

**State of California
DEPARTMENT OF STATE HOSPITALS**

UPDATED INFORMATIVE DIGEST

PROPOSED REGULATIONS FOR THE SEXUALLY
VIOLENT PREDATOR STANDARDIZED ASSESSMENT PROTOCOL

Sections Affected:

Adoption to California Code of Regulations, title 9, sections 4011, 4012, 4013, 4014, 4014.1 and 4015.

Background and the Effect of the Rulemaking:

Welfare and Institutions Code section 6600, et. seq., provides the process that evaluations must be conducted on individuals who potentially may be deemed Sexually Violent Predators under the Sexually Violent Predator Act. Specifically, when the Secretary of the Department of Corrections and Rehabilitation determines that an individual may be a sexually violent predator, the Department of Corrections and Rehabilitation is to refer the person for an evaluation to be conducted by the Department of State Hospitals. Welfare and Institutions Code section 6601, subdivision (c), provides that the State Department of State Hospitals is to evaluate the person in accordance with a standardized assessment protocol, developed by the State Department of State Hospitals. It further states that the standardized assessment protocol requires assessment of a diagnosable mental disorder, as well as various factors known to be associated with the risk of re-offense among sex offenders. These proposed regulations provide the standardized assessment protocol to the Department of State Hospital evaluators who complete the Sexually Violent Predator evaluations, as well as provide this information to the public. The proposed regulations provide the elements that are involved in the evaluation process and include the documents and risk assessment tools the evaluator may review to complete the required Sexually Violent Predator assessment.

Description of Regulatory Action:

On January 22, 2018, DSH conducted a public hearing to consider the proposed rulemaking for adoption of the Sexually Violent Predator Standardized Assessment Protocol Regulation, in accordance with the California Administrative Procedure Act, Government Code, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340), in which no written comments were received for the proposed action during the 45-day comment period in response to the January 22, 2018 public hearing notice. No written and oral comments were presented at the January 22, 2018 public hearing.

After the January 22, 2018 public hearing, DSH proposed modifications to the originally proposed regulation to sections 4011, 4012, 4013, 4014, 4014.1 and 4015, title 9, California Code of Regulations. The Department made modifications reflected in the three sets of 15-day comment periods (with the changes clearly indicated) which are sufficiently related to the originally proposed text and made them available for a supplemental 15-day comment period through a "Notice of Public Availability of Modified Text."

The first 15-day comment period was from February 15, 2018 through March 2, 2018.

The following modifications were made to the Initial Statement of Reasons:

1. Identified the source of the criterion provided under Section 4011 pursuant to the Sexually Violent Predator Act.
2. Expand the necessity and need language for Sections 4012, 4013, and 4014.
3. Explained the necessity language of section 4015 to help provide clarity based upon case law.

The second 15-day "Second Notice of Public Availability of Modified Text." was from July 10 through July 25, 2018.

The following Second 15-day modifications were made to the Regulation Text:

Section 4012, a sentence was modified to clarify that sexual interest tests, which are part of the medical record, may also be considered in the assessment review, in accordance to the general professional practice.

Section 4013(b), a sentence was added to clarify that interviews conducted by video telepsychiatry may be considered face-to-face interviews. As technology advances, the medical practice is changing and incorporating technology into the standard professional practice.

Section 4013(c), minor changes were made to ensure proper references, and to clarify that the evaluator should attempt to get informed consent. There is also a renumbering which ensures the numbering is correct.

Section 4014(e)(1)(A)2., a sentence was added to ensure that there was no confusion regarding a person who had been convicted as a mentally disordered sex offender. This is a repeat of the statute, included to make clear that this is something that needs to be considered.

Section 4014(e)(2)(D)4., there was an addition to ensure that the results of sexual interest testing may be reviewed.

Section 4014.1, language was added to clarify when the evaluations are completed and certified and are official reports pursuant to the responsibility of the department to ensure that reports are provided pursuant to the SVP law.

The third 15-day “Third Notice of Public Availability of Modified Text.” comment period was from August 20, through September 4, 2018.

Section 4014(e)(3)(A): The sentence “‘Likely’ may cover a range from possible to probable” has been removed to make it clear that there is no specific range from possible to probable of an Individual’s likelihood of risk of re-offense in sexually violent criminal behavior. This change was made to be consistent with case law.

Non-substantive changes made to the regulatory text

Section 4013, a modification was made to properly spell out the acronym of what is commonly referred to as DECS Disability and Effective Communication System. The title of the system was slightly incorrect.

Changes to Underlying Laws or Effect of the Regulation:

There have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Action.

Comparable Federal Regulations:

There are no federal regulations comparable to the proposed regulations.