

## **Sex Offender Placement:**

*Departments That Are Responsible for Placing Sex Offenders Face Challenges, and Some Need to Better Monitor Their Costs*



December 2004  
2004-111

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# CALIFORNIA STATE AUDITOR

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December 9, 2004

2004-111

The Governor of California  
President pro Tempore of the Senate  
Speaker of the Assembly  
State Capitol  
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As requested by the Joint Legislative Audit Committee, the Bureau of State Audits presents its audit report concerning the process and related costs incurred by the departments of Developmental Services (Developmental Services), the Youth Authority (Youth Authority), and Mental Health (Mental Health) to house sex offenders in the community.

This report concludes that Developmental Services cannot identify the total number of individuals it serves who are sex offenders, and is not required to do so. Consequently, it cannot isolate the costs associated with placing them in local communities. Furthermore, when regional centers identify sex offenders, they face barriers in placing them in local communities. We also found that the Youth Authority's out-of-home placement standards do not conform to laws and regulations otherwise governing housing facilities. In addition, its parole offices do not always follow procedures for supervising parolees who are sex offenders. Moreover, the Youth Authority's contracts with homes do not contain some of the elements of a valid contract and it cannot track the cost of housing sex offenders in the community because it lacks adequate controls over its billing system. Although only three sexually violent predators (SVPs) have been released to Mental Health's Forensic Conditional Release Program, procuring housing for SVPs may continue to be difficult, and the program has proven costly given the small number of people who qualify. Mental Health could improve its fiscal oversight of the program by routinely performing audits and detailed reviews of costs. Finally, the State currently has no process to measure how successful the SVP component of its Forensic Conditional Release Program is or to determine how to improve it.

Respectfully submitted,

ELAINE M. HOWLE  
State Auditor

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# SUMMARY

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## Audit Highlights . . .

*Our review of the departments of Developmental Services (Developmental Services), the Youth Authority (Youth Authority), and Mental Health (Mental Health) processes and related costs for releasing sex offenders into the local community revealed:*

- Developmental Services cannot identify the total number of individuals it serves who are registered sex offenders, or the related costs, and is not required to do so.*
- Youth Authority's out-of-home placement standards do not conform to laws and regulations otherwise governing housing facilities. In addition, it cannot track the cost of housing sex offenders in the community because of an inadequate billing system.*
- Only three sexually violent predators (SVPs) have been released to Mental Health's Forensic Conditional Release Program, but procuring housing for SVPs may continue to be difficult, and the program has proven costly.*

*In addition, the State currently has no process to measure how successful the SVP component of this program is or to determine how to improve it.*

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## RESULTS IN BRIEF

As of July 1, 2004, more than 100,000 sex offenders were registered in the State. A number of entities participate in the process of releasing these sex offenders in the community when appropriate. This report examines the process and related costs incurred by the departments of Developmental Services (Developmental Services), the Youth Authority (Youth Authority), and Mental Health (Mental Health) in housing sex offenders in the community. For purposes of our audit, we define sex offenders as follows: At Developmental Services, these are individuals with developmental disabilities (consumers) who are required to register as sex offenders under the Penal Code, Section 290; at the Youth Authority, this population includes youthful offenders eligible for placement in its Sex Offender Treatment Program; at Mental Health, this population includes sexually violent predators as defined by the Welfare and Institutions Code, Section 6600.<sup>1</sup>

Developmental Services cannot identify the total number of its consumers who are sex offenders and is not required to do so. Specifically, the Lanterman Developmental Disabilities Services Act does not require that consumers provide criminal histories, such as prior sex offenses, when accessing services provided through regional centers. Furthermore, the law only allows the California Attorney General (attorney general) to provide Developmental Services the criminal histories of its potential consumers in very limited circumstances. That same law generally prohibits law enforcement agencies and others from sharing this information with Developmental Services or the regional centers. Because Developmental Services cannot always identify the registered sex offenders in its consumer population, it cannot isolate the costs associated with placing them in local communities. When regional centers identify consumers who are sex offenders, they face barriers in placing them in local communities. For example, one community's protest caused Developmental Services to postpone a regional center's implementation of the community placement plan for a small group of consumers in that community.

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<sup>1</sup> Section 290 of the Penal Code includes sex offenses such as rape; lewd or lascivious acts with a child under the age of 14; and sodomy or oral copulation with a minor; or when committed by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

We also found that the Youth Authority's standards to assure that basic and specialized needs of the parolees are met do not conform to laws and regulations otherwise governing housing facilities. Because parole agents do not always complete evaluations and inspection of these homes, the safety of the parolees may be in jeopardy. Also, parole offices do not always follow procedures for supervising parolees who are sex offenders, making it difficult for parole agents to promptly identify whether these youths need more intensive monitoring.

In addition, the Youth Authority's contracts with homes do not contain some of the elements of a valid contract. For example, the contracts do not specify the term for the performance or completion of the services, nor do they clearly describe the level of service the homes are to provide. Further, the Youth Authority has not adequately designed and implemented a billing system to track housing costs for youthful offenders. Finally, although the Youth Authority has a conflict-of-interest code meant to avoid potential conflicts of interest, it does not ensure that all of its supervising parole agents file statements of economic interests.

Superior courts at the county level play a major role in the release of sexually violent predators (SVPs) to Mental Health's Forensic Conditional Release Program (Conditional Release Program) and retain jurisdiction over these individuals throughout the course of the program. Once an SVP resides in a secure facility for at least one year, he or she is eligible to petition the court to enter the Conditional Release Program. Although few SVPs qualify for the program (only three since the program's inception in 1995), procuring housing for them may continue to be difficult, and Mental Health needs to improve its fiscal oversight. For example, it lacks adequate procedures to monitor Conditional Release Program costs. According to the former chief of Mental Health's Forensic Services Branch, due to budget cuts it no longer has an auditor position available to perform audits and detailed reviews of costs. In addition, Mental Health does not adhere to its policies and procedures designed to reduce program costs. For example, it does not presently ensure that SVPs apply for other available financial resources such as food stamps and social security income. Finally, the State currently has no process to measure how successful its Sex Offender Commitment Program is (the Conditional Release Program is its fifth treatment phase in this program) or to determine how to improve it.

## RECOMMENDATIONS

To most appropriately provide services and supports to its consumers, Developmental Services should consider seeking legislation to enable it and the regional centers to identify those consumers who are sex offenders by obtaining criminal history information from the attorney general. If the Legislature chooses not to allow access to criminal history information, Developmental Services should seek to modify its laws and regulations governing the individual program plan process to include a question that asks potential consumers if they must register as sex offenders.

To assure that at a minimum it meets the basic and specialized needs as well as safety of sex offenders who are on parole, the Youth Authority should address the deficiencies in its out-of-home placement standards and modify its regulations accordingly.

To ensure the safety of the public, the Youth Authority should conduct periodic reviews of a sample of the parolees' case files to ensure parole agents' compliance with its supervising procedures.

To ensure that its contracting process meets state requirements, the Youth Authority should seek guidance from the departments of General Services and Finance.

To ensure that it can accurately identify the costs associated with housing sex offenders in the community, the Youth Authority should identify and correct erroneous data in its billing system, implement controls and procedures to ensure the completeness and accuracy of the records, and reconcile the invoices in its billing system with the payments in its accounting records.

To ensure that it avoids potential conflicts of interest, the Youth Authority should ensure that all supervising parole agents and employees who are performing duties similar to those of the supervising parole agents file a statement of economic interests.

To ensure that contractors adhere to the terms and conditions in its contracts, Mental Health should either reinstate the auditor position or designate available staff to fulfill the audit functions. In addition, Mental Health should follow through on its policy to reduce costs associated with the SVP component of the Conditional Release Program.

To enable the State to measure the success of the SVP component of the Conditional Release Program, the Legislature should consider directing Mental Health to conduct an evaluation of the program.

### **AGENCY COMMENTS**

Developmental Services agrees with our recommendations and intends to work toward implementing them. The Youth Authority also agrees with our recommendations and has assigned a project coordinator to oversee various groups that will have responsibility for addressing the deficiencies noted in our report. Finally, Mental Health agrees with our recommendations and has already taken some actions to address them. ■



# INTRODUCTION

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## BACKGROUND

A number of state departments, such as the Department of Corrections (Corrections), are responsible for releasing in the community individuals convicted or adjudicated of committing sex offenses.<sup>2</sup> The California Department of Justice (Justice) maintains a database of registered sex offenders in the State, and as of July 1, 2004, it contained more than 100,000 names. This report examines the process and related costs incurred by the departments of Developmental Services (Developmental Services), the Youth Authority (Youth Authority), and Mental Health (Mental Health) to house sex offenders in the community.

## DEVELOPMENTAL SERVICES

State laws, primarily the Lanterman Developmental Disabilities Services Act (Lanterman Act), charge the State with establishing a service delivery system for eligible persons with developmental disabilities (consumers) to meet their needs and choices, as well as to facilitate their integration into the mainstream life of the community. Eligibility for services is based on whether the person has mental retardation, cerebral palsy, epilepsy, autism, or other disabling conditions closely related to mental retardation or requiring treatment similar to that given for mental retardation. Any consumer can receive services as long as the disability originates before his or her 18<sup>th</sup> birthday, it continues or can be expected to continue indefinitely, and it constitutes a substantial disability. Developmental Services administers the service delivery system.

In fiscal year 2004–05, Developmental Services expects to spend \$3.5 billion providing services and supports to nearly 203,000 consumers in its seven facilities and in local communities. Developmental Services contracts with a statewide network of 21 regional centers—nonprofit private corporations—to provide a local resource to help find and access the many services available to consumers. The services offered by regional centers can include

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<sup>2</sup> When a youthful offender is accused of a crime and the case is decided in a juvenile court, that determination is known as an adjudication.

assessing and diagnosing an individual to determine his or her eligibility. They also assign service coordinators to work with eligible consumers, and where appropriate their parents, legal guardians, conservators, or authorized representatives, to develop an individual program plan that considers each consumer's needs, strengths, capabilities, preferences, lifestyle, and cultural background. Through this collaborative process, regional centers also generally decide whether consumers should enter a developmental center or remain in the community, although the court can order that certain consumers be placed in a specific setting. When regional centers become aware that a consumer is a registered sex offender, they often consider this factor when developing individual program plans. The location of the 21 regional centers is shown in the Figure.

Developmental Services operates five developmental centers. The centers provide around-the-clock services that include care, treatment, and supervision to consumers who have greater medical and behavioral problems than do those living in the community. However, a 1993 lawsuit settlement, known as the Coffelt Settlement, called for the State to help residents of developmental centers to integrate into their communities to the extent that integration is appropriate based on the needs of the individual. In 2000, Developmental Services began operating two smaller community facilities that also provide around-the-clock services. These facilities were designed to provide services to consumers with challenging behavioral issues. When consumers residing in these facilities demonstrate acceptable behavioral control and personal responsibility, as well as appropriate work, social, and living skills, they are assisted in returning to their own communities or other less restrictive living arrangements. According to Developmental Services' unaudited data, the number of consumers living in its facilities dropped from 5,400 in January 1995 to less than 3,300 in September 2004.

The legislative intent of the Lanterman Act is to require that consumers receive appropriate services and supports under the least restrictive conditions. Another legislative intent of the Lanterman Act is that consumers have a right to make choices in their own lives, including where and with whom they live; their relationships with people in their community; the way they spend their time, including education, employment, and leisure;

**FIGURE**

**Services for California Residents With Developmental Disabilities Are Provided Through a Statewide Network of 21 Locally Based Regional Centers**



Source: Department of Developmental Services.

Note: Colors correspond to areas served by each regional center.

the pursuit of their personal future; and program planning and implementation. Regional centers must respect the choices made by consumers or their parents, legal guardians, or conservators.

For example, the Lanterman Act places a high priority on providing opportunities for adult consumers, regardless of the degree of disability, to live in homes they own or lease with support available as often and for as long as it is needed, when that is the preferred objective in their individual plans. Regional centers can assist consumers in securing their own homes and provide any support they need to live on their own. The Lanterman Act also places a priority on providing opportunities for adult consumers to live in the homes of families approved by private not-for-profit family home agencies and to receive necessary services and supports in those settings consistent with their individual plans. Among other alternatives, consumers may choose to live in community care facilities licensed by the Department of Social Services that can provide around-the-clock nonmedical residential care to those in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for self-protection.

## **THE YOUTH AUTHORITY**

State law mandates that the Youth Authority provide, among other things, offender training and treatment aimed at the correction and rehabilitation of young persons who have committed public offenses. The Youth Authority pays for these services because youthful offenders—those persons under the age of 18—are under its jurisdiction. Youthful offenders can be committed to the Youth Authority by both juvenile and criminal courts. Those who violate any California or federal law or most California city or county ordinances defining crimes typically fall within the jurisdiction of the juvenile courts. In some cases, however, a youthful offender may be prosecuted in a criminal court as an adult and, in that case, can be convicted of a crime. Upon receiving a youthful offender, the Youth Authority reviews documents provided by the court to identify factors such as the individual's public offense, confinement time, and history of criminal or delinquent behavior. The Youth Authority has established a Sex Offender Treatment Program to provide treatment to youthful offenders who meet the criteria shown in the text box.

Casework specialists or parole agents refer to the Youth Authority's Sex Offender Treatment Program youthful offenders who meet one or more of the following conditions:

1. The offender is committed to the Youth Authority for a sex offense.
2. The offender was adjudicated or convicted of a sex offense prior to his or her current commitment.
3. The offender has a documented pattern or history of sexually inappropriate behavior.
4. The offender discloses his or her involvement in sexually inappropriate behavior.

Source: The Department of the Youth Authority.

Generally, the Youth Authority's jurisdiction over youthful and young adult offenders expires when they reach the age of 21; however, if they have committed certain offenses such as rape or other forcible sex offenses, its jurisdiction can extend until they reach age 25. Under California's determinate sentencing law, adult prisoners are released on parole dates that are fixed by statute based on the seriousness of the offense. In contrast, a Youth Authority ward's readiness for parole is determined by the Youth Authority Board (parole board). Prior to a parole consideration hearing, a Youth Authority parole agent in one of 16 parole offices located throughout the State completes a placement plan that specifies any special conditions of parole relevant to the youthful offender's commitment offense. The parole agent investigates the institution's recommended

placement and develops alternate placements, if necessary. If, after reviewing the case, the parole board determines that a youthful offender under supervision and with appropriate conditions of parole is not likely to present a significant danger to the public, it orders that the offender be referred to parole. The parole agent then assists the parolee in obtaining adequate housing, employment, financial assistance, social and medical services, educational placements, and other resources or services that will increase the likelihood of the parolee's adjustment in the community.

Depending on the plan, parole agents may place parolees with relatives, in facilities that house more than six persons, group homes, or foster homes.<sup>3</sup> Additionally, the Youth Authority will subsidize housing for parolees who live independently. However, the preference is to place the parolee in the approved home of a relative or the approved home of an unrelated extended-family member.

According to the Youth Authority, it released 6,911 youthful offenders on parole between July 2001 and June 2004. Only 811, or 11.8 percent, met the criteria for the Sex Offender Treatment Program. However, 51 of these offenders were released more than once during this period. Table 1 on the following page shows the number of sex offenders released by offender type.

<sup>3</sup> The Youth Authority defines a group home as a residence that provides room, board, care, and supervision for not more than six persons.

**TABLE 1**

**Number of Sex Offenders Released by the  
Department of the Youth Authority to Parole by Type  
Fiscal Years 2001–02 Through 2003–04**

Type of Sex Offender	Number of Sex Offenders
Commitment offense is a sex offense as defined in Welfare and Institutions Code, Section 727.6.*	337
Commitment offense is a sex offense other than those sex offenses defined in Welfare and Institutions Code, Section 727.6.	182
The offender has been adjudicated or convicted of a sex offense prior to his or her current commitment, or has a documented pattern or history of sexually inappropriate behavior, or discloses his or her involvement in sexually inappropriate behavior.	292
<b>Total†</b>	<b>811</b>

Source: The Department of the Youth Authority (Youth Authority) Research Division data, Bureau of State Audits' analysis.

Note: For the purpose of this audit, we defined a sex offender using the categories described in the Youth Authority's Sex Offender Treatment Program.

\* The Welfare and Institutions Code, Section 727.6, states that any minor adjudged a ward of the court and committed to the Youth Authority for committing a sexually violent offense, as defined in the Welfare and Institutions Code, Section 6600, must receive sex offender treatment. Sexually violent offenses include acts of oral copulation, sodomy and rape when committed by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

† Total includes 51 sex offenders that the Youth Authority released to parole more than once during fiscal years 2001–02 through 2003–04.

## MENTAL HEALTH

Mental Health provides services to individuals residing within the State who have mental disorders. Corrections and the Board of Prison Terms screen individuals under Corrections' jurisdiction (inmates) who may be sexually violent predators (SVPs) and are generally within at least six months of their scheduled release date from prison.<sup>4</sup> Inmates are selected for screening based on whether they have committed a sexually violent predatory offense and on a review of their social, criminal, and institutional history. If the screening indicates that the inmate is likely to be an SVP, Corrections refers him or her to Mental Health for a full evaluation. Mental Health's Sex Offender Commitment Program implements state laws that create a civil commitment process for SVPs. The director of Mental Health must designate two independent practicing

<sup>4</sup> The Board of Prison Terms is California's adult parole board. It is composed of nine commissioners who are appointed by the governor, with the advice and consent of the Senate, for a term of four years.

State law defines a sexually violent predator as 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 predatory criminal behavior.

State law also defines the following terms:

- *Sexually violent offenses* include the following acts when committed by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person: rape, lewd or lascivious acts with a child under the age of 14, spousal rape, and oral copulation or sodomy with a minor.
- *Diagnosed mental disorders* include congenital or acquired conditions 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.
- A *predatory act* is one 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.

Source: Welfare and Institutions Code, Section 6600.

psychiatrists or psychologists, or one practicing psychiatrist and one practicing psychologist to evaluate the inmate and determine if he or she meets the definition of an SVP. Two independent evaluators must concur that the inmate has a diagnosed mental disorder so that he or she is likely to engage in acts of sexual violence without appropriate treatment and custody. Then, the director of Mental Health must forward a request for a petition to be filed for the inmate's commitment to a secure facility for mental health treatment to the county's designated counsel, which can be either its own counsel or the district attorney.

If the county's designated counsel concurs with the recommendation, he or she files a petition for commitment in the Superior Court of the county where the inmate was convicted of the offense and committed to the jurisdiction of Corrections. The judge will review the petition and determine if it, on its face, supports a finding of probable cause that the individual named in the petition is likely to engage in sexually violent predatory criminal behavior upon his or her release. If so, the judge will hold a full 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 while under supervision and treatment in

the community. If probable cause is determined, the judge must order that the person remain in custody in a secure facility until a trial is completed. If the court or jury finds that the person is an SVP, the person is committed for two years to the custody of Mental Health for appropriate treatment and confinement in a secure facility. Typically, Mental Health will place an SVP in the state hospital at either Atascadero or Patton. The SVP must undergo an examination of his or her mental condition at least once every year.

The SVP can be released into Mental Health's Forensic Conditional Release Program (Conditional Release Program) in one of two ways. The director of Mental Health can determine that the SVP has so changed that he or she is not likely to commit acts of predatory violence while under supervision and treatment in the community. If this occurs, the director must forward

a report and recommendation for conditional release to the county's designated counsel, the SVP's attorney of record, and the committing court. Alternatively, the SVP can petition the court for conditional release without the recommendation or concurrence of the director. However, the SVP must have been in the custody of Mental Health, confined in a secure facility, for not less than one year from the date of the order of commitment before filing the petition.

Upon receipt of either the director's report and recommendation or the SVP's petition, the court must hold a hearing to determine if the SVP 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 determines that the SVP would not be a danger to others due to his or her diagnosed mental disorder while under supervision and treatment in the community, it must order the SVP placed in Mental Health's Conditional Release Program for one year. The court must hold another hearing at the end of a year to determine if the SVP should be unconditionally released from commitment.

The court retains jurisdiction of the SVP throughout his or her placement in the Conditional Release Program. Mental Health's Forensic Services Branch within its Long Term Care Services Division is responsible for providing program direction and policy development of mental health treatment for SVPs and for supervising their direct outpatient treatment using outside contractors. Since the enactment of state law establishing the SVP component of the Conditional Release Program in 1995, the courts have conditionally released three SVPs. Recently, a court unconditionally released one of the three SVPs. Upon release, Mental Health is no longer responsible for providing supervision and treatment to these individuals.

## **SCOPE AND METHODOLOGY**

The Joint Legislative Audit Committee (audit committee) asked us to review the process and costs of Developmental Services, the Youth Authority, and Mental Health for placing sex offenders in local communities. Specifically, the audit committee asked us to review the three departments' policies and procedures for identifying, evaluating, and placing sex offenders in local communities. It also asked us to review the contracts these departments have with homes used to house sex offenders and to identify the placement costs that each department incurred



for the last three fiscal years. Finally, the audit committee asked us to evaluate the relationship between regional centers' housing agents and homeowners for a sample of placements made through Developmental Services during the last fiscal year. For purposes of our audit, we defined a sex offender as follows: At Developmental Services, these are consumers who are required to register as sex offenders under the Penal Code, Section 290; at the Youth Authority, this population includes youthful offenders eligible for placement in its Sex Offender Treatment Program; at Mental Health, this population includes SVPs as defined by the Welfare and Institutions Code, Section 6600.

To obtain an understanding of the policies and procedures of Developmental Services and regional centers for identifying, evaluating, and placing sex offenders in local communities, we reviewed relevant state laws and regulations. We also interviewed various management and staff from Developmental Services. In addition, we interviewed personnel from 10 regional centers located throughout the State and reviewed a total of 30 consumer files from these centers. Developmental Services is not required to track the number of sex offenders it serves; therefore, we attempted to identify this segment of its consumer population by cross-referencing its records to the database of all registered sex offenders in the State maintained by Justice. However, our effort was unsuccessful because Developmental Services and Justice use different identifying data to track their respective populations. Because we could not identify the population of sex offenders that Developmental Services serves, we also could not separately identify its cost of providing services to these individuals.

To evaluate the relationship between regional centers and the facilities they use to house sex offenders, we reviewed relevant laws and regulations governing their ability to obtain vendors or contractors who provide residential services for its consumers within the community. Additionally, we assessed Developmental Services' and regional centers' compliance with laws and regulations established to avoid potential conflicts of interest.

To obtain an understanding of the Youth Authority's process for identifying, evaluating, and placing sex offenders in local communities, we reviewed laws, regulations, and its policies and procedures. We also compared the Youth Authority's out-of-home placement standards to other state laws and regulations governing housing facilities. Finally, we interviewed key department staff.

To identify the number of youthful offenders who met the criteria for the Youth Authority's Sex Offender Treatment Program and who were placed in homes, we matched its offender database against its billing system. We also reviewed the Youth Authority's offender database for reliability, accuracy, and completeness with regard to the data provided for all youthful sex offenders. For example, we selected samples from an independent database and the Youth Authority's intake files, and traced the records to the offender database.

To determine whether it follows its policies and procedures for identifying, evaluating, and placing sex offenders, we randomly selected and reviewed case files for a sample of 60 sex offenders from each of the Youth Authority's 16 parole offices. Our review of the case files entailed, among other things, determining whether parole offices were conducting background checks of home owners, operators, and employees; conducting evaluations of the homes; and monitoring sex offenders in the community. We also reviewed annual inspections and audits of the parole offices that were conducted by the Youth Authority's headquarters staff during calendar years 2001 and 2002. We interviewed key staff at each parole office. Finally, to evaluate the relationships between parole agents and home owners, we reviewed the Youth Authority's compliance with state law meant to avoid potential conflicts of interest.

To determine the Youth Authority's costs to place sex offenders in local communities for fiscal years 2001–02 through 2003–04, we reviewed housing and sex offender counseling costs. We interviewed key accounting and information technology staff. We also reviewed the Youth Authority's billing system and selected a sample of invoices to determine whether the accounting department accurately processes housing payments. For example, we agreed the payment dates to the Youth Authority's contract terms with homes. To determine the total counseling costs, we reviewed the sex offender counseling contracts and payment logs. We reviewed the contract costs for accuracy and reliability by judgmentally selecting a month from the payment log and tracing the payment to the accounting records.

To obtain an understanding of Mental Health's process for identifying, evaluating, and placing SVPs in local communities, we reviewed pertinent state laws related to its Conditional Release Program. We also interviewed key staff in Mental Health's Forensic Services Branch and Long Term Care Services Division.

To determine Mental Health's costs to place SVPs in local communities, we interviewed staff from Mental Health and its contractor. Further, we evaluated whether the expenditures and services were allowable, properly classified, and supported by documentation. ■

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# CHAPTER 1

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## ***Various Laws Complicate the Treatment of Sex Offenders by the Department of Developmental Services***

### CHAPTER SUMMARY

The Department of Developmental Services (Developmental Services) and the regional centers do not maintain a database to track the total number of consumers who are sex offenders, nor are they required to do so. Although the California Attorney General (attorney general) must maintain summary information pertaining to the identification and criminal history of any person, it can only share the criminal history of potential consumers of Developmental Services in very limited circumstances. Thus, Developmental Services cannot identify the total number of sex offenders it serves or the associated costs. In addition, regional centers are unable to ensure that these consumers are not inadvertently placed in a housing situation that is not legally permitted. Although the individual program plan process is not designed to identify sex offenders and the Lanterman Developmental Disabilities Services Act (Lanterman Act) does not require consumers to provide criminal histories such as prior sex offenses, opportunities do exist for the regional centers to solicit this information.

Further, in spite of the legislative intent of the Lanterman Act to do so when appropriate, regional centers face barriers when placing sex offenders in the community. For example, negative community reaction and concern for consumer safety caused Developmental Services to postpone one regional center's implementation of the community placement plan for a small group of consumers.

### **STATE LAW LIMITS USE OF ATTORNEY GENERAL INFORMATION TO IDENTIFY SEX OFFENDERS**

Under state law, the attorney general is required to maintain a summary of the criminal history information of any person, but may only provide that information to designated persons or entities. For example, the law only allows the attorney general to provide Developmental Services the criminal histories of its potential consumers in very limited circumstances. Neither

Developmental Services nor the regional centers maintain a database to track the total number of consumers who are sex offenders. Consequently, Developmental Services cannot identify the total number of consumers who are sex offenders it serves or determine the costs associated with providing them services.

### **Regional Centers Cannot Determine Costs Associated With Sex Offender Community Placements Due to Inability to Identify Such Consumers**

The attorney general maintains a master record of summary information pertaining to the identification and criminal history of any person, but state law limits access to that information to designated persons or entities such as state courts, peace officers, district attorneys, public defenders, and probation and parole officers if needed in the course of their duties under certain circumstances. The law only allows the attorney general to provide Developmental Services the criminal histories of its potential consumers in very limited circumstances. That same law generally prohibits law enforcement agencies and others from sharing this information with Developmental Services or the regional centers.

Neither Developmental Services nor the regional centers maintain a database to track the total number of consumers who are sex offenders, nor are they required to do so. Developmental Services will learn that a person is a sex offender if the developmentally disabled person has been found mentally incompetent to stand trial on a complaint charging a sex offense described in the Penal Code, Section 290.<sup>5</sup> In those circumstances, the court orders the person be delivered to a state hospital or other secure treatment facility such as a state developmental center for the care and treatment of the developmentally disabled unless it makes a specific finding on the record that an alternative placement would be more appropriate for the person's treatment and would not pose a threat to the health and safety of others. The court must transmit a copy of its order to the regional center director and to the director of Developmental Services. The court orders the regional center director to evaluate the defendant and submit to it within 15 judicial days a written recommendation for placement. When the court orders that the person be confined in a state hospital or other secure treatment facility, it provides copies of relevant documents, such as the person's summary criminal history information, to the facility.

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***Neither Developmental Services nor the regional centers maintain a database to track the total number of consumers who are sex offenders, nor are they required to do so.***

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<sup>5</sup> Section 290 of the Penal Code includes sex offenses such as rape; lewd or lascivious acts with a child under the age of 14; and sodomy or oral copulation with a minor; or when committed by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

Although the regional centers' individual program plan process is not designed to identify sex offenders and the Lanterman Act does not require consumers to provide criminal histories such as prior sex offenses, opportunities do exist for the regional centers to solicit this information. For example, according to the regional centers, a potential consumer or family member may voluntarily tell them that the potential consumer is a sex offender. In addition, information on prior sex offenses may surface as a regional center gathers details on the potential consumer's medical, psychosocial, psychological, or educational background. However, regional centers do not consistently ask potential consumers about their prior sex offenses. To the regional centers' credit, when they were able to identify potential consumers as registered sex offenders, they often considered this information when developing individual program plans. Nevertheless, capturing sex offender data on a voluntary basis results in a hit-or-miss approach and hinders Developmental Services' ability to identify its total population of sex offenders.

According to Developmental Services, it spent roughly \$6.9 billion between fiscal years 2001–02 and 2003–04 supporting eligible consumers in local communities, including supported living arrangements, day programs, respite, counseling, training, and transportation. However, because Developmental Services cannot identify those consumers who are registered sex offenders, it cannot separately identify the cost of providing services to these individuals. Because of the structure of its service delivery system, any cost Developmental Services incurs related to a specific consumer is driven primarily by the consumer's needs based on his or her developmental disability.

Of the 30 consumers convicted of sex offenses whose files we reviewed, most lived independently, many lived in community care facilities, and a few lived with their families.<sup>6</sup> The community care facilities housing these consumers had service levels ranging from 2 to 4I. The service levels vary depending on the supervision and special services each consumer needs. In 2004, the cost of providing level 2 services was between \$1,700 and \$1,900 per month, while the monthly cost of providing level 4I services was \$5,000, more than double the cost of level 2 services. The court ordered that one of these consumers be placed in a level 3 facility at a current monthly cost of \$2,200 and another be placed in a level 4 facility at

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***According to Developmental Services, it spent approximately \$6.9 billion supporting eligible consumers in local communities between fiscal years 2001–02 and 2003–04. However, it cannot separately identify the cost of providing services to sex offenders.***

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<sup>6</sup> Section 290(b) of the Penal Code requires any person who has been released, discharged, or paroled from a penal institution, where he or she was confined because of the commission or attempted commission of a sex offense, to register as a sex offender. One consumer was not convicted of a sex offense but is required to register under this section.

a monthly cost of nearly \$4,000. In addition to the housing costs, we also noted that regional centers often provided sex offender counseling to the consumers.

### **A Lack of Data on Consumers' Status as Sex Offenders Limits a Regional Center's Ability to Assist Them in Complying With Certain Laws**

Because regional centers cannot identify the population of consumers who are sex offenders that it serves, it cannot assist those individuals in complying with state and federal laws related to their status as a sex offender. One such law is the state law, known as Megan's Law, that generally requires that a person who is released, discharged, or paroled from a jail, state or federal prison, or other facility where he or she was confined because of the commission or attempted commission of a sex offense, as defined in Section 290 of the Penal Code, be informed of his or her duty to register as a sex offender. In addition, the

institution that releases a registered sex offender must report the address where the individual expects to live to the California Department of Justice and local law enforcement agencies having jurisdiction over the area where the person expects to reside.

State law also requires any person required to register as a sex offender under Section 290 to disclose that fact to the licensee of a community care facility before becoming a client of that facility. A community care facility client who fails to disclose to the licensee his or her status as a registered sex offender is guilty of a misdemeanor. Furthermore, state law prohibits anyone who has ever been convicted of a sex offense against a minor from residing in a community care facility that is located within one mile of an elementary school. We reviewed the placements of 30 consumers convicted of sex offenses from 10 different regional centers throughout the State and found that some who had committed sex offenses against minors were placed in community care facilities that were within one mile of one or more elementary schools in violation of this law.

Federal law requires owners of federally assisted housing to prohibit admission to such housing for any household that includes an individual who is subject to a lifetime registration requirement under a state sex offender registration program. California's

**Federally assisted housing means a dwelling unit that meets any of the following criteria:**

1. Situated in public housing.
2. Receives tenant-based assistance or project-based assistance under Section 8 of the United States Housing Act of 1937.
3. Provides supportive housing for the elderly in various forms, such as rental assistance.
4. Provides supportive housing for individuals with disabilities.
5. Is financed by a loan or mortgage insured under the National Housing Act.
6. Is insured, assisted, or held by the Secretary for Housing and Urban Development or a state or state agency under the National Housing Act.
7. Receives assistance from loans issued by the Secretary for Housing and Urban Development to private nonprofit corporations, consumer cooperatives, and Indian tribes to provide rental or cooperative housing and related facilities for elderly or handicapped persons or families of low or moderate income or other persons and families of low income in rural areas.

Source: Title 42 of the United States Code, Section 13664.



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*Without the ability to identify those consumers who are sex offenders, regional centers are unable to ensure that they are not inadvertently placed in a housing situation that is not legally permitted.*

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sex offender registration program requires, with certain exceptions, that every person who is subject to that law for the rest of his or her life, while residing in, or, if he or she has no residence, while located in California, or while attending school or working in California, comply with the registration requirements of that law. Thus, California law generally imposes a lifetime registration requirement, and consumers who are registered sex offenders cannot reside in federally assisted housing. Without the ability to identify sex offenders, regional centers are unable to ensure that they are not inadvertently placed in a housing situation that is not legally permitted. The director of Developmental Services agrees that absent the provision of information about consumers who are registered sex offenders, regional centers are unable to ensure that such consumers' placements will comport with existing statutory requirements. In addition, because regional centers are not necessarily aware of a consumer's prior sex conviction, they may also not be able to identify and assist the consumer with specific services and supports needed to address the behaviors related to his or her conviction.

## **REGIONAL CENTERS SOMETIMES FACE BARRIERS WHEN PLACING CONSUMERS IN THE COMMUNITY**

Regional centers have generally complied with the Lanterman Act that requires them to establish an array of services and supports to meet the needs and choices of each person with developmental disabilities and to facilitate their integration into the mainstream life of the community. However, they face certain barriers when trying to place sex offenders in the community.

A regional center's determination that a consumer will be best served by placement in the community rather than in one of Developmental Service's seven facilities is guided by the Lanterman Act. The legislative intent of this act requires that consumers receive appropriate services and supports in the least restrictive environment. As discussed in the Introduction, a collaborative process is used to develop an individual program plan to identify what a consumer will need to successfully integrate into the community, as well as to reach his or her goals and objectives.

The Lanterman Act also requires each regional center to prepare an annual community placement plan to identify consumers in developmental centers whose needs could be better met in the community. The community placement plan outlines funding needed to conduct comprehensive assessments of selected developmental center consumers and to move them into the

community. A team comprising representatives from the regional centers, developmental centers, and Developmental Services' Regional Resource Development Project coordinates to develop the individual program plans for these consumers. It also includes proposals to divert certain consumers from initial placement in a developmental center to a direct placement in the community.

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*Although the court ordered one regional center to release a small number of consumers with a history of sex offenses into the community, the community's negative reaction caused Developmental Services to postpone the regional center's implementation of the community placement plan for these consumers.*

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Our review of 30 consumer files from 10 regional centers throughout the State found that regional centers appear to be placing consumers in the community based on their needs, as the Lanterman Act requires. However, regional centers can face community opposition when trying to place sex offenders. For example, negative community reaction and the potential for consumer safety to be jeopardized caused Developmental Services to postpone one regional center's implementation of the community placement plan for a small group of consumers. This small group of consumers all had a history of sexual offenses, and some but not all were required to register as sex offenders. According to the regional center, these consumers were ordered by the court to participate in a sex offender treatment program. Following their completion of this program, an interdisciplinary team composed of developmental center and regional center staff, including medical and psychological personnel and family members, determined that these consumers were ready to progress to community placement and recommended that the court so order. The court agreed with these recommendations and ordered the regional center to release these consumers into the community. Despite the fact that these individuals had undergone court-ordered sex offender treatment and their release into the community was ordered by the court, the regional center encountered significant community opposition when attempting to place these individuals.

According to the regional center, to facilitate placing them in the local community, it sent out a request for proposals to identify organizations that could provide housing and support services in a community setting. The regional center stated that it received only one response; however, it was a proposal from an entity that had experience working with sex offenders. The regional center proceeded to contract with this organization to provide a home and related supports and services for this small group of consumers. According to the regional center, a year later, the provider identified and purchased a home in San Bernardino County. The home had a fence built directly around it and another around the entire property. In addition, to ensure adequate security, the provider installed an alarm in the house. The cost of the home and the related services was projected to be almost \$70,000 per month, although the regional center planned to reduce these

expenses by working toward decreasing the level of services as it deemed appropriate to meet the needs of the consumers. According to the regional center, it had also notified local law enforcement of its plan to move the group of consumers into the home one year before the home's development.

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*The legislative intent of the Lanterman Act is that persons with developmental disabilities have the right to receive appropriate treatment, habilitation services, and supports in the least restrictive environment.*

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According to the regional center, four days before the consumers were to be moved into the home, the local community became aware of the placement and reacted adversely. Consequently, Developmental Services determined that the safety of the consumers could not be ensured in the group home and cancelled implementation of the plan. According to Developmental Services, this regional center was subsequently able to place some of these consumers in other group homes in the community. However, as of October 2004, the regional center was still trying to locate community housing for the other consumers who remain in the developmental center.

The Lanterman Act states that it is the intent of the Legislature that persons with developmental disabilities have the same legal rights and responsibilities guaranteed all other individuals by the United States Constitution and laws and the State Constitution and laws. Specifically, the Lanterman Act states that no otherwise qualified person by reason of having a developmental disability shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity that receives public funds. Further, the legislative intent of the Lanterman Act is that persons with developmental disabilities have the right to receive appropriate treatment, habilitation services, and supports in the least restrictive environment. However, public opposition regional centers experience when they attempt to place developmentally disabled individuals who are sex offenders in the community makes it very difficult to achieve the legislative intent of the Lanterman Act.

#### **STATE LAW CONTAINS SPECIAL CONFLICT-OF-INTEREST PROVISIONS THAT APPLY TO REGIONAL CENTER BOARD MEMBERS AND THEIR EMPLOYEES WHEN THEY SELECT RESIDENTIAL SERVICES FOR CONSUMERS**

The Lanterman Act and its implementing regulations prescribe a framework that allows regional centers to obtain vendors or contractors who will provide residential services for its consumers within the community. To act as a vendor, the provider must meet various state requirements, some of which are described in the textbox on the following page.

**Persons who wish to provide residential services must meet requirements that include:**

1. Possessing a valid community care facility license issued by the Department of Social Services.
2. Generally, providing a basic staffing level of no less than one direct-care staff person at all times when consumers are under the supervision of facility staff.
3. Submitting a program design that includes an organizational chart for the facility; statement of purpose; a description of the consumer services and outcomes; and the characteristics of the consumer population the facility intends to serve, including age range, gender, ambulatory status, medical conditions, self-help skills, and behavioral characteristics.
4. Describing staff qualifications and providing a duty statement for each staff position in the facility.

Source: Title 17 of the California Code of Regulations.

The requirements also specifically preclude certain entities from becoming a vendor, for the apparent purpose of avoiding potential conflicts of interest. Specifically, the following entities cannot act as a vendor of residential services:

- Any state officer or employee.
- Any applicant in which an officer or employee of the State has a “financial interest,” as that term is defined for purposes of the Political Reform Act of 1974.<sup>7</sup>
- Any employee and board member of any regional center who has a conflict of interest, as defined by regulations applicable only to regional center board members and their employees.
- Any applicant in which the regional center employee or board member has a relationship that creates a conflict of interest as defined by those regulations applicable only to regional center board members and their employees.

In addition to the vendor selection process, regional centers can obtain residential services for consumers by contract. Specifically, regional centers must give public notice of their intent to contract for family home agency services. Family home agencies are private, not-for-profit agencies that recruit, approve, train, and monitor family home providers; provide services and supports to family home providers; and assist consumers in moving into, or relocating from, family homes.

Regional centers review the agencies’ applications, make their selection based on certain criteria, and give public notice of their intent to contract with the agencies. Regional centers negotiate contracts with the agencies, which require the agencies to also become vendors. Thus, contractors would be subject to the same requirements that specifically preclude certain entities from becoming a vendor, for the apparent purpose of avoiding potential conflicts of interest.

<sup>7</sup> The Political Reform Act of 1974 provides that a public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her family, or on any of certain entities, including, but not limited to, any business entity in which the public official has a direct or indirect investment of \$2,000 or more.

State regulations establish specific conflict-of-interest provisions that apply exclusively to regional center board members and their employees. These provisions are modeled closely after the State's central law related to conflicts of interest in the public sector, the Political Reform Act of 1974, but they sometimes impose requirements on regional center board members and their employees that hold them to an even higher standard than the standard to which other public officials are held.

The starting point for complying with these conflict-of-interest regulations is that each regional center board member and employee who has decision or policy-making authority must prepare and file an initial conflict-of-interest statement; declaring under penalty of perjury that he or she has no present or potential conflict of interest.

These regulations also define the circumstances under which a conflict of interest may arise for regional center governing board members and regional center employees. Specifically, a conflict of interest may arise for a regional center employee if the employee or a family member of that employee holds a management or decision-making position in any business entity or provider that provides services to the regional center, or the employee makes a decision regarding regional center operations involving a business entity or provider of services to the regional center in which the employee has a financial interest. For purposes of this prohibition, an employee has a financial interest if it is reasonably foreseeable that the employee's interest or the employee's decision regarding that interest will have a material effect, as distinguished from its material effect on the regional center's clients and their families generally on any of certain ownership or income interests of the employee. For example, under this prohibition, a regional center employee could not participate in making a decision to select a provider of residential services if that employee had an investment in that provider of residential services worth more than \$1,000.

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***A regional center employee could not participate in making a decision to select a provider of residential services if that employee had an investment in that provider of residential services worth more than \$1,000.***

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The regulations also prescribe the procedures for addressing present or potential conflicts of interest. The regulations allow an employee who has a conflict of interest to seek a waiver that would allow the employee to remain within the employ of the regional center as long as he or she met certain conditions, including developing a plan for resolving his or her conflict of interest and complying with certain limitations on his or her involvement in the decision-making process related to the conflict-of-interest situation. An employee who has a present or potential conflict of interest who does not seek a waiver has 30 days within which to eliminate the conflict of interest or resign from

employment with the regional center. During the 30-day period, the employee must avoid all involvement with or participation in regional center activities involving the conflict in question.

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*Developmental Services does not have a proactive process in place to enforce its conflict-of-interest regulations.*

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State law requires the director of Developmental Services to enforce conflict-of-interest regulations to ensure that the standards and procedures are enforced. However, Developmental Services does not, as part of its fiscal or program audit protocols, monitor regional centers' compliance with the requirement that employees file conflict-of-interest statements. According to Developmental Services, it does enforce the conflict-of-interest requirements when it learns that any regional center employee or board member has such a conflict. Nevertheless, Developmental Services does not have a proactive process in place to enforce its conflict-of-interest regulations.

Each of the 10 regional centers we reviewed were able to demonstrate that they obtain conflict-of-interest statements from their employees who approve residential services for consumers and thus appear to be complying with related state laws and regulations.

## **RECOMMENDATIONS**

To most appropriately provide services and supports to its consumers, Developmental Services should consider seeking legislation to enable it and the regional centers to identify those consumers who are sex offenders by obtaining criminal history information from the attorney general.

If the Legislature chooses to allow Developmental Services and the regional centers access to criminal history information, it should include controls that prevent them from passing this information on to other entities or using it for purposes other than determining the provision of appropriate services and supports.

If the Legislature chooses not to allow Developmental Services and the regional centers access to criminal history information, Developmental Services should seek to modify its laws and regulations governing the individual program plan process to include a question that asks potential consumers if they must register as sex offenders.

Developmental Services should incorporate into its fiscal or program audit procedures a review of whether regional center board members and employees are filing required conflict-of-interest statements. ■

# CHAPTER 2

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## ***The Department of the Youth Authority Has Problems With Placement and Monitoring of Sex Offenders, as Well as With Contracting***

### CHAPTER SUMMARY

**A**lthough the Department of the Youth Authority (Youth Authority) places paroled youthful sex offenders in facilities that house more than six persons, group homes with less than six persons, or foster homes (in this chapter we use “home” as a generic term to include all types of youth living facilities in the community) in communities throughout the State, its out-of-home placement standards do not address many of the laws and regulations that govern housing facilities.<sup>8</sup> The safety of these parolees is further jeopardized because parole agents often fall behind or do not complete important evaluations of group homes.

Parole agents also fail to adequately monitor youthful sex offenders released to parole to protect the community. Specifically, the Youth Authority could not provide documentation to demonstrate that parole agents held case conferences for nine of the 60 paroled sex offenders in our sample. Moreover, according to our review, parole agents were up to 96 working days late in documenting the case conferences for 36 of the sex offenders.

The Youth Authority cannot track the cost of housing sex offenders in the community because it lacks adequate controls over its billing system. We found errors in 6 percent of the 138 invoices we reviewed from fiscal years 2001–02 through 2003–04, resulting in duplicate payments, overpayments, and underpayments. The Youth Authority had failed to detect any of these errors. In addition, its contracts with homes that we reviewed lacked ending dates and other vital information required by the Department of General Services (General Services) for valid contracts, and the Youth Authority does not submit these contracts to General Services for approval before executing them.

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<sup>8</sup> See page 13 in the Introduction for the definition of the Youth Authority’s sex offender population.

## THE YOUTH AUTHORITY CAN IMPROVE ITS OUT-OF-HOME PLACEMENT OF SEX OFFENDERS

The Department of Social Services (Social Services) licenses community care facilities such as foster family homes, group homes, and residential facilities. This licensing process is designed to ensure that these facilities meet adequate standards of care and to ensure that caregivers with certain prior criminal convictions do not operate or work in them. However, California law exempts juvenile placement facilities from these licensing requirements. A juvenile placement facility is not defined in statute or regulation, but the Youth Authority defines it broadly to include group homes, which means the group homes it uses to house youthful offenders are not subject to Social Services' licensing requirements.

The Youth Authority's policy is to require standards of care and services in all out-of-home placements that, at a minimum, assure that both basic and specialized needs of the parolees are met. It has developed certain standards that facilities such as group homes must meet.<sup>9</sup> Parole agents are to evaluate potential homes for compliance with these standards prior to placing parolees in them and to conduct semiannual inspections thereafter. However, the Youth Authority's standards do not always ensure its out-of-home placement facilities provide the same standards of care as facilities that conform to laws and regulations otherwise governing housing facilities. Additionally, parole agents do not always complete the evaluations and inspections of such homes and therefore cannot ensure that these standards are met. For example, only 17 of the 28 required semiannual inspections for the 14 homes that we reviewed were completed on time.

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*Parole officers did not adhere to policies and procedures for supervising more than 30 of the 60 sex offenders in our sample.*

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Parole offices also do not always follow procedures for supervising parolees who are sex offenders. Specifically, the parole offices did not adhere to policies and procedures for supervising more than 30 of the 60 sex offenders in our sample. As a result, parole agents cannot promptly identify whether released sex offenders are in need of more intensive monitoring.

### **The Youth Authority's Standards Do Not Conform to Laws and Regulations Governing Housing Facilities**

The Youth Authority's out-of-home placement standards do not address many of the laws and regulations that govern housing facilities. State regulations require the Youth Authority to ensure that the out-of-home placement facilities it uses conform to

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<sup>9</sup> If parolees are placed with relatives, the residence is exempt from the Youth Authority's out-of-home placement standards.



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*The Youth Authority's out-of-home placement standards do not cover many important laws and regulations governing the homes used to house youthful offenders. Further, the Youth Authority's standards are silent on how parole offices should deal with homes that they determine do not meet its standards.*

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other state laws and regulations, including those governing fire safety. However, the Youth Authority standards simply do not cover many important requirements for the homes it uses to house youthful offenders. For example, regulations require that when evaluators determine that a deficiency exists, they must discuss the deficiency with the home administrator, operator, or other person in charge of the facility and develop a corrective action plan. The evaluator must then conduct follow-up visits to the home to determine compliance with the plan. However, the Youth Authority standards are silent on how parole offices should deal with homes that they determine do not meet its standards.

In another example, the Youth Authority's standards make no mention of any financial requirements a home must meet, including developing and maintaining financial plans and records to ensure necessary resources to meet operating costs before receiving youthful offenders, as required by state regulations. We found that one group home was not in good standing with the State. Specifically, the group home had its corporate powers, rights, and privileges suspended on December 1, 1999, because it had not filed the proper tax forms with the Franchise Tax Board. The Youth Authority was not aware of the group home's noncompliance until we brought the issue to its attention.

Although the Youth Authority's standards address some laws and regulations governing housing facilities, they do not go far enough. For example, state regulations specify that a home administrator must have the ability to establish the facility's policies, program, and budget; recruit and train qualified staff; and provide the type of care and supervision needed by its clients, including the ability to communicate with them. However, the Youth Authority's standards do not address all of these issues but simply state that home owners and operators must provide an emotional climate appropriate to parolees, as well as supervision of daily functions such as chores, activities, and curfew hours.

In yet another example, regulations require those persons who have the authority and responsibility for the home to maintain a written disaster plan that addresses the contingency plan for actions to be taken during fires, floods, and earthquakes, including the means of exiting the home and contacting local law enforcement agencies and other civil defense and disaster authorities. Additionally, disaster drills must be conducted and documented at least every six months. Although the Youth Authority's standards specify that homes must have a written emergency plan that includes some of the elements described, it

does not require that the homes practice evacuating the parolees and document these practices or identify the steps to be taken if relocation is necessary.

Finally, state laws and regulations require that all home owners, operators, and employees obtain a criminal record clearance prior to working in the home. The persons who have the authority over and responsibility for the home must submit their fingerprints to the California Department of Justice (Justice) and the Federal Bureau of Investigation. Additionally, each person must sign a criminal record statement under penalty of perjury declaring whether he or she has been convicted of a crime other than a minor traffic violation and providing information about the conviction. The laws and regulations also identify the specific types of convictions that disqualify an individual from working at a facility, such as committing a lewd and lascivious act with a child under the age of 14.

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***Parole offices failed to perform background checks on home owners, operators, and employees for 12 of the 14 homes we reviewed.***

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The Youth Authority's standards require parole agents to verify the identity of all home owners, operators, and employees prior to placing parolees in the homes and to contact local law enforcement agencies and Justice to determine if a criminal record exists. Additionally, a memorandum issued by the director of the Youth Authority in February 2002 instructed the parole offices to conduct background checks on all contractors using Live Scan to fingerprint them.<sup>10</sup> However, parole offices failed to perform background checks for 12 of the 14 homes we reviewed, and the Youth Authority lacks a policy to identify the types of prior criminal convictions that would preclude an individual from working in a home. The two homes that complied with the Youth Authority's Live Scan requirement employed individuals who had prior criminal convictions, such as receiving stolen property.

The Youth Authority acknowledges that it needs to improve its out-of-home placement standards, and it plans to convene work groups to focus specifically on these standards, as well as to meet with the departments of Social Services and Alcohol and Drug Programs to review their licensing standards. The Youth Authority expects the work groups to develop regulations that will incorporate higher standards. It also plans to submit requests to all home owners, operators, and employees in order to Live Scan all persons who have not previously been fingerprinted. Until the Youth Authority addresses the deficiencies in its standards, it

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<sup>10</sup> Live Scan technology allows digitally scanned fingerprints to be submitted electronically to the Department of Justice and allows criminal background checks to be processed usually within 72 hours.

cannot ensure that it is complying with state laws and regulations that govern housing facilities. Further, without obtaining criminal record clearances, it is unaware of individuals who have prior criminal convictions and are working with paroled sex offenders.

### **Parole Offices Do Not Always Conduct Evaluations of Homes**

State regulations established in the early 1980s require the Youth Authority to place sex offenders on parole in homes that meet certain criteria. The Youth Authority established a policy to incorporate some state regulations and define its standards. Parole agents must evaluate homes in the areas of safety and sanitation, living accommodations, care and supervision, health and nutrition, and liability and insurance. The Youth Authority's policy requires parole agents to conduct an initial evaluation prior to placing parolees and semiannual inspections thereafter, but it has no process in place for ensuring that parole agents regularly do this. Although in the past its headquarters staff conducted annual inspections or audits of the parole offices that included a review of their out-of-home placement evaluations, the Youth Authority stated that these audits were discontinued 18 months ago because of budget constraints. However, we believe the audits are necessary.

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*Previous reviews noted deficiencies in the parole office's implementation of policies and procedures relating to the Youth Authority's Sex Offender Treatment Program.*

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According to records of previous reviews, three of 16 parole offices did not complete all of the required semiannual evaluations. Previous reviews also showed that 14 out of 16 parole offices did not complete the criminal background checks. Additionally, these reviews noted deficiencies in the parole offices' implementation of policies and procedures relating to the Youth Authority's Sex Offender Treatment Program. For example, reviewers noted no documentation for seven of the 16 parole offices that demonstrated parole office staff and therapists were teaching the sex offenders how to prevent themselves from reoffending. We found evidence that these types of deficiencies still occur; for eight of 14 group homes we reviewed, parole agents failed to conduct one or both semiannual evaluations in fiscal year 2003–04.

The chief deputy director of the Youth Authority stated that resuming the audits in their entirety is predicated on a reorganization of the Youth and Adult Correctional Agency, which is responsible for the oversight of the Youth Authority. However, in the interim, the Youth Authority would direct its compliance unit to conduct spot audits focused on specific operations of the parole offices. Until the Youth Authority

reinstates the audits, it is unable to effectively monitor parole offices' compliance with its policies and procedures. The parole offices' failure to conduct semiannual evaluations places the safety of the parolees at risk.

### **Parole Offices Do Not Ensure Compliance With Out-of-Home Guidelines for Placing Certain Sex Offenders**

The Youth Authority has established a policy specifically for placing sex offenders who are on parole, which embraces a state law Social Services must follow when licensing community care facilities. State law prohibits an individual who has ever been convicted of a sex offense against a minor from residing in a community care facility that is within one mile of an elementary school. However, despite its policy, the Youth Authority placed one parolee who had been convicted in a criminal court of a sex offense in a group home less than a mile from an elementary school. This individual's parole placement plan states that no schools or parks are within one mile of the group home, but using Mapquest we found an elementary school within one mile that has been in existence since 1980. According to the assistant deputy director of the Youth Authority's Parole Services and Community Corrections Branch, staff in the parole office told him that the elementary school is exactly one mile from the home. However, we believe the parole office should have erred on the side of caution and placed the parolee in another home. The assistant deputy director stated that the Youth Authority will review its policy and clarify the method parole offices should use to calculate the distance of one mile.

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*The Youth Authority placed one parolee who had been convicted of a sex offense into a group home within one mile of an elementary school, despite its policy not to make such placements.*

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### **PAROLE OFFICES DO NOT ALWAYS FOLLOW PROCEDURES DESIGNED TO MONITOR SEX OFFENDERS IN THE COMMUNITY**

To enhance public protection, state law requires that the Youth Authority supervise youthful offenders released to parole. State regulations require that each parolee have at least one face-to-face contact each week during the first 30 days of parole and every other week thereafter. The Youth Authority established procedures that are inconsistent with state regulations. Specifically, depending on the results of case conferences, parole agents can conduct less frequent face-to-face contacts with parolees after the first 30 days. A case conference is a formal group discussion between the parole agent, the casework supervisor, and, if possible, the parolee to review, assess, and modify the parolee's program. The meetings that parole agents hold with parolees allow them to determine the appropriate level of supervision each offender needs through evaluating parole

**Youth Authority procedures require parole agents to make face-to-face contact with parolees as follows:**

1. At least once each week during the first 30 days of parole.
2. If the case conference results indicate the parolee requires maximum supervision, face-to-face contact occurs twice each month.
3. If the case conference results indicate the parolee requires medium supervision, face-to-face contact occurs once each month.
4. If the case conference results indicate the parolee requires minimum supervision, face-to-face contact occurs every other month.

Source: Department of the Youth Authority's Parole Dictation Guide.

performance, assessing the offender's need for services, and determining the risk the offender poses to society. The supervising and other parole agents have the option of overriding the recommended supervision levels, depending on special circumstances or other factors affecting the parolee. The Youth Authority requires parole agents to conduct 30-day, 90-day, and 120-day case conferences within certain deadlines and to document the results within two days of the conference.

The Youth Authority could not provide documentation demonstrating that the parole agents held all required case conferences for nine of the 60 paroled sex offenders in our sample. Moreover, parole agents were up to 96 working days late in documenting the case conferences that were held for 36 of the sex offenders. The Youth Authority is aware that the parole offices' actual practices do not

adhere to its policies and procedures for case conferences. The chief deputy director of the Youth Authority stated that an increase in its population in the late 1980s was a major factor in the parole offices' development of practices contrary to Youth Authority policy. The Youth Authority plans to clarify the roles and expectations for case conferences and, if necessary, will revise its regulations. Until it takes steps to align its policies and practices, the Youth Authority will be unable to effectively evaluate the appropriate level of supervision for parolees, which is based on factors such as the risk individual parolees pose to society. This is particularly important because the law and regulations state that the parole board may renew or revoke a youthful offender's parole based on the Youth Authority's report that a possible parole violation has occurred.

### **THE YOUTH AUTHORITY HAS FLAWS IN THE PROCESS IT USES TO CONTRACT WITH HOMES AND CANNOT ACCURATELY IDENTIFY ITS COSTS**

The Youth Authority's contracts with homes do not contain some of the elements of a valid contract and therefore do not adhere to state contracting policies and procedures. For example, the contracts do not specify the term for the performance or completion of the services, nor do they clearly describe the level of service the home must provide. Moreover, the Youth Authority could not justify the rates it pays to homes. Further, because the Youth Authority has not adequately designed

and implemented a billing system to track housing costs for youthful offenders, it cannot accurately assess its costs for housing sex offenders placed in the community. Of the 138 transactions we reviewed, 6 percent were erroneous. Finally, the Youth Authority generally complies with policies and procedures to ensure that parole agents do not have a financial interest in the homes in which it places sex offenders.

### **Contracts the Youth Authority Enters Into With Homes Do Not Meet State Requirements**

The contracts the Youth Authority enters into with homes are missing some of the key elements of a valid contract. They do not contain the length of time a home will provide services. When the contracts are initially signed by the home director and the parole agent, they only have a start date. We found that in a few instances as many as eight months could elapse before the parole agent completes the end date on a contract.

The Youth Authority's contracts also do not enumerate the maximum amount it will pay homes in a given year to house parolees. General Services has statutory authority to approve state contracts. Typically, contracts to obtain services require approval unless they are exempt (for example, public works and engineering contracts or contracts for services that are less

than \$5,000). However, because its contracts do not contain a length of time, the total amount to be paid to the home for all parolees is unknown at the time the contract is executed, and the Youth Authority does not obtain General Services' approval. According to Youth Authority data, two homes we reviewed were due payments of more than \$95,000 each during fiscal year 2003–04. The contract also does not clearly describe the scope of services the home should provide. It merely states that the Youth Authority agrees to pay the home owner a monthly rate to provide food, lodging, personal needs, clothing, recreation and incidentals, and parental care to the parolees. In addition, the contracts are signed by parole agents who have not been authorized to sign on behalf of the Youth Authority by its director.

The chief deputy director of the Youth Authority stated that as best as it can determine, General Services approved its current method of contracting in 1967, which provides the foundation for the

**A valid contract should contain the following elements:**

1. Identification of the parties.
2. Term for the performance or completion of the contract (dates or length of time).
3. The maximum amount to be paid and the basis on which payments will be made (for example, a fixed amount regardless of time spent, billing based on time spent at a specified rate plus actual expenses, or cost recovery).
4. The work, service, or product to be performed, rendered, or provided.
5. Other general or unique terms and conditions of the agreement.
6. Signature by a person for each party who is authorized to bind that party.

Source: State Contracting Manual, Section 2.05.

Youth Authority to approve contracts with homes without viewing them within the strictest terms of a contract. However, the Youth Authority also acknowledges that General Services' approval was formulated with factors that are not applicable today. It plans to ask General Services, and possibly the Department of Finance (Finance), to review its process for contracting with homes and bring its contracts into compliance with state laws and regulations. Until the Youth Authority seeks guidance, its contracts will continue to lack conformity with existing contracting policies and procedures.

### **The Youth Authority Cannot Accurately Identify the Costs Associated With Placing Sex Offenders in Homes**

The Youth Authority can only track payments for housing paroled offenders using a billing system it created. However, the billing system contains several records for invoices that its accounting department has never paid or has paid in error. Our review of payments made to homes between July 2001 and June 2004 found some invoices recorded in the billing system that do not agree with payments recorded in the Youth Authority's accounting records. The billing system was developed with virtually no controls in place, leaving it vulnerable to errors and possible abuse or fraud. As a result, the Youth Authority is unable to rely on the billing system to determine how much it has spent on payments to homes.

The Youth Authority uses its billing system to generate and print monthly invoices on behalf of each home. The parole offices send the accounting technician the original copies of the contracts, which include the start date for the services and the monthly payment rate. The accounting technician continues to generate invoices each month until he receives a duplicate copy of the contract from a parole office that contains the date the services were discontinued.

The Youth Authority developed its billing system without adequate controls in place; it allows the accounting technician to manually create and adjust invoices without supervisory approval. The billing system also lacks sufficient edits or checks to identify potential errors or omissions. Consequently, the accounting technician is able to adjust invoices that have already been paid, create duplicate invoices so that invoices paid in prior months are paid again, or change the monthly rate and parolee's length of stay in a home. For example, the accounting technician generated two invoices for services rendered to one parolee during January 2004. One invoice was

The Financial Integrity and State Manager's Accountability Act of 1983, requires agencies to establish and maintain an adequate system of internal controls. A key element in such a system is separation of duties. Adequate separation of duties should include not allowing one person to perform more than one of the following types of duties:

1. Designing systems
2. Programming
3. Maintaining records file and operating mechanized equipment
4. Initiating disbursement document
5. Approving disbursement document
6. Inputting disbursement information
7. Receiving and depositing remittances
8. Inputting receipt information
9. Controlling blank check stock
10. Reconciling input to output
11. Initiating or preparing invoices

Source: Department of General Services, State Administrative Manual.

processed on January 28, 2004, and the other on February 24, 2004. Consequently, the home was overpaid \$1,000. The Youth Authority was not aware of this until we brought the overpayment to its attention in September 2004. According to the accounting administrator, the parole agent faxed the contract to expedite the payment process. Receipt of the original contract generated the second invoice.

Additionally, adjustments made by the accounting technician to invoices overwrite the existing record, but the billing system does not contain a log to document adjustments and store a history of the values that were entered. Furthermore, the Youth Authority has not established adequate separation of duties, which is a basic control that can prevent or detect errors and irregularities; the accounting technician is the only user of the system. To further compound the problem, the Youth Authority has never attempted to reconcile invoices recorded in the billing system with payments recorded in its accounting records. As a result, errors in the billing system remain undetected. For example, for one parolee the billing system reflects a \$1,600 payment due to the home for services rendered during December 2003. However, the contract states that

services were discontinued on November 14, 2003, and the accounting system does not have a payment record for the month of December. A reconciliation of the invoices recorded in the billing system and payments recorded in accounting records would have identified this discrepancy and the need for further follow-up with the parole office.

The accounting administrator stated that it is the responsibility of the parole offices to reconcile expenditures in the accounting records with their allotment registers and invoice copies. However, based on our discussions with parole office agents and review of the parole services accounting procedure manual, the parole offices are not reconciling these expenditures to billing information and such a requirement does not exist. The billing system contains sufficient data on each parolee and home, as well as invoice totals by account codes, to allow the accounting department to perform the reconciliation by tracing the invoices to transaction and cash disbursement registers. Additionally, the parole offices are to provide the accounting department with a monthly listing that verifies the parolees who are residing in homes, which it can use to follow up on discrepancies in the length of stay.



Databases should be designed with controls in place to ensure the completeness and accuracy of the records and the validity of the entries. Adequate procedures also should exist to prevent or detect errors and irregularities. Without adequate controls and procedures, the Youth Authority cannot identify accurately the costs it incurs to house parolees in the community or ensure payments to homes are correct.

According to the Youth Authority's billing system, it incurred costs of \$1.1 million between fiscal years 2001–02 and 2003–04 to house sex offenders in the community. Table 2 shows that the total housing costs for sex offenders increased 46 percent in fiscal year 2002–03 and another 13 percent in fiscal year 2003–04. The average daily rates paid for each sex offender type have also been increasing.

**TABLE 2**

**The Department of the Youth Authority Housing  
Costs by Type of Sex Offender  
Fiscal Years 2001–02 Through 2003–04\***

Type of Sex Offender	Fiscal Year 2001–02		Fiscal Year 2002–03		Fiscal Year 2003–04		Total Annual Cost for Three Fiscal Years
	Annual Cost	Average Daily Rate	Annual Cost	Average Daily Rate	Annual Cost	Average Daily Rate	
Commitment offense is a sex offense as defined in Welfare and Institutions Code, Section 727.6. <sup>†</sup>	\$138,981	\$27	\$222,300	\$30	\$277,943	\$31	\$ 639,224
Commitment offense is a sex offense, other than sex offenses defined in Welfare and Institutions Code, Section 727.6.	61,585	27	64,617	30	81,119	33	207,321
The offender has been adjudicated or convicted of a sex offense prior to his or her current commitment, or has a documented pattern or history of sexually inappropriate behavior, or discloses his or her involvement in sexually inappropriate behavior.	67,100	24	103,757	27	80,665	30	251,522
<b>Totals*</b>	<b>\$267,666</b>		<b>\$390,674</b>		<b>\$439,727</b>		<b>\$1,098,067</b>

Source: The Department of the Youth Authority (Youth Authority), Research Division and Accounting Division data, Bureau of State Audits' analysis.

Notes: For the purpose of this audit, we defined a sex offender using the categories described in the Youth Authority's Sex Offender Treatment Program.

\* The Youth Authority's billing system does not accurately account for all costs it incurs to house parolees in the community because it lacks adequate controls and procedures. We reviewed a sample of 138 transactions in the billing system and found errors in eight, which results in a 6 percent error rate.

<sup>†</sup> The Welfare and Institutions Code, Section 727.6, states that any minor adjudged a ward of the court and committed to the Youth Authority for committing a sexually violent offense, as defined in the Welfare and Institutions Code, Section 6600, must receive sex offender treatment. Sexually violent offenses include acts of oral copulation, sodomy and rape when committed by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

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*The Youth Authority could not explain how it sets the rates paid to homes it uses to house sex offenders.*

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The chief deputy director of the Youth Authority stated that a portion of the 46 percent increase between fiscal years 2001–02 and 2002–03 can be attributed to additional funding it received to provide parole transitional housing. However, the Youth Authority could not explain how it sets rates for the homes it uses to house parolees. Its parole services manual states that payments to group homes should be based on the permissible rates allowed by Finance for the county where the placements are made, and in the 1970s it submitted the out-of-home placement rates to Finance, according to the chief deputy. The chief deputy also stated that it appears that over the years, this practice evolved into the Parole Services and Community Corrections Branch setting the rates. However, the Youth Authority could not locate specific documents to support how the rates are set. Without this information, the Youth Authority cannot explain adequately why the housing costs for sex offenders are increasing.

In addition to housing costs, the Youth Authority also provides treatment to the sex offenders while they live in the community. During fiscal years 2001–02 through 2003–04, it paid more than \$450,000 for sex offenders to receive counseling.

### **The Youth Authority Generally Ensures That Designated Parole Office Staff Adhere to Its Conflict-of-Interest Code**

Although the Youth Authority has a conflict-of-interest code that is designed to avoid potential conflicts of interest, it is not ensuring that all of its supervising parole agents file a statement of economic interests. The Youth Authority's supervising parole agents are responsible for, among other things, approving contracts and monthly payments for out-of-home placement facilities housing parolees.

State and local government agencies must adopt and promulgate conflict-of-interest codes. In October 2000, the Fair Political Practices Commission approved the Youth Authority's conflict-of-interest code. The Youth Authority requires its supervising parole agents to disclose all investment in, as well as sources of income from, businesses that provide services, supplies, materials, machinery, or equipment to their parole office. We found that one of the Youth Authority's 13 supervising parole agents did not complete a statement of economic interests; the parole agent assumed the position after the annual filing process for calendar year 2003. The Youth Authority plans to obtain this missing statement during its annual filing process for calendar year 2004. However, in addition to the annual

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*The Youth Authority requires its supervising parole agents to disclose all investment in, as well as sources of income from, businesses that provide services, supplies, materials, machinery, or equipment to their parole office.*

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filing, the Fair Political Practices Commission requires that a designated employee complete a statement of economic interests when assuming or leaving the office. We also found an assistant supervising parole agent who is performing the duties of the supervising parole agent; the assistant's position does not require a statement of economic interests. Therefore, the Youth Authority did not require the employee to file one. The chief deputy director stated that by February 2005, the Youth Authority will review the need to include this position as a designated employee. Without these statements, the Youth Authority cannot ensure that its supervising parole agents do not benefit from their out-of-home placement decisions for parolees.

## RECOMMENDATIONS

To assure that, at a minimum, it meets the basic and specialized needs as well as safety of sex offenders who are on parole, the Youth Authority should do the following:

- Pursue its plans to convene work groups to address the deficiencies in its out-of-home placement standards and modify its regulations accordingly.
- Perform Live Scan fingerprint checks on all owners, operators, and employees of homes that it uses to house parolees. It should also identify the type of prior criminal convictions that would exclude individuals from working in these homes.
- Require headquarters staff to resume audits of the parole offices.

To ensure the safety of the public, the Youth Authority should do the following:

- Perform periodic reviews of parole placement plans to determine the parole agents' adherence to its policy relating to the placement of certain sex offenders within one mile of an elementary school.
- Pursue its plans to review and clarify the method parole offices should use to calculate the distance of one mile from elementary schools.
- Require parole agents to adhere to case conference schedules and to document their results in accordance with its policies and procedures, and conduct periodic reviews of a sample of the parolees' case files to ensure compliance.

- Pursue its plans to clarify the roles and expectations for case conferences and modify its regulations accordingly.

To ensure that its contracting process meets State requirements, the Youth Authority should do the following:

- Pursue its plans to seek guidance from General Services and Finance.
- Ensure that any revisions to its contracting process include a mechanism for supervising parole agents to review and approve invoices prior to payment.

To ensure that it can accurately identify the costs associated with housing sex offenders in the community, the Youth Authority should do the following:

- Identify and correct erroneous data in its billing system, then implement controls and procedures to ensure the completeness and accuracy of the records and the validity of the entries.
- Implement management controls that include adequate separation of duties and supervisory reviews. For example, the accounting technician should not be allowed to create invoices and then make adjustments to them.
- Reconcile the invoices in its billing system with the payments in its accounting records.

To ensure that it places paroled sex offenders in group homes that provide the most adequate services for the least amount of money, the Youth Authority should do the following:

- Conduct a study of the out-of-home placement rates paid by each of its parole offices.
- Establish a process for reviewing and approving its rate schedule.
- Ensure that the rates set are commensurate with the services the homes provide.
- Ensure that parole offices adhere to its established rates.

To ensure that it avoids potential conflicts of interest for all employees who are responsible for approving contracts and monthly payments for out-of-home placement facilities housing parolees, the Youth Authority should do the following:

- Require that designated employees complete statements of economic interests when they assume or leave their office, as well as annually while holding the position.
- Include positions for employees who are performing duties similar to those of supervising parole agents in the pool of positions that must file a statement of economic interests. ■

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# CHAPTER 3

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## ***The Department of Mental Health Should Improve Fiscal Oversight of the Forensic Conditional Release Program, and the State Lacks a Process to Measure Its Success***

### CHAPTER SUMMARY

**T**he Forensic Conditional Release Program (Conditional Release Program) operated by the Department of Mental Health (Mental Health) allows a sexually violent predator (SVP) the opportunity to be released back into the community, as dictated by state and federal laws. Despite additional state legislation in August 2004, procuring housing for SVPs may continue to be difficult, and the program has proven costly given the small number of people who qualify.

Mental Health could improve its fiscal oversight of the program by routinely auditing invoices and supporting documentation for services. The loss of an audit position has not allowed it to do so. Mental Health could also better monitor costs for appropriateness, such as providing security to SVPs. It paid almost \$190,000 to a private contractor and the Department of Corrections (Corrections) to guard one SVP and his housing area, which appears excessive. In addition, Mental Health could better follow its policies and procedures designed to reduce program costs. For example, it is providing one SVP housing and a monthly allowance at a cost of almost \$1,500 although its policy dictates less than \$800.

Currently, the State has no process to measure how successful its Sex Offender Commitment Program, of which the Conditional Release Program is its fifth treatment phase, is or to determine how to improve it.

## STATE AND FEDERAL LAWS AND COUNTY SUPERIOR COURTS DICTATE THE PLACEMENT OF SEXUALLY VIOLENT PREDATORS IN COMMUNITIES

County superior courts play a major role in the release of SVPs to the Conditional Release Program and retain jurisdiction over the person throughout the course of the program. Once an SVP resides in a secure facility for at least one year, he or she is eligible to petition the court to enter the Conditional Release Program. If the court grants the petition, state law requires Mental Health to make the necessary placement arrangements and, within 21 days after receiving notice of the finding, place the SVP in the community in accordance with his or her treatment and supervision plan, unless good cause for not doing so is presented to the court. Courts can establish alternative time frames for Mental Health to locate and secure appropriate housing for SVPs. A court can also weigh in on whether the housing is suitable and appropriate for the implementation of an SVP's outpatient treatment. As of October 2004, two SVPs are participating in the Conditional Release Program. A third SVP entered the program in August 2003 and was unconditionally released by the court in August 2004.

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*Attempts to secure housing for SVPs prior to August 12, 2004, were not always successful. Mental Health contacted more than 100 housing agents or home owners in its efforts to locate housing for one SVP.*

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Attempts to secure housing for SVPs prior to August 12, 2004, were not always successful. According to the former chief of its Forensic Services Branch, Mental Health would begin the search for housing in the county where the SVP was committed to its jurisdiction. It would inform county officials and law enforcement agencies of the SVP's impending release into their community. However, Mental Health received letters from county and city officials expressing their concerns about placing an SVP in that particular community. In some instances, cities have also petitioned the courts to intervene in their placement decisions. The former chief also stated that some county officials often established unreasonable restrictions such as requiring it to locate housing 10 miles away from a school. Mental Health contacted more than 100 housing agents or home owners in its efforts to locate housing for one SVP. The housing agents' or home owners' responses varied. Several said they would not accept SVPs due to the impact their presence would have on other tenants or neighbors. Some indicated that their property was either in close proximity to schools or had children present. Others expressed concern with exposing themselves to liability issues.

Effective August 12, 2004, state law requires Mental Health to place SVPs in their county of domicile prior to their incarceration unless the court finds that extraordinary circumstances require



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*State law, effective August 2004, requires Mental Health to place SVPs in their county of domicile prior to their incarceration, unless the court finds that extraordinary circumstances require placement elsewhere.*

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placement elsewhere. State law defines county of domicile as the county where the SVP's true, fixed, and permanent home and principal residence was and to which he or she has manifested the intention of returning. The county of domicile must designate a county agency or program that will provide assistance and consultation in the process of locating and securing housing within the county. Although Mental Health will receive county assistance in placing SVPs in the community, it may still face opposition from local communities and owners of federally-assisted housing. As discussed in Chapter 1, federal law requires owners of federally assisted housing to prohibit admission to such housing for any household that includes an individual who is subject to a lifetime registration requirement under a state sex offender registration program. California law generally imposes a lifetime registration requirement, thus SVPs cannot reside in federally assisted housing. The State has no control over this restriction.

## **MENTAL HEALTH CAN IMPROVE ITS FISCAL OVERSIGHT OF THE CONDITIONAL RELEASE PROGRAM**

Mental Health has neither conducted an audit nor reviewed the supporting documentation for services billed monthly by the contractor who has provided pre-release planning and post-release services for SVPs in the Conditional Release Program since March 2003. In addition, Mental Health paid a private security company and Corrections a total of almost \$190,000 to guard one SVP and his housing area, which appears excessive. Mental Health is also remiss in following through on its policies and procedures designed to reduce program costs. For example, it does not ensure that SVPs apply for other available financial resources before assisting them with their living arrangements, food, and personal and incidental needs, as dictated by its policies.

### **Mental Health Lacks Adequate Procedures to Monitor Conditional Release Program Costs**

Since March 2003, Mental Health has used a contractor to provide pre-release planning and court-ordered post-release services such as mental health treatment, supervision, and monitoring for SVPs in the Conditional Release Program. However, Mental Health has neither conducted an audit nor reviewed the supporting documentation for most services billed by the contractor.

Mental Health pays the contractor using two types of rates: negotiated net amount and negotiated rate. Negotiated net amount services include the contractor's administrative costs such as

personnel and operating expenses. Each month Mental Health pays the contractor one-twelfth of its approved annual budget for those services. Mental Health paid almost \$1 million for negotiated net amount services rendered between March 2003 and June 2004. Negotiated rate services include the contractor's costs of providing core services to SVPs such as individual and group face-to-face meetings and home visits. The contractor uses subcontractors to provide other negotiated rate services such as sex offender treatment, medication, medical testing, independent living support, and vocational services. Mental Health's contract specifies the negotiated rate amounts and requires the contractor to submit monthly reimbursement claims. Mental Health paid roughly \$57,000 for these expenditures in fiscal year 2003–04.

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***Since July 2004, Mental Health has not conducted a detailed review of the summary the contractor prepares to support its reimbursement claim and accompanying receipts, rather it relies on the contractor to accurately record all expenditures.***

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The former chief of Mental Health's Forensic Services Branch stated that Mental Health has not conducted an audit or reviewed the supporting documentation for the negotiated net amount services billed by the contractor. Furthermore, since July 2004, it no longer conducts a detailed review of the summary the contractor prepares to support the reimbursement claim and accompanying receipts. It relies on the contractor to accurately record all expenditures and reviews only some of the larger receipts. The former chief stated that due to budget cuts, Mental Health no longer has an auditor position available to perform these audits and detailed reviews.

Our review of the invoices paid by Mental Health and the contractor's accounting records found that Mental Health paid for items not allowable under the contract, not supported by documentation, or that exceeded the contract limits. For example, the former chief stated that it paid travel expenses of \$750 for an SVP's family member to escort the SVP from Atascadero State Hospital to his designated housing because he could not afford to transport himself from another state to carry out the court order to do so. However, Mental Health could have sought an amendment to the order instead of paying this expense.

Mental Health also paid \$1,100 in travel expenses for a therapist to provide therapy sessions at an SVP's residence despite the fact that the contract does not cover reimbursement of travel expenses. The deputy director of Mental Health's Long Term Care Services Division stated that it covered the cost because there was a crisis situation due to the community's opposition to the SVP's placement and that it was concerned for the SVP's safety. Additionally, Mental Health was eager to begin his treatment. Nevertheless, the State Contracting Manual prohibits the contract manager from directing the contractor to do work

that is not specifically described in the contract. Mental Health should have executed an emergency contract, which would have required only the director's approval because state law allows it to contract with certain private providers without obtaining the approval of the Department of General Services (General Services).

Finally, Mental Health paid \$20,000 without obtaining and reviewing the supporting documentation, which represents more than 30 percent of the expenditures it was billed for in fiscal year 2003–04. The contractor was also unable to provide us with documentation to support \$4,000 of the \$20,000. The State Contracting Manual requires Mental Health's contract manager to review and approve invoices for payment to substantiate expenditures for work performed. Mental Health's contract terms require it to "monitor and audit services rendered and may take fiscal sanctions against the Contractor." Finally, Mental Health's Conditional Release Program policies and procedures require that auditors determine if the reported costs for the negotiated net amount services were allowable and reasonable in accordance with its contract and policies. The auditors are also supposed to ensure that requirements for staffing and core standards were met. Similarly, Mental Health's auditors are to determine if the negotiated rate expenditures and services were allowable, properly classified, and supported by documentation in the SVP's case records.

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*The deputy director of Mental Health's Long Term Care Division acknowledges that Mental Health needs to improve its oversight of this contractor's payments.*

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The deputy director of its Long Term Care Division acknowledges that Mental Health needs to improve its oversight of this contractor's payments. Mental Health plans to revise its procedures to include a review of the invoices and supporting documentation prior to payment. In addition to these efforts, we believe that Mental Health should reinstate the auditor position or designate available staff to fulfill the audit functions.

Mental Health also uses the services of a company to monitor the SVPs' movements with a global positioning system (GPS). According to the contract, the company was to maintain around-the-clock monitoring of the SVPs, store and transmit monitoring data, notify Mental Health of any violations, and train Mental Health's staff to use the system. Mental Health paid almost \$39,000 for the use of five GPS units and services rendered between October 2001 and June 2003. However, because the courts did not release the first SVP into the Conditional Release Program until August 2003, we question payment of these costs. The former chief of Mental Health's Forensic Services Branch stated

the payments were necessary to field test the equipment and fully understand how it would function. The former chief also pointed out that although the first SVP did not enter the Conditional Release Program until August 2003, the court ordered him into the program in early 2003. Nevertheless, Mental Health's statement does not explain why it chose to pay for services in 2001 and 2002 instead of exercising the 60-day termination clause. Moreover, although the former chief and a representative from the company both recalled one or two meetings, neither were able to provide training records to support efforts to field test and fully understand the equipment during this time.

### **Mental Health Security Costs for One SVP Appear Excessive**

Conditional Release Program policies and procedures do not require it to provide security to SVPs. However, Mental Health paid a private security company and Corrections a total of almost \$190,000 to guard one SVP and his housing area. Mental Health entered into a contract with Corrections on April 30, 2004, for \$4,500 to prepare a site for the installation of a trailer to house an SVP and \$154,000 to guard and patrol the trailer site. Under this contract, Mental Health paid Corrections \$132,000 for guard and patrol services provided during the months of August 2003 through June 2004. These security services were in addition to the \$57,000 that Mental Health paid to a private company to provide security services for this SVP between August 11, 2003, and November 1, 2003. The director of the Long Term Care Services Division stated that it paid Corrections for guard and patrol services because there was a crisis situation due to community opposition to the SVP's presence. However, we question why it was necessary to have both Corrections and a private security company guard one SVP for a period of three months.

Moreover, Mental Health did not submit its interagency agreement with Corrections to General Services for approval, as dictated in the State Contracting Manual. General Services must approve all interagency agreements greater than \$50,000 unless the agency has a higher delegation authority. According to Mental Health's contracting staff, it erred in its interpretation of a state law that allows it to furnish treatment and supervision in the community for judicially committed persons either directly or through private contractors or county mental health agencies without having to meet the requirements contained in the Public Contract Code and the State Administrative Manual, and from approval by General Services. Mental Health also allowed Corrections to provide services beginning in August 2003, eight

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*Mental Health paid both a private security company and the Department of Corrections almost \$190,000 to guard one SVP and his housing area.*

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months prior to the execution of the contract. In the future, Mental Health must ensure that its contracts comply with state contracting policies and procedures when it is faced with a crisis situation.

**Although It Has Policies and Procedures Designed to Reduce Conditional Release Program Costs, Mental Health Does Not Adhere to Them**

Prior to accepting an SVP into the Conditional Release Program, Mental Health establishes terms and conditions for outpatient treatment and documents them in writing. The SVP and a Conditional Release Program representative sign the document and attach it to the evaluation report that is submitted to the committing court and public defender. One condition requires the SVP to agree to pay for a portion of his or her basic food, clothing, shelter, and personal and incidental expense, depending upon available personal resources. To implement this condition, Mental Health has established a loan program to assist SVPs who have little or no financial resources to sustain them in their transition to the community. This funding is commonly referred to as life support payments.

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*Mental Health has established a loan program to assist SVPs who have little or no financial resources to sustain them in their transition to the community.*

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The Conditional Release Program policy and procedure manual states that although Mental Health may provide life support funds for short- or long-term room, board, and basic living expenses necessary to allow SVPs to achieve or maintain independent living arrangements, staff must first pursue all other sources of support for the SVP. SVPs must be willing to apply for any funding sources for which they may be eligible, including Social Security income/state supplement payment (SSI/SSP), food stamps, and local general assistance. Life support funding is to be used only after exhausting all other financial resources, including personal funds. However, Mental Health does not ensure that SVPs apply for other available financial resources. For example, Mental Health did not request that its contractor have the SVPs apply for food stamps until after we brought this issue to its attention. Consequently, Mental Health is not being proactive in reducing program costs.

The SVP is also expected to sign a promissory note of reimbursement prior to receiving life support funds. Mental Health could not provide a promissory note for one of the two SVPs who benefited from the loan program. According to the current chief of the Forensic Services Branch, the contractor did not present the SVP with a repayment agreement at the time of his conditional release. The

***Although an SVP is expected to sign a promissory note of reimbursement prior to receiving life support funds, Mental Health could not provide a promissory note for one of the two SVPs who benefited from the loan program.***

contractor's recent attempt to secure a repayment agreement was unsuccessful because the SVP refused to sign it. Consequently, the contractor had to bring this issue before the court and is awaiting the judge's decision. The current chief also stated that Mental Health has updated its terms and conditions to include life support repayment agreements.

The Conditional Release Program policy and procedure manual also outlines life support payment rates, but it is paying one SVP twice the stated amounts. Mental Health paid \$210 per week for one SVP's housing costs and in addition provided him with \$160 per week in life support funds. However, life support funds are to include the actual cost for the living arrangement, food, and personal and incidental needs up to the Department of Social Services' SSI/SSP rate for independent living. The rates for calendar years 2003 and 2004 are \$757 and \$769, respectively. During calendar year 2004, Mental Health paid the SVP almost \$1,500 per month. The former chief of the Forensic Services Branch stated that although no specific authority requires it to do so, providing the SVP with a stable residence is a primary requirement to ensure the delivery of mental health treatment in the community. The deputy director of the Long Term Care Services Division acknowledged Mental Health is not in compliance with its Conditional Release Program policy and procedure manual. Mental Health plans to review this issue and revise or delete the outdated portions of its manual.

### **THE STATE LACKS A PROCESS TO MEASURE THE SUCCESS OF ITS SEX OFFENDER COMMITMENT PROGRAM**

The State has no process in place to measure the success of its Sex Offender Commitment Program (SOCP), which contains five treatment phases. Phases one through four occur after the court commits the SVP to the custody of Mental Health for two years to obtain the appropriate treatment and confinement in a secure facility. The SVP will undergo treatment to learn, among other things, skills to prevent a reoffense. During phase four, the SVP prepares to enter into the fifth phase, which is the Conditional Release Program.

According to the deputy director of the Long Term Care Services Division, since 1995 almost 500 individuals have been committed to the SOCP, of which 64 have been discharged from Atascadero and Patton State hospitals. He estimates the State has

spent more than \$34 million providing supervision and treatment to the 64 SVPs, which includes both hospital and Conditional Release Program costs.

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*Although the State will have invested millions of dollars supervising and treating SVPs, it is unable to determine if its goals are being met, whether modifications to its program are necessary, and whether its goals are producing the outcome it seeks.*

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A major drawback to the SOCP is that a mechanism to track its success does not exist. In 1985, when the Conditional Release Program was established as an outpatient program for mentally disordered and developmentally disabled offenders, state law directed Mental Health to conduct an evaluation to determine the program's effectiveness in successfully reintegrating persons who receive supervision and treatment in state institutions into society after their release. The evaluation was also to include a determination of the rate of reoffense while persons were served by the program and after their discharge, as well as the effectiveness of the various treatment components. However, state law enacting the SVP component of the Conditional Release Program in 1995 does not require a similar evaluation, nor does it allow Mental Health to track the SVPs once they leave the program. Consequently, although the State will have invested millions of dollars in the supervision and treatment of SVPs, it is unable to determine the extent to which its goals are being met, whether modifications to its program are necessary, and whether its goals are producing the outcome it seeks.

## RECOMMENDATIONS

To ensure that contractors adhere to the terms and conditions in its contracts, Mental Health should do the following:

- Pursue its plan to resume its review of invoices and supporting documentation prior to making payments.
- Either reinstate the auditor position or designate available staff to fulfill the audit functions.

To comply with state contracting policies and procedures, Mental Health should do the following:

- Ensure that its future contracts with Corrections or other state agencies above its delegation authority are subject to review by General Services.
- Ensure that it executes emergency contracts when it finds itself in a crisis situation.

To reduce costs associated with the Conditional Release Program, Mental Health should do the following:

- Exercise its right to cancel contracts when it is unsure of the impending need for the service.
- Ensure that SVPs pursue all other sources of support before receiving life support funds.
- Ensure that SVPs sign life support repayment agreements at the time they enter the Conditional Release Program.
- Reevaluate the amount of life support funds an SVP can receive when it is also paying for the SVP's housing costs and modify its procedures accordingly.

To enable the State to measure the success of the SVP component of the Conditional Release Program, the Legislature should consider directing Mental Health to conduct an evaluation of the program.

We conducted this review under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. We limited our review to those areas specified in the audit scope section of this report.

Respectfully submitted,



ELAINE M. HOWLE  
State Auditor

Date: December 9, 2004

Executive Staff: Philip J. Jelicich, CPA, Deputy State Auditor  
Donna Neville, Esq., Senior Staff Counsel

Staff: Joanne Quarles, Audit Principal, CPA  
Michael Tilden, CPA  
Michelle J. Baur, CISA  
Barbara Henderson, CPA  
Michelle Ludwick  
Dawn Tomita  
Loretta T. Wright



*Agency's comments provided as text only.*

Department of Developmental Services  
1600 Ninth Street, Room 240, MS 2-13  
Sacramento, CA 95814

November 22, 2004

Ms. Elaine M. Howle  
State Auditor  
California State Auditor  
555 Capitol Mall, Suite 300  
Sacramento, CA 95814

Dear Ms. Howle:

Response to Bureau of State Audits' Report  
"Sex Offender Placement: Departments That Are Responsible for Placing Sex  
Offenders Face Challenges and Some Need to Better Monitor Their Costs"

This is the Department of Developmental Services (Department) response to the Bureau of State Audit's (BSA) November 16, 2004, Draft Report referenced above.

In response to the specific BSA recommendations, the Department submits the following comments:

- 1) The Department agrees that a mechanism should be in place to facilitate the regional centers' ability to identify which of their consumers are required to register as sex offenders under Penal Code, Section 290. This information would, as stated in the report, enhance the regional centers' ability to assist their consumers in complying with related laws and also to assess the appropriate type and level of services and supports that the person needs. To that end, the Department will immediately begin exploring options, in collaboration with the Association of Regional Center Agencies (ARCA), that address the need to obtain sufficient information to meet the legal requirements for consumers who fall under Penal Code, Section 290. Such options will include a review of the Individual Program Planning process by which the regional center has the ability to solicit information to ensure that consumers receive services and supports appropriate to their needs and to protect consumers from situations that may not be in their best interest.

Ms. Elaine M. Howle  
November 22, 2004  
Page two

In addition, the Department will:

- a) Follow-up with BSA staff to identify the consumers referenced in the audit whom, unbeknownst to the regional center(s) prior to this audit, were living in community care facilities that were within one mile of one or more elementary school.
  - b) Inform the responsible regional centers that these consumers' placements are in violation of the law and that appropriate placements must be found.
  - c) Monitor the regional centers' efforts to assure that consumers are placed in living arrangements that are in compliance with the law.
- 2) The Department will incorporate into its fiscal or program audit procedures, a review of whether regional center board members and employees are filing required conflict-of-interest statements.

The Department believes taking these actions will lead to a more comprehensive system that meets the intent of the Lanterman Developmental Disabilities Services Act and will ensure that consumers receive the quality services to which they are entitled.

Should you have any questions or need additional information regarding the Department's response to this report, please contact Dale Sorbello, Deputy Director, Community Operations Division, at 654-1958.

Cordially,

*(Signed by: Cliff Allenby)*

CLIFF ALLENBY  
Director

*Agency's comments provided as text only.*

Youth and Adult Correctional Agency  
1515 K Street, Suite 520  
Sacramento, CA 95814

November 23, 2004

Elaine M. Howle  
State Auditor  
Bureau of State Audits  
555 Capitol Mall, Suite 300  
Sacramento, California 95814

Dear Ms. Howle:

The Youth and Adult Correctional Agency (YACA) has reviewed your draft audit report entitled "Sex Offender Placement: Departments That Are Responsible for Placing Sex Offenders Face Challenges and Some Need to Better Monitor Their Costs." We appreciate the opportunity to respond to the draft report. Enclosed is the California Youth Authority's response to the report's recommendations.

We appreciate the effort your staff put forth in auditing our sex offender placement practices and procedures. Your staff were professional and at all times available to discuss key issues with our staff. Please extend our appreciation to those who participated in this review.

YACA takes your recommendations to improve the management of its parole program and the placement of sex offenders very seriously. In this regard, we are committed to making the improvements addressed in the enclosed response and look forward to reporting our progress to you in future reports. If you have any questions concerning the response, please contact me at 323-6001.

Continued Success,

*(Signed by: Roderick Q. Hickman)*

RODERICK Q. HICKMAN  
Secretary  
Youth and Adult Correctional Agency

Enclosures

State of California  
Department of the Youth Authority  
Office of the Director

M e m o r a n d u m

Date : November 22, 2004

To : Roderick Hickman  
Secretary  
Youth and Adult Correctional Agency

*(Signed by: Silvia Huerta Garcia)*

From : Silvia Huerta Garcia  
Chief Deputy Director

Subject: **Bureau of State Audits  
Sex Offender Placement**

The California Youth Authority has had the opportunity to review the results of the Bureau of State Audit (BSA) on the Sex Offender Placement Programs draft report issued on November 16, 2004. During our exit meeting on November 12, 2004, with Ms. Quarles and her staff, CYA was able to discuss the findings in details and afforded an opportunity to provide any additional information to the findings rendered in the report. We were able to contact her throughout the audit process and her office was very professional and helpful in her interactions with our Department.

CYA acknowledges the need to review many of our policies, procedures to ensure that the programs are cost effective and provide the services required for youths released to the community. We also appreciated Ms. Quarles efforts in assisting us in resolving many of the problems.

To ensure that these programs meet the needs of and safety of sex offender parolees, CYA has assigned a Project Manager to track the numerous issues noted in the BSA as well as other issues identified by the Department. The BSA matrix (Attachment 1)♦ will assist us in tracking the assignment so that we may provide status reports every 60 days, 6 months and one-year time frames.

We remain committed to improvements noted in our responses and I am confident that we will accomplish all the tasks we have identified.

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♦We have not included attachments in the report, however, they are available for review at the California State Auditor's Office.

## OVERVIEW

The California Youth Authority (CYA) has received and reviewed the recommendations contained in the Bureau of State Audits' (BSA) report on sex offender placement. CYA acknowledges that the six major areas documented in this report are in need of review, analysis and revision. The CYA is committed to improving the quality of rehabilitative services provided to youthful offenders as a strategy for reducing the incidence of reoffending behavior and as a tool for improving public safety. Much of what has been identified in this report as deficient are related to policies and procedures, which have not been revised to reflect changes within the Department. These operating standards have become inadequate or inefficient in their ability to provide consistent, statewide administrative and procedural oversight for this very high-risk population of offenders.

The CYA proposes to address the recommendations proposed by the BSA in the following manner. First, the CYA will draw upon the expertise of its staff and the Youth and Adult Correctional Agency in the development of regulations and procedures. This will ensure that standards developed from these requirements are procedurally sound and are consistent with state mandates and existing regulatory practices. To facilitate this process a Project Coordinator has been assigned. The Project Coordinator, in conjunction with the Assistant Deputy of Parole Services and Community Corrections (PSCC) Branch, will assign staff members as chairpersons for specific workgroups and convene those groups as soon as possible. Second, recommendations will be implemented within the framework of the Departmental and Agency-wide reorganization currently underway.

**SEX OFFENDER PLACEMENT  
BUREAU OF STATE AUDITS**

**RECOMMENDATIONS**

1. *To assure that it, at a minimum, meets the base needs and safety of sex offenders who are on parole, the Youth Authority should do the following:*
  - A. *Follow through on its plans to convene work groups to address the deficiencies in its out-of-home placement standards and modify its regulations accordingly.*

**CYA agrees with the need for both standards and regulations to address deficiencies in the out-of-home placement process. A work group has been established to address the deficiencies in its standards and to modify its regulations. The first meeting was held in October 2004; and the attached agenda outlines the scope of their assignment (Attachment 2). They have been instructed to include specific input from the Department of Social Services, Community Care Licensing, and the Department of Alcohol and Drug Programs on their respective standards and licensing requirements. The Project Manager will track the progress of the work group and ensure that status reports are provided consistent with BSA requirements.**

- B. *Perform Live Scan fingerprint checks on all owners, operators, and employees of homes that it uses to house parolees. It should also identify the type of prior criminal convictions that would exclude individuals from working in these homes.*

**CYA agrees. By December 1, 2004 the Parole Services and Community Corrections (PSCC) Branch will submit requests for Live Scan to all out-of-home service providers not currently Live Scanned to the Department's Background unit for processing with the Department of Justice (DOJ) (Attachment 3). Service providers presently licensed or certified by another state agency (i.e. Department of Alcohol and Drug Programs and Department of Social Services) would be excluded from this process. The Department's policy, which currently is silent on the issue of whether additional Live Scan is required for operators screened by other state agencies, will be modified accordingly. The assigned task force will establish guidelines on performing Live Scan fingerprint checks on all owners, operators, and employees of homes that it uses to house parolees. The task force will also ensure that the type of prior criminal convictions that will exclude individuals from working in these homes is clearly identified.**

**By December 8, 2004 the Regional Administrators will assign a staff person in each regional office to ensure that the results of Live Scan requests from service providers are on file, and will monitor for timely reports back from the Department of Justice. An existing PSCC Branch work group focused on Live Scan issues has begun to develop regulations. A timetable for the development and implementation of these regulations will be reported to the BSA in the 60-day Progress Report.**

C. *Require headquarters' staff to resume audits of the parole offices.*

**Currently, Section 4860 of the Parole Services Manual requires the initial and semi-annual evaluations of out of home placements. In addition to this requirement, in 1998 the Department enhanced its audit requirements that exceeded the requirements on Section 4860. It was this enhanced audit that was discontinued 18 months ago. The requirement contained in Section 4860 remains, and Parole Services staff have never been instructed to curtail this activity. Nevertheless, there is no current documented process that exists to measure compliance with the provisions of Section 4860.**

**Regional Administrators will immediately, therefore, conduct a review of all out of home placements to ensure that the requirements of Section 4860 have been met and that proper documentation is completed. This task will be completed within 60 days and will be tracked using the matrix noted in Attachment 1.**

**In addition, the Department's Program Compliance Unit has been assigned the task of developing specific tools to ensure ongoing, statewide compliance of the semi-annual out of home evaluations. The estimated date to complete this task will be reported in the CYA's 60-day progress report to the BSA.**

2. *To ensure the safety of the public, the Youth Authority should do the following:*

A. *Perform periodic reviews of parole placement plans to determine the parole agents' adherence to its policy relating to the placement of certain sex offenders within one mile of an elementary school.*

**The CYA agrees. Current policy does not speak to the methodology used to determine the distance from an out of home placement site to an elementary school. A Sex Offender Specialist will be assigned (refer to BSA Audit Project Coordinator Matrix) to convene a work group; conduct a review of policy, regulations and statute; and prepare a recommendation identifying a specific methodology to calculate the mileage from state subsidized sex offender placement and all other sex offender sites to/from an elementary school. Inclusive in this process will be a comparison of the related policies from the Department of Corrections.**

**Once the policy has been formalized, the Program Compliance Unit will be assigned to develop specific tools related to use of the parole placement plans to ensure adherence to the policy of placement of sex offenders. CYA will provide the BSA with a timetable for the completion of the policy and management tools in the 60-day progress report.**

- B. *Follow through on its plans to review and clarify the method parole offices should use to calculate the distance of one mile from elementary schools.*

**This issue is partially addressed above. If regulations are required, staff will submit the necessary documents to effectuate the change. A timetable to complete this activity will be provided to the BSA in the 60-day progress report.**

- C. *Require parole agents to adhere to case conference schedules and to document their results, in accordance with its policies and procedures. It should also conduct periodic reviews of a sample of the parolees' case files to ensure compliance.*

**CYA agrees with this finding. The Department will devise a plan for getting back into compliance with regard to conducting case conferences and will provide the BSA with a timetable in its 60-day progress report.**

- D. *Follow through on its plans to clarify the roles and expectations for case conferences and modify its regulations accordingly.*

**Please refer to the response provided above.**

- 3. *To ensure that its contracting process meets State requirements, the Youth Authority should:*

- A. *Follow through on its plans to seek guidance from General Services and Finance.*

**CYA agrees. The Administrative Services Deputy Director (A) has been assigned the task of coordinating a meeting with the Department of General Services and the Department of Finance to ensure that our contract process is consistent with state law and Departmental policies (Attachment 5). CYA anticipates that the first meeting will be held by December 30, 2004, but no later than 60 days from the date of this response.**

- B. *Ensure that any revisions to its contracting process include a mechanism for supervising parole agents to review and approve invoices prior to payment.*

**The Administrative Services Deputy Director (A), and a Staff Services Manager II will spearhead a workgroup to formalize a contracting process that includes an approval process (Attachment 5). In addition, the scope of service agreement currently in place will be reviewed by the Contracts Department by December 30, 2004 it can be formalized.**

- 4. *To ensure that it can accurately identify the costs associated with housing sex offenders in the community, the Youth Authority should do the following:*



- A. *Identify and correct erroneous data in its billing system, then implement controls and procedures to ensure the completeness and accuracy of the records and the validity of the entries.*

**CYA agrees and notes that the billing system was never designated to track the cost of the sex offender group home placement. It was designed only to print invoices. The appropriate tracking costs associated with housing sex offenders is one of the issues that will be addressed by the work group spearheaded by the Administrative Services Deputy Director (A), and a Staff Services Manager II. CYA's plan and timetable to implement the BSA's recommendation will be provided in the 6-month progress report.**

- B. *Implement management controls that include adequate separation of duties and supervisory reviews. For example, the accounting technician should not be allowed to create invoices and then make adjustments to them.*

**Two Deputy Directors have been assigned as the chairpersons that will look at the separation of duty functions and supervisory review requirements (Attachment 6). The CYA will provide an update in the 60-day progress report on when management controls are expected to be in place. The work group will also address additional resources, manpower, and information technology needs necessary to ensure an effective accounting system for our sex offender group homes.**

- C. *Reconcile the invoices in its billing system with the payments in its accounting records.*

**A Deputy Director and a Staff Services Manager II will also address this issue as part of the workgroup assigned to review the billing, contracting, and payment process. The CYA will provide an update in the 60-day progress report on when the BSA's recommendation will be completed.**

5. *To ensure that it places paroled sex offenders in group homes that provide the most adequate services for the least amount of money, the Youth Authority should:*

- A. *Conduct a study of the out-of-home placement rates paid by each of its parole offices.*

**CYA agrees. The PSCC Deputy Director (A) and the Project Coordinator will assign (refer to BSA Audit Project Coordinator Matrix) a staff person by December 15, 2004 to conduct a study of the current out of home placement rates paid by each office. The estimated date to complete the study will be reported in the CYA's 60-day progress report to the BSA.**

- B. *Establish a process for reviewing and approving its rate schedule.*

**CYA agrees. As noted above, the PSCC Deputy Director (A) and the Project Coordinator will assign (refer to BSA Audit Project Coordinator Matrix) a staff person by December 15, 2004 to chair a work group to establish guidelines related to reviewing and approving a rate schedule, to ensure that rates are commensurate with the services requested, and**

to develop a monitoring tool to ensure office compliance. The group will seek input from the Department of Social Services, the Department of Alcohol and Drug Programs and other state agencies that incorporate payment for out of home placement services.

The work group will also seek input from control agencies such as the Department of Finance. The breadth of information received and the complexity of setting comparable rates across the entire state for a most needy population, will determine the final due date for the guidelines.

C. *Ensure that the rates set are commensurate with the services the homes provide.*

**CYA agrees. Please refer to the response above.**

D. *Ensure that parole offices adhere to its established rates.*

**CYA agrees. Please refer to the response above.**

6. *To ensure that it avoids potential conflicts of interest between all employees who are responsible for approving contracts and monthly payments for out-of-home placement facilities housing parolees, the Youth Authority should:*

A. *Require, in addition to annually, that designated employees complete a statement of economic interests when they assume or leave their office.*

**CYA's headquarters' Personnel Office is in the process of establishing a checklist to ensure compliance with the completion of Form 700, Conflict of Interest Code when an employee assumes or leaves their office.**

B. *Review its designation of those positions that must file a statement of economic interests. Specifically, it should include positions for employees who are performing duties similar to the supervising parole agents.*

**CYA agrees. The Regulation Coordinator revised the Conflict of Interest Code Policy for fiscal year 2005/06 to include positions for the employees who are performing duties similar to the supervising parole agents. CYA was not able to add the additional decisions to the policy but will do so for next year's revision (Attachment 7). The revision is scheduled to take effect in October 2005. In the interim, the Administrative Services Branch will provide the Conflict of Interest package to all Parole Agent II (Supervisors) positions. The Parole Services Deputy Director will request that they all complete the Form 700 provided by the Personnel Department (Attachment 8 & 9).**

*Agency's comments provided as text only.*

Department of Mental Health  
1600 9th Street, Sacramento, CA 95814

November 22, 2004

Elaine M. Howle, State Auditor\*  
Bureau of State Audits  
555 Capitol Mall, Suite 300  
Sacramento, CA 95814

Dear Ms. Howle:

This is the Department of Mental Health's (DMH) response to your draft audit report titled "Sex Offender Placement: Departments That Are Responsible for Placing Sex Offenders Face Challenges and Some Need to Better Monitor Their Costs," dated December 2004. Overall, we agree with the administrative recommendations made in the report and have already taken actions to address them.

As the draft report has described, DMH is responsible for the custody of and providing treatment to individuals found by the court or jury to be Sexually Violent Predators (SVPs). SVPs are individuals who already have been convicted of multiple sexual offenses and who have been determined to be likely to engage in sexually violent criminal behavior upon their release from prison. The SVP treatment program in the state hospitals is intensive and lengthy, culminating in the final phase of release to the Forensic Conditional Release Program (CONREP). Although the SVP program has existed since 1996, the first SVP was not released to CONREP until 2003. The placement of the first SVP in CONREP presented DMH with many new and significant challenges, such as overcoming opposition when attempting to place an SVP in the community, ensuring public safety once the SVP is placed, and monitoring an SVP's daily activities including the use of global satellite system technology.

One such challenge, providing security over a CONREP patient, was never an issue until the first SVP entered the CONREP. Although the draft audit report faults DMH for security costs that appear to be excessive, DMH believes that the costs incurred to ensure public safety in this instance both reasonable and necessary under the circumstances. Because of strong community opposition to placement and numerous failed attempts to secure housing for the first SVP entering CONREP, DMH purchased a trailer and entered into an agreement with the Department of Corrections to place the trailer on vacant land at a state prison. The level of security that DMH agreed to provide over the trailer was in direct response to the strong, emotional concerns expressed by the community to house an SVP in close proximity to people living on prison grounds and close to migrant seasonal workers and their families living in a neighboring housing complex. DMH is committed to ensuring public safety in the SVP program, and will continue to make appropriate programmatic adjustments in this regard as more experience is gained.

The audit report points out the recent enactment of state law requiring DMH to place SVPs in their county of domicile as determined by the courts and that the county of domicile must designate a county agency or program that will provide assistance and consultation in the process of locating and securing housing within the county. It is hoped that early notification of an SVP's county of

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\* California State Auditor's comments appear on page 67.

domicile and receiving county assistance will facilitate the timely placement of additional SVPs into the community, thus avoiding similar circumstances that lead to incurring costs to place and guard a trailer on state prison grounds.

As noted in the report, DMH has addressed many of the recommendations made in the report and will continue to update and/or develop new policies and procedures to strengthen our administration over the release of SVPs to the CONREP. Following are our responses to specific recommendations:

**Recommendation:**

To ensure that contractors adhere to the terms and conditions in its contracts, Mental Health should:

- Follow through on its plan to resume its review of invoices and supporting documentation prior to making a payment.
- Either reinstate the auditor position or designate available staff to fulfill the audit functions.

**Response:**

DMH will review invoices and supporting documentation prior to making a payment. Beginning with invoices submitted by its contractor, Liberty Healthcare, for the month of November 2004, CONREP operations staff will review supporting documentation and match it to approved expenditure categories to determine that costs are reasonable and allowable under the terms of the contract.

Due to the severe budget constraints of recent fiscal years, DMH has had to make difficult choices regarding the allocation of administrative staff. Although the department will need to receive new funding to reinstate positions eliminated through past budget reductions, we will use CONREP operations staff to review invoices and supporting documentation prior to making a payment as noted above.

**Recommendation:**

To comply with state contracting policies and procedures, Mental Health should:

- Ensure that its future contracts with Corrections or other state agencies are subject to review by General Services.
- Ensure that it executes emergency contracts when it finds itself in a crisis situation.

**Response:**

DMH's contract unit is now aware of the requirement to have these types of contracts reviewed by the Department of General Services. In addition, DMH will update the CONREP policies and procedures manual to require that contracting procedures are followed when faced with a crisis situation.

**Recommendation:**

To reduce the costs associated with the Conditional Release Program, Mental Health should do the following:

- Exercise its right to cancel contracts when it is unsure of the impending need for the service.
- Ensure that SVPs pursue all other sources of support before receiving life support funds.
- Ensure that SVPs sign a life support repayment agreement at the time they enter the CONREP.
- Re-evaluate the amount of life support funds an SVP can receive when it is also paying for the SVP's housing costs. It should modify its procedures accordingly.

**Response:**

DMH will update the CONREP policies and procedures manual to specify the right to cancel contracts if circumstances cause the service or product to be no longer needed.

Effective November 2004, Liberty Healthcare enacted procedures to ensure that SVPs are made aware of and follow through with the need to pursue all other sources of support before they receive life support funds.

Effective November 2004, Liberty Healthcare added language to its standard terms and conditions boilerplate form stating that the amounts received by SVPs in CONREP as life support funds must be repaid by the SVP.

DMH will update the CONREP policies and procedures manual to specify that the amount an SVP receives in life support funds to pay the cost of housing will be evaluated and determined separately from the amount received to pay the cost of other items such as food and clothing.

**Recommendation:**

To enable the State to measure the success of the SVP component of the Conditional Release Program, the Legislature should consider directing Mental Health to conduct an evaluation of the program.

**Response:**

DMH supports evaluating programs to determine the level of success and improve program administration including the SVP component of CONREP. However, the Legislature should consider the following before requesting such an evaluation:

- Legislation would need to be enacted giving DMH (or other designated entity) the authority to track SVPs after courts order them unconditionally released from their civil commitment.

Ms. Elaine Howle  
Page 4  
November 22, 2004

- To effectively evaluate a program, a sufficient number of program participants need to be available for follow-up. Only one SVP has been unconditionally released into the community following CONREP, and that SVP moved out of the state. It may be years before a sufficient number of SVPs are released unconditionally into the community to allow for a credible evaluation of the SVP component of CONREP.

Thank you for the opportunity to respond to the draft report. Implementing the corrective actions to address the recommendations made in your report will improve our overall administration of the CONREP. If you have any questions, please call John Rodriguez, Deputy Director, Long Term Care Services, at (916) 654-2413.

Sincerely,

*(Signed by: Robert L. Garcia, Chief Deputy Director, for)*

STEPHEN W. MAYBERG, Ph.D.  
Director  
Department of Mental Health

# COMMENTS

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## ***California State Auditor's Comments on the Response From the Department of Mental Health***

To provide clarity and perspective, we are commenting on the Department of Mental Health's (Mental Health) response to our audit. The numbers below correspond to the numbers we have placed in its response.

- We disagree with Mental Health's belief that the security costs incurred for one sexually violent predator (SVP) were reasonable and necessary. Specifically, as stated on page 48, Mental Health paid almost \$190,000 to guard one SVP and his housing area over a period of 11 months, which appears excessive. Moreover, for three of these months we question why it was necessary to have both the Department of Corrections and a private security company guard the SVP.
- Mental Health did not address fully its efforts to ensure that contractors adhere to the contract terms and conditions for the SVP component of the Forensic Conditional Release Program (Conditional Release Program). Specifically, although Mental Health plans to review invoices and supporting documentation prior to making payments to its contractors, as the State Contracting Manual requires, it fails to address adequately the steps it will take to fulfill the audit functions we describe on page 47. Specifically, Mental Health does not indicate if it will seek funding for the auditor position nor does it outline the specific audit steps its Conditional Release Program staff will undertake. Thus, we look forward to Mental Health's subsequent responses relating to this audit issue.

cc: Members of the Legislature  
Office of the Lieutenant Governor  
Milton Marks Commission on California State  
Government Organization and Economy  
Department of Finance  
Attorney General  
State Controller  
State Treasurer  
Legislative Analyst  
Senate Office of Research  
California Research Bureau  
Capitol Press