists who are existing or potential DSH contractors, DSH monitors these evaluations and assigns evaluators on a case-by-case, rotating basis. Consequently, because there will be no change to the appointment process as a result of these proposed regulations, the Department does not anticipate that there will be any creation of new businesses or elimination of existing businesses within the State of California.

Expansion of businesses currently doing business with the State of California

These regulations are designed to make uniform the evaluations process of SVPs. This evaluation process is currently being managed by DSH evaluators who are existing State staff or State contractors, and these proposed regulations only enhance and clarify their job duties. As such, these proposed regulations affect only State positions already existing. Because SVP evaluations are conducted only by State staff or State contractors, the Department does not anticipate that there will be any expansion of businesses currently doing business with the State of California.

Benefits of the regulations to the health and welfare of California residents, worker safety, and the State of California's environment

These proposed regulations may benefit the health and welfare of California residents by ensuring that potential SVPs are evaluated equally, fairly, and uniformly, resulting in the potential civil commitment of only those patients who meet the SVP criteria, treating and rehabilitating SVPs who are suitable and appropriate for treatment, and keeping the public safe from potentially dangerous SVPs – in congruence with the spirit of the SVPA which is to keep the public safe and to provide treatment to SVPs who will benefit from it. These proposed regulations may also benefit worker safety by ensuring that only those patients who meet the SVP criteria, as evaluated using these proposed regulations, are treated by hospital staff, resulting in appropriate treatment and workload. Lastly, these proposed regulations may benefit the State's environment by streamlining the evaluation process, reducing carbon footprint, waste, use of resources, and energy costs.

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

Although these proposed regulations implicate the businesses of psychiatrists or psychologists who are existing or potential State contractors, the impact on these businesses is minimal, if any. Each potential SVP is evaluated by an appointed evaluator. DSH monitors these evaluations and assigns evaluators on a case-by-case, rotating basis, thereby eliminating the risk of these businesses competing with each other in the market. These proposed regulations do not change the rotating appointment process but only clarifies the duties of the evaluators regarding SVP criteria and the evaluations process itself.

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

The Department believes that there are no reasonable alternatives to the proposed regulations which would be more effective and less burdensome to affected private persons or equally effective in implementing the provision of law.

DUPLICATION OR CONFLICT WITH FEDERAL REGULATIONS OR STATUTES

The Department expects no duplication or conflict with federal regulations to occur.