

Sex Offender Commitment Program

Streamlining the Process for Identifying Potential Sexually Violent Predators Would Reduce Unnecessary or Duplicative Work

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This report concludes that the Department of Corrections and Rehabilitation (Corrections) and the Department of Mental Health's (Mental Health) processes for identifying and evaluating sexually violent predators (SVPs) are not as efficient as they could be and at times have resulted in the State performing unnecessary work. The current inefficiencies in the process for identifying and evaluating potential SVPs stems in part from Corrections' interpretation of state law. These inefficiencies were compounded by recent changes made by voters through the passage of Jessica's Law in 2006. Specifically, Jessica's Law added more crimes to the list of sexually violent offenses and reduced the required number of victims to be considered for the SVP designation from two to one, and as a result many more offenders became potentially eligible for commitment. Additionally, Corrections refers all offenders convicted of specified criminal offenses enumerated in law but does not consider whether an offender committed a predatory offense or other factors that make the person likely to be an SVP, both of which are required by state law. As a result, the number of referrals Mental Health received dramatically increased from 1,850 in 2006 to 8,871 in 2007, the first full year Jessica's Law was in effect. In addition, in 2008 and 2009 Corrections referred 7,338 and 6,765 offenders, respectively. However, despite the increased number of referrals it received, Mental Health recommended to the district attorneys or the county counsels responsible for handling SVP cases about the same number of offenders in 2009 as it did in 2005, before the voters passed Jessica's Law. In addition, the courts ultimately committed only a small percentage of those offenders. Further, we noted that 45 percent of Corrections' referrals involved offenders whom Mental Health previously screened or evaluated and had found not to meet SVP criteria. Corrections' process did not consider the results of previous referrals or the nature of parole violations when re-referring offenders, which is allowable under the law.

Our review also found that Mental Health primarily used contracted evaluators to perform its evaluations—which state law expressly permits through the end of 2011. Mental Health indicated that it has had difficulty attracting qualified evaluators to its employment and hopes to remedy the situation by establishing a new position with higher pay that is more competitive with the contractors. However, it has not kept the Legislature up to date regarding its efforts to hire staff to perform evaluations, as state law requires, nor has it reported the impact of Jessica's Law on the program.

In the report, the California State Auditor (state auditor) made the following recommendations to Mental Health and Corrections. The state auditor's determination regarding the current status of recommendations is based on Mental Health's and Corrections' responses to the state auditor as of September 2011.

Recommendation 1.1—See pages 15—17 of the audit report for information on the related finding.

To enable it to track trends and streamline processes, Mental Health should expand the use of its database to capture more specific information about the offenders whom Corrections refers to it and the outcomes of the screenings and evaluations that it conducts.

Mental Health's Action: Pending.

Mental Health reported that it has identified database enhancements that will enable it to track more specific information and that these changes will enable Mental Health to track trends and streamline processes. In August 2011 Mental Health's project team began discussing development of the enhancements and estimates fully implementing this recommendation by January 2013.

Recommendation 1.2.a—See pages 19 and 20 of the audit report for information on the related finding.

To eliminate duplicative effort and increase efficiency, Corrections should not make unnecessary referrals to Mental Health. Corrections and Mental Health should jointly revise the structured screening instrument so that the referral process adheres more closely to the law's intent.

Mental Health's Action: Pending.

Mental Health stated that it is working with Corrections to further streamline the referral process to eliminate duplicative effort and increase efficiency. Mental Health also stated that in July 2011 it began meeting with Corrections bi-weekly to focus on referrals, access to records, systems and equipment.

Recommendation 1.2.b—See pages 19—23 of the audit report for information on the related finding.

To eliminate duplicative effort and increase efficiency, Corrections should not make unnecessary referrals to Mental Health. For example, Corrections should better leverage the time and work it already conducts by including in its referral process: (1) determining whether the offender committed a predatory offense, (2) reviewing results from any previous screenings and evaluations that Mental Health completed and considering whether the most recent parole violation or offense might alter the previous decision, and (3) using STATIC-99R to assess the risk that an offender will reoffend.

Corrections' Action: Pending.

Corrections stated that it will explore the best method to evaluate the circumstance of the qualifying conviction to determine if the elements of the offense were predatory in nature and evaluate the circumstance of the new parole violation and or new conviction to determine if the new elements alter the previous decision. Corrections stated that in September 2011 its Board of Parole Hearings met with Mental Health to discuss the screening process and plans to meet again to evaluate and discuss Mental Health's screening process, whether the current screening process could be replicated within Corrections using existing resources, and to work with Mental Health to develop a screening form for use by Corrections to determine which cases will be referred to Mental Health for full evaluations.

Recommendation 1.3—See pages 23 and 24 of the audit report for information on the related finding.

To allow Mental Health sufficient time to complete its screenings and evaluations, Corrections should improve the timeliness of its referrals. If it does not achieve a reduction in referrals from implementing recommendation 1.2.b, Corrections should begin the referral process earlier than nine months before offenders' scheduled release dates in order to meet its six-month statutory deadline.

Corrections' Action: Pending.

Corrections stated that it is taking various steps to evaluate potential efficiencies to streamline its screenings and is establishing a new database for tracking cases requiring review. These actions are scheduled to be completed during the last quarter of 2011 and Corrections plans to complete a six-month report in January 2012. Corrections did not provide documentation of its efforts but we look forward to its report and corroborating documentation of its efforts in its six-month update.

Recommendation 1.4—See pages 27—29 of the audit report for information on the related finding.

To reduce costs for unnecessary evaluations, Mental Health should either issue a regulation or seek a statutory amendment to clarify that when resolving a difference of opinion between the two initial evaluators of an offender, Mental Health must seek the opinion of a fourth evaluator only when a third evaluator concludes that the offender meets SVP criteria.

Mental Health's Action: Pending.

Mental Health stated that it is preparing rulemaking packages, which will include the submission of regulations, to the Office of Administrative Law by the end of 2011.

Legislative Action: Unknown.

The state auditor is not aware of any action taken by the Legislature as of January 5, 2012.

Recommendation 1.5—See pages 29—32 of the audit report for information on the related finding.

To ensure that it will have enough qualified staff to perform evaluations, Mental Health should continue its efforts to obtain approval for a new position classification for evaluators. If the State Personnel Board (SPB) approves the new classification, Mental Health should take steps to recruit qualified individuals as quickly as possible. Additionally, Mental Health should continue its efforts to train its consulting psychologists to conduct evaluations.

Mental Health's Action: Partially implemented.

Mental Health stated that its SVP Evaluator classification proposal is to be heard by SPB in October 2011 and if approved, Mental Health will immediately recruit and train evaluators once the position is approved. Additionally, Mental Health reported that Senate Bill 179, approved in September 2011, allows for an extension to use contractors until January 2013.

Recommendation 1.6—See page 32 of the audit report for information on the related finding.

To ensure that the Legislature can provide effective oversight of the program, Mental Health should complete and submit as soon as possible its reports to the Legislature about Mental Health's efforts to hire state employees to conduct evaluations and about the impact of Jessica's Law on the program.

Mental Health's Action: Partially implemented.

Mental Health submitted a combined report on its efforts to hire state employees in July 2011. This report covered its activities for the period July 2009 through January 2011. Mental Health stated that it planned to submit two additional reports to the Legislature by October 1, 2011: a report covering its efforts to hire state employees through July 2011 and a report on the impact of Jessica's Law on the program.