

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)¹ 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 July 2012 and August 2012, respectively.

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: Fully implemented.

Mental Health has completed database enhancements that will enable it to track more specific information related to victims, offenders, offenses, clinical screening outcomes, and evaluation outcomes.

¹ As of July 1, 2012, the Department of Mental Health became the Department of State Hospitals.

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: No action taken.

- ➔ Although Mental Health indicates that referrals from Corrections have declined, it did not specify any actions taken to revise the structured screening instrument. Mental Health stated that referral efficiencies have been realized through the implementation of Assembly Bill 109 and that referrals from Corrections for January through June 2012 were significantly lower than in previous years. Mental Health stated that it now agrees that all of the referrals received from Corrections require review by Mental Health staff.

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 the State Authorized Risk Assessment Tool for Sex Offenders (STATIC-99R) to assess the risk that an offender will reoffend.

Corrections' Action: No action taken.

- ➔ Although Corrections explored what additional screening it could do before making referrals to Mental Health, it chose not to implement any of the changes we recommended to its referral process. Corrections stated that it has determined that the STATIC-99 scores should continue to be part of the Mental Health clinical evaluation and should not be used by Corrections to screen out a case prior to referral to Mental Health for evaluation. Corrections also stated that due to the Public Safety Realignment Act, Corrections no longer receives parole violators. Corrections stated that it and its Board of Parole Hearings will review previous screening results and refer the case to Mental Health. Corrections and its Board of Parole Hearings stated that it believes that Mental Health is better qualified to determine whether the current offense would alter a prior determination based on a clinical evaluation of the current offense and its possible physiological connectedness with the previous sex offense.

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: Fully implemented.

Corrections provided a memorandum issued in August 2011 adjusting its timelines and transmittal methods for SVP cases. Corrections also implemented a new database for tracking SVP cases and indicated that it tracks referral dates to its Board of Parole Hearings and Mental Health. Additionally, Corrections stated that the number of cases referred to Mental Health has decreased significantly as a result of Public Safety Realignment. Corrections provided a report from its tracking system showing a reduction in referrals to Mental Health.

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: Partially implemented.

Mental Health stated that it is moving forward with a regulation that would allow it to seek the opinion of a fourth evaluator only when a third evaluator concludes that the offender meets the SVP criteria when resolving a difference of opinion between the two initial evaluators. As of August 2012 Mental Health states that its legal office is reviewing the final documents for submission to the Office of Administrative Law.

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 Board² (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.

According to Mental Health, it received approval for the SVP Evaluator classification from the SBP in March 2012 and began immediate recruitment. Although Mental Health reported that it expects to fill 35 evaluator positions by the end of July 2012, it did not provide documentation to show how many have been hired so far. Additionally, Mental Health provided documentation to show it is continuing efforts to provide training to its consulting psychologists to conduct evaluations and asserted that all existing consulting psychologists have received the training. However, it has not yet provided us with the documentation we requested to demonstrate who attended the training.

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: Pending.

Mental Health stated that it submitted to the Legislature a combined report on its efforts to hire state employees to conduct evaluations for the periods of July 2011 and January 2012 and that it is updating the data contained in the report regarding the impact of Jessica's Law. However, Mental Health has not provided us with copies of those reports.

² On July 1, 2012, the State Personnel Board and the Department of Personnel Administration were combined to create the California Department of Human Resources.

