

No. S277072

# In the Supreme Court of the State of California

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IN RE VICTOR TELLEZ, ON HABEAS CORPUS.

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Fourth Appellate District, Case No. D079716  
San Diego County Superior Court, Case No. SCE369196  
The Honorable Roderick W. Shelton, Judge

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## RESPONDENT'S REQUEST FOR JUDICIAL NOTICE

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July 20, 2023

Pursuant to Evidence Code sections 452, 453, and 459, and rule 8.252(a) of the California Rules of Court, respondent moves this Court to take judicial notice of the 2014-2015 audit report presented by the California State Auditor concerning the California Department of State Hospitals' (DSH) Sex Offender Commitment Program. Pages 40 and 41 of the report detail the number of offenders evaluated for commitment as a sexually violent predator (SVP) by DSH evaluators for the years 2009 through 2014, and the outcomes of the evaluations. A copy of the full report is attached to this request as Attachment A.

Under Evidence Code sections 452, subdivision (c), and 459, a reviewing court may take judicial notice of public records of state administrative agencies, including official acts of the legislative branch of the state. Because the attached report was prepared by the California State Auditor at the request of the Joint Legislative Audit Committee, it constitutes an official act of the legislative branch of California, and is the proper subject of judicial notice pursuant to subdivision (c) of Evidence Code section 452. (*Alvarado v. Superior Court* (2000) 23 Cal.4th 1121, 1151, fn. 6 [a California State Audit report was a proper subject of judicial notice].)<sup>1</sup>

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<sup>1</sup> Section 453 of the Evidence Code provides that judicial notice of the matters set forth in section 452 is mandatory if properly requested by a party. The requesting party must give sufficient notice of the request to enable the adverse party to prepare to meet it, and furnish the court with sufficient information to enable the court to take judicial notice of the matter. (Evid. Code, § 453, subds. (a) & (b).)

The matter to be noticed is relevant to the central issue of this case: whether the Sixth Amendment requires defense counsel to advise a defendant pleading guilty of possible SVP commitment. (Cal. Rules of Court, rule 8.254(a)(2)(A).) Tellez claims that such an advisement is required because SVP commitment is akin to immigration consequences. Respondent distinguishes immigration consequences from SVP commitment, arguing, among other things, that SVP commitment is far from an automatic result of a qualifying conviction. The report sets forth statistics regarding the number of initial SVP evaluations that result in a positive referral for SVP commitment.

The report was not presented to the lower courts. (Cal. Rules of Court, rule 8.254(a)(2)(B).) However, a reviewing court can take judicial notice of a matter not previously noticed by the trial court. (Evid. Code, § 459, subd. (d); *Brosterhous v. State Bar* (1995) 12 Cal.4th 315, 325.)

The matter to be noticed relates to proceedings that occurred before the judgment that is the subject of the appeal. (Cal. Rules of Court, rule 8.252(a)(2)(D).)<sup>2</sup>

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<sup>2</sup> The report can also be found on the California State Auditor's website: <https://www.auditor.ca.gov/pdfs/reports/2014-125.pdf>.

## CONCLUSION

Based on the foregoing, respondent respectfully requests this Court take judicial notice of the attached report.

Respectfully submitted,

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July 20, 2023

## CERTIFICATE OF COMPLIANCE

I certify that the attached Respondent's Request for Judicial Notice uses a 13-point Century Schoolbook font and contains 392 words.

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*Attorney General of California*

S/ JOY UTOMI  
JOY UTOMI  
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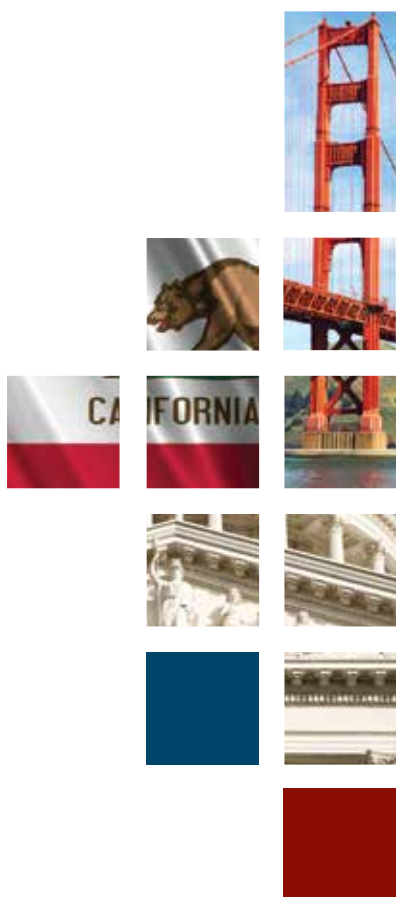
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# **ATTACHMENT- A**

California Department of State Hospitals'  
Sex Offender Commitment Program  
2014-2015 Audit Report



## California Department of State Hospitals

It Could Increase the Consistency of Its Evaluations of  
Sex Offenders by Improving Its Assessment Protocol  
and Training

Report 2014-125

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March 12, 2015

2014-125

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 California State Auditor presents this audit report concerning the California Department of State Hospitals' (State Hospitals) Sex Offender Commitment Program (program). The program targets a small but extremely dangerous subset of sexually violent offenders (offenders) who present a continuing threat to society because their diagnosed mental disorders predispose them to engage in sexually violent criminal behavior. State Hospitals evaluates these offenders to determine whether they meet criteria to be considered sexually violent predators (SVPs) and whether courts should consider committing such offenders to a state hospital.

Our report concludes that State Hospitals' evaluations of potential SVPs were inconsistent. Although state law requires that evaluators consider a number of factors about offenders, such as their criminal and psychosexual histories, we noted instances in which evaluators did not consider all relevant information. We noted that gaps in policies, supervision, and training may have contributed to the inconsistent evaluations. Specifically, State Hospitals' standardized assessment protocol for conducting evaluations of potential SVPs lacks adequate detail and direction for SVP evaluators on how to perform evaluations. Further, State Hospitals' headquarters lacks a process of supervisory review of evaluators' work from a clinical perspective. We also noted that State Hospitals has not consistently offered training to its evaluators, and did not provide SVP evaluators with any training between August 2012 and May 2014. Also, State Hospitals could not demonstrate that its evaluators had training on a specific type of instrument used when assessing whether an individual would commit another sexual offense until it began offering such training at the end of 2014.

We also noted additional areas in which State Hospitals could improve its evaluation process. Specifically, it has not documented its efforts to verify that its evaluators met the experience portion of the minimum qualifications for their positions. In addition, in March 2013, State Hospitals developed a process for assigning and tracking the workload of its evaluators and recently revised it in January 2015. Although the revised process addresses some concerns about workload assignments, it omits other elements and State Hospitals has not established a formal process for periodically reviewing its workload assignment process. Finally, State Hospitals needs to address its backlog of annual evaluations of currently committed SVPs at Coalinga State Hospital (Coalinga). When Coalinga fails to promptly perform these evaluations, it is not fulfilling one of its critical statutory obligations, leaving the State unable to report on whether the SVPs continue to pose risks to the public and whether unconditional release or release to a less restrictive environment might be an appropriate alternative.

Respectfully submitted,



ELAINE M. HOWLE, CPA  
State Auditor

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## Summary

### Results in Brief

The Legislature created the Sex Offender Commitment Program (program) in 1996 to target a small but extremely dangerous subset of sexually violent offenders who present a continuing threat to society because their diagnosed mental disorders predispose them to engage in sexually violent criminal behavior. Through this program, the California Department of Corrections and Rehabilitation (Corrections) refers certain sex offenders (offenders) to the California Department of State Hospitals (State Hospitals) for psychological evaluations when those offenders are nearing their scheduled release dates. State Hospitals' evaluators determine whether the offenders meet the criteria for being a sexually violent predator (SVP). If State Hospitals determines that offenders meet the SVP criteria, it requests the county counsels to petition for the offenders' commitments to a state hospital. If the county counsels concur with the request, the counties will submit a petition to the court, which decides whether the individuals should be committed. State law designates Coalinga State Hospital (Coalinga) as the hospital for SVPs unless unique circumstances exist. For example, one female SVP is held at another state hospital. As of June 2014 approximately 930 individuals were either residing at Coalinga pending trials for commitment or were committed as SVPs.

Despite the critical role State Hospitals' evaluations play in the SVP commitment process, it has not ensured that it conducts these evaluations in a consistent manner. State law requires that evaluators consider a number of factors about offenders, such as their criminal and psychosexual histories, when determining whether they meet the SVP criteria. However, of the 29 evaluations we reviewed—23 conducted by evaluators at State Hospitals' headquarters in Sacramento and six conducted by evaluators at Coalinga—we noted instances in which evaluators did not demonstrate that they considered all relevant information. For example, one evaluation did not indicate that the evaluator used a certain kind of instrument to gauge the risk that the individual would commit another sexual crime, and eight did not note that the evaluators had reviewed a report from Corrections that identifies any communication challenges or disabilities the individuals might have that could affect their assessments. In fact, we noted one instance in which differences in the documentation that evaluators indicated they reviewed led evaluators to reach very different conclusions about an individual: One evaluator noted that the individual had experienced suicidal thoughts, while the other stated that he did not have any mental health issues.

### Audit Highlights . . .

*Our audit of the California Department of State Hospitals' (State Hospitals) evaluation process for determining whether offenders meet the criteria of a sexually violent predator (SVP) highlighted the following:*

- » *It has not ensured that it conducts these evaluations in a consistent manner.*
- » *Although state law requires evaluators to use a standardized assessment protocol when conducting evaluations, State Hospitals' existing protocol lacks detail.*
- » *None of its reviews of SVP evaluations at headquarters focus on ensuring the quality of the evaluations from a clinical perspective.*
  - *The quality assurance team provides guidance to less experienced evaluators but does not provide supervisory review.*
  - *Coalinga State Hospital (Coalinga) has not established a process to document its clinical reviews of evaluations.*
- » *It could better use data related to court outcomes to identify areas to strengthen its evaluations.*
- » *Its training for SVP evaluators has been inconsistent—between August 2012 and May 2014 it offered no training at all.*
- » *Coalinga has a significant backlog of annual SVP evaluations—it had 261 annual evaluations that were due to courts as of December 2014.*

When evaluators do not consider all relevant information, it is possible that State Hospitals may recommend that courts commit individuals who do not pose a danger to the public, or they may not recommend commitment of individuals who do. Further, when evaluators do not fully document how they reached their conclusions, they may not be able to adequately defend those conclusions if challenged in court. To avoid such situations, we would expect State Hospitals to provide its evaluators with significant guidance regarding how they should perform evaluations. State law requires evaluators to use a standardized assessment protocol when conducting evaluations. However, State Hospitals' existing protocol lacks detail. For example, the protocol does not give guidance on specific risk assessment approaches or list specific risk assessment instruments evaluators may choose to use. In contrast, the former protocol State Hospitals used in 2007 covered approaches to risk assessment and risk assessment instruments. However, State Hospitals revised and simplified this protocol in 2008 because the Office of Administrative Law determined that certain provisions of the protocol met the definition of regulations but had not gone through the required regulatory process.

Additionally, evaluators did not always consider all three criteria for determining whether offenders might be recommended for commitment; however, this decision created some efficiency. Specifically, in three evaluations we reviewed the evaluators noted that they did not diagnose a mental disorder—the second of three criteria that must be met for commitment—and therefore chose not to evaluate the third criterion, which is whether the diagnosed mental disorder makes the offenders likely to engage in sexually violent, predatory criminal behavior in the future without treatment and custody. State Hospitals has directed evaluators to complete evaluation of all three criteria regardless of the outcome of one. However, if the evaluator determines that an offender will not meet the criteria, we believe stopping the evaluations is both appropriate and efficient.

Given that State Hospitals recently hired many of its evaluators and that evaluating SVPs requires highly specialized skills, we also would expect State Hospitals to have established certain quality control measures, such as supervisory reviews, to ensure that its evaluators complete adequate and consistent evaluations. However, none of State Hospitals' reviews of SVP evaluations at headquarters focus on ensuring the quality of the evaluations from a clinical perspective. Further, in October 2013, State Hospitals established a quality assurance and training team (quality assurance team) to provide guidance to State Hospitals' less-experienced evaluators at headquarters; however, the quality assurance team does not provide supervisory review. At Coalinga—where evaluators conduct annual evaluations of individuals whom the State has already committed as SVPs—hospital managers stated that evaluators receive multiple levels of clinical review. However, Coalinga has not established a

process to document these reviews. Without evidence of adequate supervision and review, State Hospitals' evaluations may fail to effectively demonstrate the need to recommend or not recommend commitment of an individual.

Further, State Hospitals could better use data related to court outcomes to identify areas to strengthen its evaluations. High-quality evaluations are important because courts use them to decide whether individuals are SVPs and should be committed to a state hospital. However, State Hospitals has not consistently tracked the disposition of SVP court cases, and the courts do not always agree with State Hospitals' recommendations. For example, in one of the 23 evaluations we reviewed at State Hospitals' headquarters, a court chose to release an offender even though evaluators determined that he met the SVP criteria. A November 2014 change to State Hospitals' court scheduling process for evaluators may help State Hospitals better track case outcomes and evaluate trends for court decisions; however, it is too soon to conclude whether this new process is successful. Unless it tracks the dispositions of its SVP court cases, State Hospitals is missing an opportunity to improve its evaluation process and potentially strengthen its training and supervision of evaluators.

Besides providing guidance and supervisory reviews to evaluators, providing ongoing technical training is important to ensure the competence of those conducting evaluations of potential and current SVPs. However, State Hospitals has not consistently offered training to SVP evaluators. In 2009 and 2010 State Hospitals offered its evaluators—at the time, mostly contractors—training on a variety of topics, including sex offender risk assessment tools, statistics on sexual recidivism, the effect of aging on recidivism, and the violence-risk scale. In anticipation of hiring evaluators, State Hospitals developed its own training, which it provided in 2011 and part of 2012. However, between August 2012 and May 2014, it offered no training at all.

More recently, State Hospitals began taking steps to provide more robust training to its evaluators at its headquarters, though it has yet to take similar steps for the evaluators at Coalinga. In 2014 State Hospitals' chief psychologist and the quality assurance team developed a training plan for evaluators at headquarters. Specifically, in May 2014, State Hospitals offered comprehensive SVP training for all consulting psychologists, who currently represent 33 of 45 evaluators on staff. The training focused on the background of the SVP statutes, the various criteria under which State Hospitals evaluates potential SVPs, and a specific type of risk assessment tool. State Hospitals has a tentative plan to offer additional training but has yet to schedule it. Coalinga's evaluators receive fewer training opportunities than the evaluators



at headquarters. Coalinga's forensic senior psychologist supervisor designed a training plan for fiscal year 2014–15 to help new evaluators at the hospital develop a basic understanding of state law affecting forensic evaluations, forensic report writing, and risk assessment. She indicated that Coalinga is also in the process of developing an ongoing training plan for experienced evaluators and has some trainings scheduled for 2015.

Compounding the inconsistent training offered to evaluators, State Hospitals has not offered training on dynamic risk assessment instruments until recently. A dynamic risk assessment may consider factors that change slowly, such as personality disorders or sexual preference, to help predict long-term risk, and may consider acute, rapidly changing factors, such as negative mood or intoxication, that could signal the possible timing of a reoffense. However, in two trainings on forensic assessment in 2012, State Hospitals' instructors provided a high-level overview of dynamic risk factors but did not provide instructions on how to use specific assessment instruments. State Hospitals' chief psychologist stated that a dynamic risk assessment tool strengthens an evaluation by providing a higher degree of certainty when estimating the risk of a reoffense. As a result, State Hospitals provided training on dynamic risk assessment instruments in December 2014 and January 2015.

Finally, Coalinga has a significant backlog of annual SVP evaluations it has not completed. State law requires State Hospitals to evaluate at least annually SVPs committed to it. However, according to Coalinga's tracking log of overdue annual reports, it had 261 annual evaluations that were due to courts as of December 2014. According to the acting chief of forensic services at Coalinga, State Hospitals briefly required Coalinga's evaluators to complete another type of evaluation in addition to the annual evaluations, creating additional work. Further, he stated that Coalinga has found it difficult to hire staff. When State Hospitals does not complete annual evaluations on time, it is not fulfilling its statutory obligation to consider whether an SVP is a candidate for release.

### **Recommendations**

To promote efficiency, the Legislature should change state law to allow State Hospitals the flexibility to stop an evaluation once the evaluator determines that the offender does not meet one of the SVP criteria.

To improve the consistency of its evaluations, by June 2015 State Hospitals should create a written policy that requires its evaluators to include the following documentation in their evaluations:

- Detail describing all the documentation they reviewed.
- A description of the risk assessment instruments the evaluator used.
- Acknowledgement of their review of a form from Corrections that identifies any communication challenges or disabilities the offenders might have that could affect their assessments.

To promote consistency and ensure that it provides sufficient guidance to evaluators, State Hospitals should update its assessment protocol by March 2016 to include more specific instructions on how to conduct evaluations, such as what assessment instruments evaluators should use and what documents they should consider.

To improve the consistency and completeness of its evaluations, by December 2015 State Hospitals should develop a plan for the formal, supervisory review of evaluations from a clinical perspective.

To ensure that it has the data necessary to inform its training and supervision of evaluators, State Hospitals should identify the most efficient means for obtaining the outcomes of past trials—at least three years of past trials if possible—and should ensure that it includes such outcomes in its database by March 2016. It should use this information to provide training and supervision where they are most needed.

To ensure that its evaluators have the necessary training to conduct evaluations effectively and consistently, State Hospitals should complete the development of its comprehensive training plan for all evaluators by June 2015. In addition, by September 2015 it should provide training on risk assessment instruments to all new evaluators and those who have not yet received such training.

To reduce its backlog of annual evaluations at Coalinga and to reduce the number of days these evaluations are overdue, State Hospitals should continue its efforts to hire enough evaluators to meet its workload.

**Agency Comments**

State Hospitals generally agreed with our recommendations, described the steps it would take to implement them, and provided estimated implementation dates.

## Introduction

### Background

The Legislature created the Sex Offender Commitment Program (program) in 1996 to target a small but extremely dangerous subset of sex offenders (offenders) who present a continuing threat to society because their diagnosed mental disorders predispose them to engage in sexually violent predatory criminal behavior. State law designates these offenders as sexually violent predators (SVPs) and allows the State to commit them to a treatment facility for an indeterminate period of time. The law lists crimes that qualify as sexually violent offenses and defines *predatory* to mean acts against strangers, persons of casual acquaintance, or persons with whom the offender established relationships primarily for the purposes of victimization. Before the State commits offenders, state law requires that the State conduct trials to determine whether the offenders meet the criteria for an SVP—that, by reason of diagnosed mental disorders, they are likely to engage in acts of predatory sexual violence upon release. Determining whether offenders are SVPs and committing them for treatment is a civil rather than a criminal process.

Changes to state law during the last decade have expanded the scope of the program. In September 2006 Senate Bill 1128 (SB 1128) became law and added more crimes to the list of sexually violent offenses that could cause offenders to qualify as SVPs. More dramatically, in November 2006, California voters passed Proposition 83, also known as Jessica’s Law. In addition to creating additional residency restrictions and requiring global positioning system monitoring for certain sex offenders, Jessica’s Law added more crimes to the list of sexually violent offenses and decreased from two to one the number of victims necessary for the SVP designation to apply. Both SB 1128 and Jessica’s Law abolished the previous two-year term of civil commitment for SVPs and instead established a commitment term of indeterminate length. State law requires that individuals committed to the program as SVPs receive annual evaluations to consider their readiness for release. Further, as of June 2012, state law generally designated Coalinga State Hospital (Coalinga) as the state hospital for placing individuals committed as SVPs.<sup>1</sup>

### The Process for Evaluating SVPs

The California Department of State Hospitals (State Hospitals) and the California Department of Corrections and Rehabilitation (Corrections), including its Board of Parole Hearings (Parole Board),

<sup>1</sup> According to a July 2014 census from State Hospitals, there was one female SVP at another state hospital.

each play a role in identifying, evaluating, and requesting the commitment of an offender as an SVP. However, a court or jury makes the final determination of an offender's SVP status. State law requires that Corrections and its Parole Board screen offenders based on whether they committed sexually violent predatory offenses and on reviews of their social, criminal, and institutional histories. To complete these screenings, the law requires that Corrections use a structured screening instrument developed and updated by State Hospitals in consultation with Corrections. According to state law, when Corrections determines through this screening process that offenders may be SVPs, it must refer the offenders to State Hospitals for further evaluation at least six months before their scheduled release dates.

### Indicators That a Sex Offender Is a Sexually Violent Predator

The California Department of State Hospitals uses the following criteria in state law to determine whether a sex offender (offender) meets the criteria of a sexually violent predator:

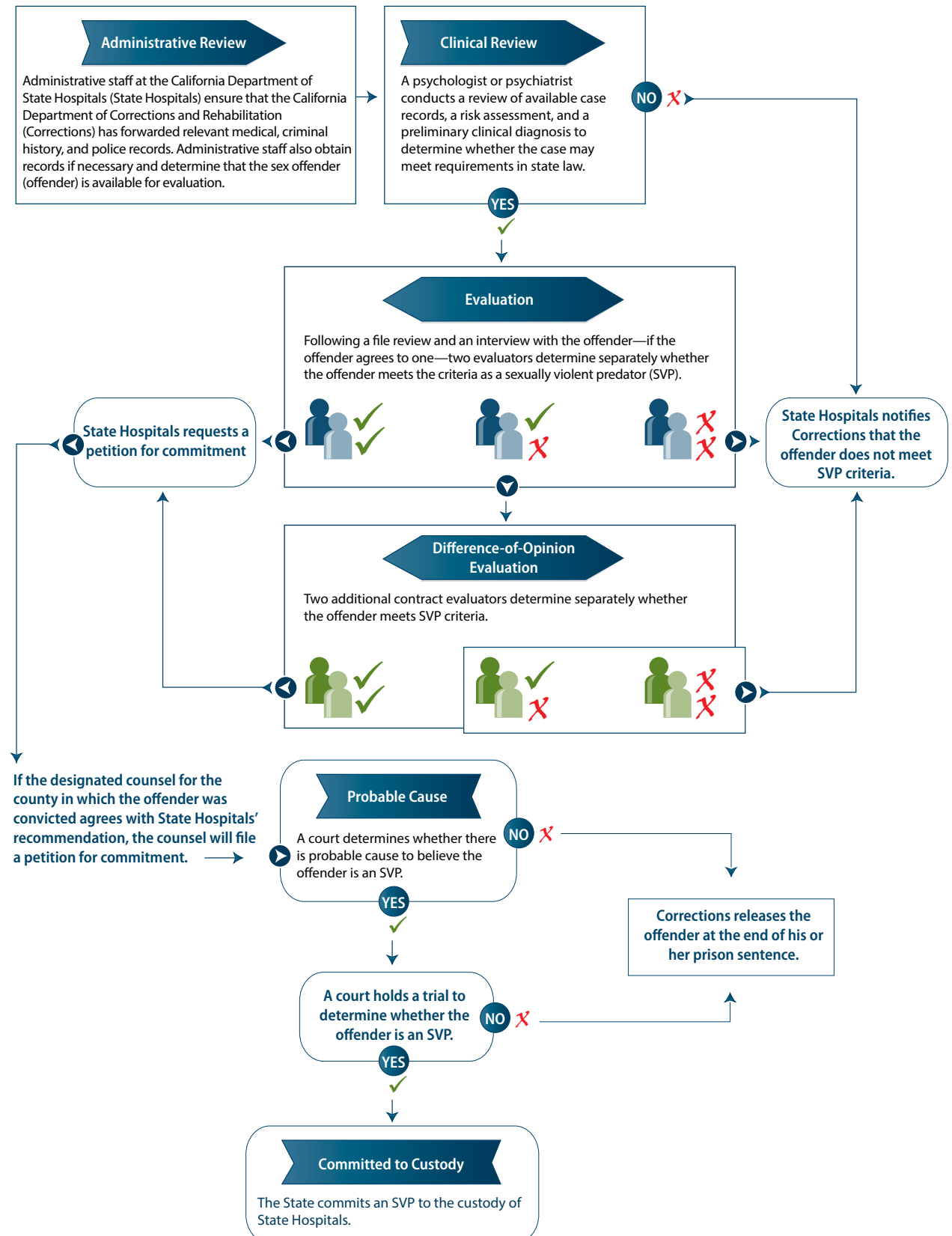
- The offender has been convicted of a sexually violent predatory offense against one or more victims, such as rape when committed with force, threats, or other violence.
- The offender suffers from a diagnosed mental disorder.
  - The law defines a diagnosed mental disorder as a condition affecting the emotional and volitional capacity that predisposes the person to commit criminal sexual acts to a degree that the person is a menace to the health and safety of others.
- The diagnosed mental disorder makes the person likely to engage in sexually violent predatory criminal behavior in the future without treatment and custody.
  - The law defines predatory offenses as acts against strangers, persons of casual acquaintance, or persons with whom the offender established relationships primarily for the purpose of victimization.
  - Regulations require evaluators to use tests and instruments and to consider various risk factors to determine the risk that an offender will commit future crimes.

Sources: Analysis of California Welfare and Institutions Code, Section 6600 et seq., Title 9 of the California Code of Regulations, and a California Supreme Court decision.

State law requires that State Hospitals evaluate all offenders that Corrections refers to it. It specifies that for each of these offenders, State Hospitals must conduct an evaluation consisting of assessments by two mental health professionals who must be practicing psychiatrists or psychologists. However, in practice, State Hospitals has an agreement with Corrections to conduct clinical reviews on Corrections' behalf in order to determine whether offenders merit a full evaluation. Figure 1 illustrates the process that State Hospitals uses to determine whether it should recommend to the district attorneys or the designated county counsels responsible for handling SVP cases (designated counsels) that the court should commit offenders to the program.

State law requires State Hospitals' evaluators to determine whether the offenders that Corrections refers to it meet the criteria for the SVP designation. State Hospitals divides the criteria for evaluation into three broad areas, which the text box describes in more detail. Two evaluators independently review information related to each offender and attempt to interview him or her. If both evaluators agree that the offender meets the SVP criteria, State Hospitals must request a petition for commitment. If the two evaluators disagree, the law requires State Hospitals to appoint two additional evaluators—who must meet certain professional qualifications and cannot be employees of the State—to perform evaluations. The two additional evaluators must agree that the offender meets the SVP criteria if State Hospitals is to request a petition for commitment.

**Figure 1**  
**Process for Determining Whether an Offender Meets the Criteria of a Sexually Violent Predator**



### Static and Dynamic Risk Factors

**Static risk factors** are fixed or historical characteristics, such as offender age, offense history, and sexual deviance.

**Dynamic risk factors** are characteristics that can change over time, such as cooperation with supervision, self-regulation, and social influences.

### Selected Risk Assessment Tools

- **Static-99/Static-99R:** A 10-item, score-based assessment tool used for adult male offenders ages 18 and over that addresses the risk of reoffending by examining more static risk factors such as the offender's age, conviction for nonsexual violence, prior sex offenses, and relationship with victims, among other items.
- **Stable 2007:** An evidence-based risk assessment tool that measures dynamic risk factors. The State Authorized Risk Assessment Tool for Sex Offender Review Committee (SARATSO committee) adopted the Stable 2007 in September 2013 as the new dynamic risk assessment instrument for California.
- **The Structured Risk Assessment/Forensic Version Light (SRA-FVL)** assesses long-term vulnerabilities through a review of two domains, sexual interests and relational style, and a partial review of a third domain, self-management.

**Sources:** The Web site for the SARATSO committee and [www.static99.org](http://www.static99.org), a Web site whose advisory board includes the creators of the Static-99.

## Assessing the Risk of Reoffense

Evaluators have a number of risk assessment instruments at their disposal for evaluating the risk that the offender will commit another sexually violent predatory crime in the future. The tools assist evaluators in assessing the impact various less changeable and more changeable characteristics—called static and dynamic variables, respectively—have on the risk that an individual will commit another crime. The text box describes the types of variable risk factors and identifies several risk assessment tools State Hospitals uses.

State law established a committee—the State Authorized Risk Assessment Tool for Sex Offenders Review Committee (SARATSO committee)—to select tools for use when assessing whether sex offenders will likely commit other sexual crimes. SARATSO selected the Static-99R risk assessment scale as the tool to evaluate adult males required to register as sex offenders. State law requires the SARATSO committee to determine whether the State should replace or supplement the static assessment tool in use. Until 2013 the SARATSO committee recommended supplementing the Static-99R with another assessment tool—the Structured Risk Assessment/Forensic Version Light. In 2013 SARATSO selected the Stable 2007 dynamic risk assessment instrument to supplement the Static-99R.

## Process for Committing Offenders as SVPs

Although State Hospitals conducts evaluations to determine whether offenders meet the SVP criteria, a court or jury makes the final decision to commit the offenders. When two evaluators determine that an offender meets the SVP criteria, state law requires that State Hospitals request the designated counsel of the county in which the offender was convicted to file a petition in court to commit the offender. If the county's designated counsel agrees with State Hospitals' recommendation, he or she must file a petition for commitment. State law requires that a judge determine whether probable cause exists to detain an offender beyond his or her prison term. If a judge determines that there is probable cause that the offender may be an SVP, he or she will order

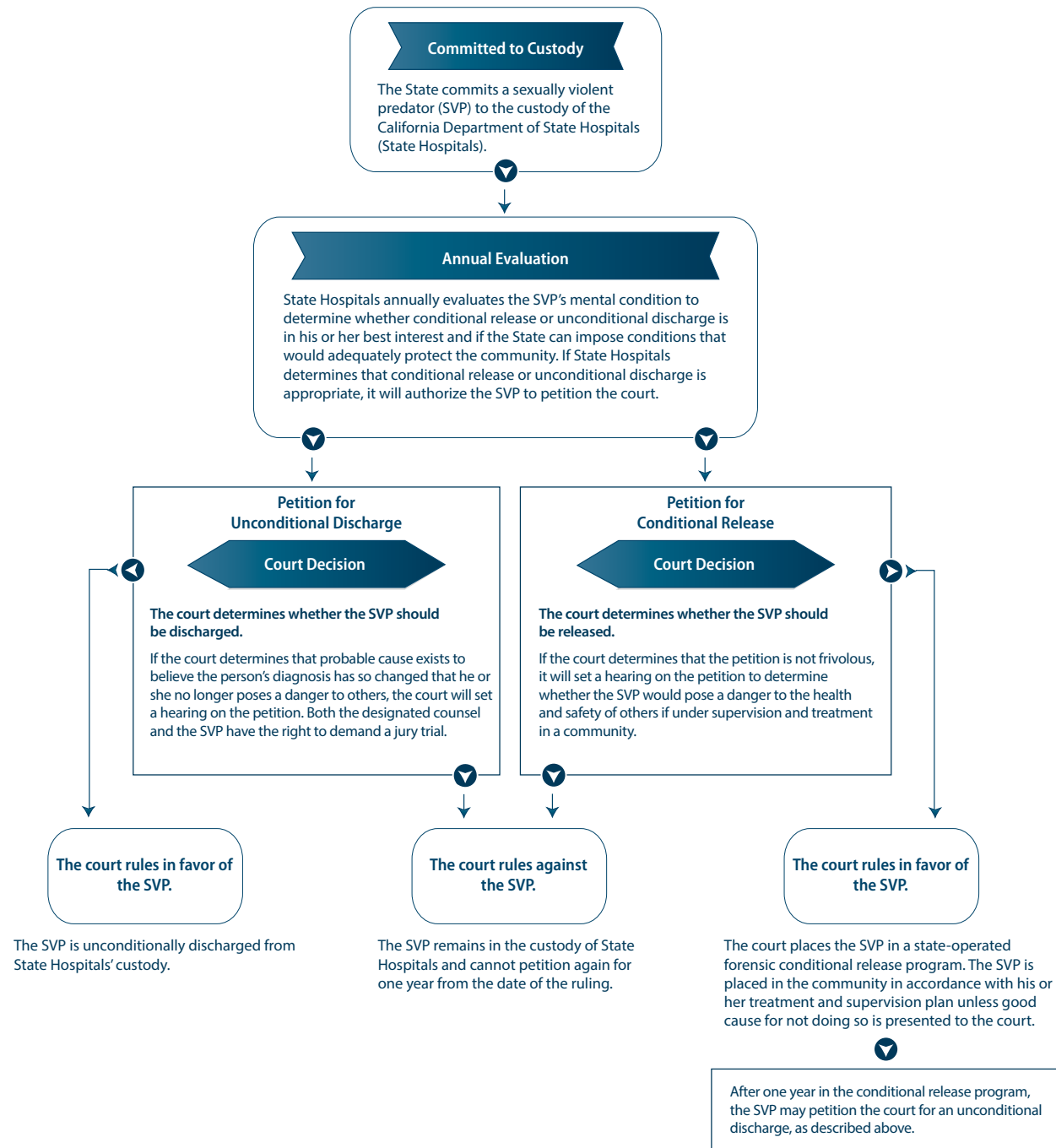
that the offender remain in custody in a secure facility. State law then requires a trial to determine whether the offender is an SVP. During the trial, the court may call upon State Hospitals' evaluators to provide testimony regarding their evaluations. According to State Hospitals, as of June 2014, 354 individuals at Coalinga were awaiting trial to determine whether they would be committed or released. The acting chief of forensic services at Coalinga stated that some individuals awaiting trial receive treatment. However, State Hospitals' chief psychologist told us that offenders' attorneys may recommend they not seek treatment because courts may see participation in treatment as an admission that they are SVPs. Representatives of the courts may periodically request updated evaluations of potential SVPs awaiting trial.

Additionally, some offenders purposely delay their trials and remain confined at a state hospital but are not technically committed as SVPs. State Hospitals' chief psychologist stated that offenders often delay their trials because age is a factor in determining whether an individual is likely to commit another sexually violent, predatory crime, as older offenders are statistically less likely to reoffend. According to State Hospitals' Sex Offender Commitment Program Support System, during fiscal years 2009–10 through 2013–14, courts determined that between eight and 22 individuals per year did not meet the SVP criteria and released them. In fiscal year 2013–14, for example, courts released 16 individuals, compared to the population of approximately 350 awaiting trial at Coalinga as of June 2014.

### **Treatment and Release**

If a court or jury finds that an offender is an SVP, a court commits the offender to a secure facility—generally Coalinga—for an indeterminate time period. State law requires State Hospitals to offer treatment. For those SVPs refusing treatment, State Hospitals must continue to offer treatment on at least a monthly basis. According to State Hospitals, as of June 2014 the courts had committed 573 individuals as SVPs who were housed at Coalinga, and the forensic senior psychologist supervisor at Coalinga stated that 35 percent participate in treatment. Although state law does not require treatment, it allows courts to consider an SVP's failure to participate in or complete treatment when determining whether the SVP's condition has changed and whether the SVP is eligible for release. Figure 2 on the following page outlines the process from commitment through release.



**Figure 2****Process Through Which the State Releases Sexually Violent Predators From the Custody of the California Department of State Hospitals**

Source: California Welfare and Institutions Code, Section 6600 et seq.

State law requires State Hospitals to evaluate SVPs once a year to determine whether they might qualify for release. The law also requires that a professionally qualified person prepare the evaluation report. In addition to the evaluation performed by an evaluator at Coalinga, the SVP may retain, or request the court to appoint, an expert to perform the annual evaluation. The evaluator's annual report must consider whether the SVP currently meets the SVP criteria and whether unconditional release or release to a less restrictive alternative than a state hospital—called a conditional release—would be in the SVP's best interest. State Hospitals must file these annual reports with the courts in the counties that committed the SVPs. As of December 2014 Coalinga had 11 evaluators performing annual evaluations.

Similar to the decision to commit an SVP, the decision to release an SVP resides with the courts. When State Hospitals finds that an SVP's condition has changed and that he or she no longer meets the SVP criteria and unconditional discharge is appropriate, state law requires State Hospitals' director to authorize the SVP to file a petition for unconditional discharge with the court responsible for his or her initial commitment. If the court determines that probable cause exists that an individual's diagnosed mental disorder has changed and he or she is not a danger to others, then state law requires the court to set a hearing on the issue. Both the designated counsel and the SVP have the right to request a jury trial. When determining whether an SVP seeking unconditional discharge continues to meet the SVP criteria, state law places the burden of proof on the State to prove beyond reasonable doubt that the SVP remains a danger to others. Table 1 on the following page shows the number of offenders who had been committed as SVPs who were discharged from a state hospital, as well as the number of SVPs that State Hospitals conditionally released, during fiscal years 2009–10 through 2013–14.

As part of its annual evaluations, State Hospitals may also recommend the release of an SVP to a less restrictive environment, called a conditional release. An SVP may petition a court for a conditional release with or without State Hospitals' recommendation. If a court determines the SVP's petition is not frivolous, the court will conduct a hearing to determine whether releasing him or her would pose a danger to the health and safety of others—that is, whether the SVP is likely to engage in sexually violent predatory criminal behavior due to a diagnosed mental disorder, if under supervision and treatment in the community.

If a court determines that the SVP would not be a danger to others through treatment in the community, state law requires the court to order the SVP into a state-operated conditional release program that includes outpatient supervision

and treatment. The conditional release program requires SVPs to abide by various conditions. For example, in July 2014, an SVP released into the conditional release program agreed to numerous conditions, such as outpatient treatment, 24-hour monitoring via a global positioning system, and restrictions on travel. State Hospitals has a contract with Liberty Healthcare to provide services for the conditional release program.

**Table 1**  
**Individuals Discharged From California Department of State Hospitals’ Custody or Released Conditionally**  
**Fiscal Years 2009–10 Through 2013–14**

FISCAL YEAR	INDIVIDUALS DISCHARGED OR RELEASED*	OF THOSE RELEASED, INDIVIDUALS ADMITTED TO THE CONDITIONAL RELEASE PROGRAM†
2009–10	23	4
2010–11	22	0
2011–12	17	3
2012–13	10	2
2013–14	14	2
<b>Totals</b>	<b>86</b>	<b>11</b>

Sources: California State Auditor’s analysis of data obtained from the California Department of State Hospitals’ (State Hospitals) Sex Offender Commitment Program Support System; information from State Hospitals’ conditional release program; and a spreadsheet of discharges, transfers, and deaths from Coalinga State Hospital.

\* Of the 86 individuals discharged from State Hospitals’ custody during the audit period, only nine were committed for indeterminate terms. The remaining 77 had expired two-year commitments—that is, they were committed before changes to state law in 2006, and the courts did not recommit them for an indeterminate term. Individuals may be unconditionally discharged from State Hospitals’ custody to the community when a court determines they no longer meet the criteria of a sexually violent predator (SVP). Individuals may also be discharged to parole, incarceration—for example, to a county jail—discharged to immigration for deportation, or released to the conditional release program.

† SVPs released conditionally must agree to certain restrictions, such as outpatient treatment and monitoring.

### Progress on Implementing Recommendations From a 2011 Audit on the Program

State Hospitals has fully implemented three recommendations from the California State Auditor’s (state auditor) prior audit report and has stated that it will not implement two. In July 2011 the state auditor issued a report titled *Sex Offender Commitment Program: Streamlining the Process for Identifying Potential Sexually Violent Predators Would Reduce Unnecessary or Duplicative Work* (Report Number 2010-116). The report concluded that the processes at Corrections and the former California Department of Mental Health—now State Hospitals—for identifying and evaluating SVPs were not as efficient as they could be and at times

resulted in the State performing unnecessary work.<sup>2</sup> The report made five recommendations to State Hospitals, and we discuss the status of each in the following paragraphs.

The report recommended that State Hospitals 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. State Hospitals has completed database enhancements that enable it to track more specific information related to victims, offenders, offenses, clinical screening outcomes, and evaluation outcomes.

State Hospitals also fully implemented a recommendation that it continue its efforts to obtain approval for a new position classification for evaluators, continue to recruit qualified individuals, and continue its efforts to train its consulting psychologists to conduct evaluations. State Hospitals received approval from the State Personnel Board for a new sexually violent predator evaluator (SVPE) position and, according to the assistant deputy director of State Hospitals' Forensic Services Division (forensic services), has completed hiring evaluators in this classification. As of December 2014 State Hospitals had 12 SVPEs and 33 consulting psychologists on staff to conduct evaluations.

Further, we recommended that State Hospitals complete and submit reports to the Legislature on its efforts to hire state employees to conduct evaluations and on the impact of Jessica's Law on the program. As previously noted, State Hospitals completed its hiring of employees to complete evaluations. State Hospitals submitted a report to the Legislature in July 2012, which included information on the impact of Jessica's Law.

State Hospitals reported to us that it will not implement two recommendations. First, the report recommended that, to eliminate duplicative effort and increase efficiency, Corrections and State Hospitals jointly revise their structured screening instrument so that the referral process would adhere more closely to the law's intent. As previously discussed, state law requires Corrections and its Parole Board to screen potential SVPs in accordance with a structured screening instrument developed and updated by State Hospitals in consultation with Corrections. If this screening determines that the offender is likely to be an SVP, state law requires Corrections to refer the person to State Hospitals for a full evaluation. However, our 2011 audit report found that Corrections

<sup>2</sup> In June 2012 the California Department of Mental Health was renamed the California Department of State Hospitals. To avoid confusion, we refer to the California Department of Mental Health as State Hospitals throughout the report.

frequently referred offenders whom State Hospitals had previously evaluated and found not to meet the SVP criteria, even though those offenders had not committed new sexual crimes.

To address this recommendation, State Hospitals reported that it believes that by entering into a memorandum of understanding with Corrections in January 2011, in which Corrections delegated authority to State Hospitals to conduct a clinical review, it is in compliance with the law's intent. State Hospitals agreed to conduct clinical review screens of offenders' sexually violent predatory offenses and social, criminal, and institutional histories. According to the assistant deputy director of forensic services, the memorandum uses State Hospitals' expertise in evaluating potential offenders.

Finally, State Hospitals reported that it will not implement a recommendation related to reducing costs for unnecessary evaluations. Specifically, the report recommended that it 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, it must seek the opinion of a fourth evaluator only when the third evaluator concludes that the offender meets SVP criteria. State Hospitals stated that it will not implement this recommendation because of the significant reduction in referrals it receives from Corrections and its finding that potential costs savings were insignificant. Therefore, according to the assistant deputy director of forensic services, State Hospitals plans to continue to obtain two evaluations to resolve cases in which the initial two evaluators do not agree.

### **Scope and Methodology**

The Joint Legislative Audit Committee directed the state auditor to perform an audit of the policies and procedures that State Hospitals' mental health professionals follow when evaluating sex offenders for initial commitment, recommitment, and conditional or unconditional release.

**Table 2**  
**Audit Objectives and the Methods Used to Address Them**

AUDIT OBJECTIVE	METHOD
1 Review and evaluate the laws, rules, and regulations significant to the audit objectives.	Reviewed relevant state laws and regulations.
2 Review the policies and procedures used by evaluators at the California Department of State Hospitals (State Hospitals) when conducting evaluations of offenders and sexually violent predators (SVPs). Specifically, determine the following: <ol style="list-style-type: none"> <li>The amount of time that evaluators are directed to spend on evaluations.</li> <li>The peer and supervisory review procedures for evaluations.</li> <li>The steps taken to replace an evaluator when an evaluation is incomplete.</li> <li>Whether the policies or procedures provide any monetary or workload incentives to evaluators.</li> <li>Whether the policies and procedures used by State Hospitals' evaluators are consistent with best practices, to the extent that those practices can be identified.</li> </ol>	<p>To evaluate State Hospitals' policies and procedures for the specified items, we did the following:</p> <ul style="list-style-type: none"> <li>Reviewed current and prior versions of State Hospitals' standardized assessment protocol and other documentation related to conducting evaluations.</li> <li>Reviewed a decision from the Office of Administrative Law that provisions of State Hospitals' 2007 protocol were regulations that had not been approved through the Administrative Procedure Act.</li> <li>Interviewed key staff at State Hospitals and at Coalinga State Hospital (Coalinga) to obtain their perspectives. Also reviewed State Hospitals' available policies and procedures.</li> <li>Noted that neither State Hospitals nor Coalinga has formal policies regarding replacing evaluators when evaluations are incomplete, but managers at both entities stated that a new evaluator assigned to an incomplete evaluation would need to redo it entirely.</li> <li>Interviewed key staff at State Hospitals and Coalinga to determine what peer and supervisory review procedures are used in the evaluation process. Also reviewed available documentation of the peer and supervisory review procedures.</li> </ul> <p>To assess whether State Hospitals' policies and procedures were consistent with best practices, we did the following:</p> <ul style="list-style-type: none"> <li>Reviewed guidance from the American Psychological Association (APA) regarding forensic evaluation of sex offenders and incorporated that into our work on objectives 3 and 7c.</li> <li>Reviewed laws related to SVPs in Massachusetts, Washington, and South Carolina, as well as audits or other research on programs in Virginia, Florida, and Colorado. We did not identify specific practices for California to follow.</li> </ul>
3 Review a selection of evaluations, including evaluations for initial commitment and for conditional and unconditional release, and determine whether the evaluations were completed in accordance with state law and regulations, with State Hospitals' policies and procedures, and with any identifiable best practices. As part of this review, consider the breadth of documents that State Hospitals' evaluators consider when completing an evaluation of a sex offender or SVP and the number of treating staff interviewed as part of the evaluation.	<ul style="list-style-type: none"> <li>Interviewed relevant staff regarding State Hospitals' and Coalinga's expectations for completing evaluations.</li> <li>Selected and reviewed 29 evaluations conducted during fiscal years 2009–10 through 2013–14, including 23 from State Hospitals' evaluators at its headquarters and six from Coalinga's evaluators. Our selection included initial, updated, and annual evaluations, as well as evaluations performed immediately before an offender or an SVP's release.</li> <li>Assessed the extent to which the 29 evaluations adhered to State Hospitals' protocol and expectations as well as APA guidance.</li> <li>Compared each of the 23 evaluations at State Hospitals' headquarters to other evaluations of the same individual to determine any differences in the documents the evaluators indicated they used.</li> <li>For the six evaluations at Coalinga, we assessed the number of treatment staff consulted when developing the evaluation. We have no findings in this area.</li> </ul>
4 By year, determine the number of positive determinations and the number of negative determinations for both offenders and SVPs.	Calculated positive and negative determinations for offenders using data obtained from State Hospitals' Sex Offender Commitment Program Support System (SOCPSS) and present the data in Table 5 on page 41. See the discussion about SVPs in Objective 5.
5 Determine the following information by year: <ol style="list-style-type: none"> <li>The number of SVPs that State Hospitals found suitable for conditional release.</li> <li>The number of SVPs that State Hospitals found suitable for unconditional release.</li> <li>The number of SVPs released for any reason, including a case dismissal or a finding by State Hospitals that the individual did not meet the SVP criteria.</li> <li>The number of SVPs that State Hospitals found unsuitable for release.</li> </ol>	<ul style="list-style-type: none"> <li>Calculated the number of individuals released using data from State Hospitals' SOCPSS.</li> <li>Obtained a list of all SVPs who had been or were currently in State Hospitals' conditional release program.</li> <li>In SOCPSS, State Hospitals tracks the findings of each evaluation of individuals who have been committed to State Hospitals. However, it does not track an overall result by individual evaluated. Thus, we are not able to report on the number of SVPs that State Hospitals found suitable for release. Instead, we report the findings of individual evaluators. The table on page 52 in the Appendix provides information on the conclusions of individual evaluators regarding the individuals committed to the custody of State Hospitals.</li> <li>Interviewed key State Hospitals management regarding its efforts to track the outcomes of court cases.</li> </ul>

AUDIT OBJECTIVE	METHOD
<p>6 By year, determine the total number of evaluators used by State Hospitals, the number of those evaluators that were State Hospitals' employees, and the number of cases assigned to each evaluator.</p>	<ul style="list-style-type: none"> <li>Using data obtained from State Hospitals' SOCPSS, information obtained from both State Hospitals and Coalinga on their evaluators, and State Hospitals' payroll data obtained from the California State Controller's Office's Uniform State Payroll System, we calculated the number of employee and contract evaluators State Hospitals used during fiscal years 2009–10 through 2013–14 and the number of evaluations conducted. We present this data in Table 6 on page 44.</li> <li>Identified State Hospitals' method for assigning cases to evaluators. Because State Hospitals assigns evaluators on a per-evaluation basis, rather than a per-case basis, the steps we took to address Objective 6 also pertain to Objective 7b. We also report on the process for assigning workload to evaluators in Objective 8.</li> </ul>
<p>7 Review the qualifications and experience of the evaluators State Hospitals used. At a minimum, consider the following:</p> <p>a. The number of years of relevant experience for State Hospital employees who conducted evaluations as compared to the number of years of experience for evaluators that State Hospitals contracted with.</p> <p>b. The number of evaluations conducted by State Hospitals' employees for each of the last five years as compared to the number of evaluations conducted by evaluators that State Hospitals contracts with over the same period.</p> <p>c. Whether State Hospitals provides adequate training to both staff and contracted evaluators.</p>	<ul style="list-style-type: none"> <li>Interviewed relevant staff regarding State Hospitals' procedures to verify that evaluators had the appropriate qualifications.</li> <li>Reviewed employment or contracting records for a selection of 15 employee and contract evaluators.</li> <li>For the 15 selected evaluators, we determined the number of years of experience based on the licensure period and other documentation.</li> <li>Verified whether each of the evaluators had a current, state-issued license to practice psychology or psychiatry in California.</li> </ul> <p>We describe the steps taken to address Objective 7b in Objective 6.</p> <ul style="list-style-type: none"> <li>Reviewed training materials and schedules.</li> <li>Obtained the perspective of managers at both State Hospitals' headquarters and Coalinga regarding training needs for evaluators.</li> <li>Reviewed training plans in place at both State Hospitals and Coalinga.</li> </ul>
<p>8 To the extent possible, provide recommendations for changes that would improve the policies and procedures State Hospitals uses to evaluate offenders and SVPs and the compensation or incentives given to evaluators.</p>	<ul style="list-style-type: none"> <li>Reviewed evaluator contracts and employee position descriptions for our audit period.</li> <li>Interviewed key management to understand State Hospitals' method of assigning work to its evaluators.</li> <li>Obtained documentation and evaluated workload assignment methodology to assess whether the practices in place might create incentives for employees or contractors to rush work.</li> <li>Made recommendations to State Hospitals related to several of the audit objectives.</li> </ul>
<p>9 Review and assess any other issues significant to the evaluation of offenders and SVPs.</p>	<ul style="list-style-type: none"> <li>Interviewed key managers at State Hospitals and reviewed relevant documentation related to State Hospitals' implementation of recommendations from a 2011 audit report by the California State Auditor (state auditor).</li> <li>Interviewed relevant staff and obtained Coalinga's tracking log to identify the extent of its backlog of annual evaluations for individuals committed as SVPs.</li> </ul>

Sources: State auditor's analysis of Joint Legislative Audit Committee audit request 2014-125, and information and documentation identified in the table column titled *Method*.

## Methods to Assess Data Reliability

In performing this audit, we obtained electronic data files extracted from the information systems listed in Table 3. The United States Government Accountability Office, whose standards we are statutorily required to follow, requires us to assess the sufficiency and appropriateness of the computer-processed information that we use to support our findings, conclusions, or recommendations. Table 3 describes the analyses we conducted using data from these information systems, our methodology for testing them, and the issues we identified pertaining to the data. Although we recognize that these issues may impact the precision of the numbers we present, there is sufficient evidence in total to support our audit findings, conclusions, and recommendations.

**Table 3**  
**Methods Used to Assess Data Reliability**

INFORMATION SYSTEM	PURPOSE	METHOD AND RESULT	CONCLUSION
California Department of State Hospitals (State Hospitals)  Uniform State Payroll System (payroll system)  State Hospitals' payroll data as maintained by the California State Controller's Office (state controller) for the period July 1, 2009, through June 30, 2014	For the period July 1, 2009, through June 30, 2014, determine whether the individual conducting the evaluation was a State Hospitals' employee (employee) or an evaluator State Hospitals contracted with (contractor) at the time the evaluation was performed.	<ul style="list-style-type: none"> <li>We performed data-set verification procedures and electronic testing of key data elements and did not identify any errors.</li> <li>We relied on completeness testing performed as part of the State's annual financial audit for payroll transactions between January 2008 and June 2013. Because we found the payroll data to be complete between January 2008 and June 2013, we have reasonable assurance that the payroll data for the period of July 2013 through June 2014 are also complete.</li> <li>We did not conduct accuracy testing on these data.</li> </ul>	Undetermined reliability for the purposes of this audit. Although this determination may affect the precision of the numbers we present, there is sufficient evidence in total to support our audit findings, conclusions, and recommendations.
State Hospitals  Sex Offender Commitment Program Support System (SOC PSS)  State Hospitals case and evaluation data related to sex offenders (offenders) as of September 17, 2014	To determine the number of evaluations by type, outcome, and fiscal year and the number of cases that included a difference of opinion between evaluators for offenders prior to commitment.	<ul style="list-style-type: none"> <li>We performed data-set verification procedures and electronic testing of key data elements and did not identify any issues.</li> <li>For a random selection of 29 evaluations, we verified that key data elements matched source documentation and did not identify any significant issues.</li> <li>To test the completeness of State Hospitals' data, we haphazardly selected 29 evaluations and traced them from State Hospitals' source documents back to SOC PSS. We found the data to be complete.</li> </ul>	Sufficiently reliable for the purposes of this audit.

*continued on next page...*



INFORMATION SYSTEM	PURPOSE	METHOD AND RESULT	CONCLUSION
	<p>To determine by fiscal year the number of offenders awaiting trial who received evaluations by State Hospitals.</p> <p>To determine by fiscal year the number of cases prior to commitment found by State Hospitals to be positive or negative for commitment.</p>	<ul style="list-style-type: none"> <li>• We performed data-set verification procedures and electronic testing of key data elements and did not identify any issues.</li> <li>• For a random selection of 46 evaluations prior to commitment, we attempted to verify that key data elements matched source documentation. However, we found two errors in each of two fields that contain the date that probable cause was found for an offender awaiting trial and the date that State Hospitals made its final determination for an offender prior to commitment.</li> <li>• To test the completeness of State Hospitals' data, we haphazardly selected 29 evaluations prior to commitment and traced them from State Hospitals' source documents back to SOCPSS. We found the data to be complete.</li> </ul>	Not sufficiently reliable for the purposes of this audit. Although this determination may affect the precision of the numbers we present, there is sufficient evidence in total to support our audit findings, conclusions, and recommendations.
	To determine by fiscal year the number of evaluations after commitment performed on sexually violent predators (SVPs) by type and outcome.	<ul style="list-style-type: none"> <li>• We performed data-set verification procedures and electronic testing of key data elements and did not identify any issues.</li> <li>• We performed accuracy testing for a random selection of 29 evaluations performed after commitment and attempted to verify that key data elements matched source documentation. The results of our testing identified three errors in the field that contains the date that State Hospitals received an evaluation from the evaluator. As a result, we were unable to identify the complete universe of evaluations during our audit period that were performed after commitment. Therefore, we did not conduct completeness testing for evaluations performed after commitment.</li> </ul>	Not sufficiently reliable for the purposes of this audit. Although this determination may affect the precision of the numbers we present, there is sufficient evidence in total to support our audit findings, conclusions, and recommendations.
	<p>To determine by fiscal year the number of offenders held due to probable cause who were discharged.</p> <p>To identify SVPs who were discharged by fiscal year.</p>	<ul style="list-style-type: none"> <li>• We performed data-set verification procedures and electronic testing of key data elements and did not identify any issues.</li> <li>• We randomly selected 29 evaluations after commitment and verified that key data elements matched source documentation, and did not identify any issues.</li> <li>• To assess the completeness of the SOCPSS data, we haphazardly selected 29 discharge records and traced them from State Hospitals' source documents back to SOCPSS and found the data to be complete.</li> </ul>	Sufficiently reliable for the purposes of this audit.
	Determine by fiscal year for both State Hospitals' employees and contractors the total number evaluations conducted.	<ul style="list-style-type: none"> <li>• We performed data-set verification procedures and did not identify any issues.</li> <li>• We performed electronic testing of key data elements and found that the data field containing Social Security number information was blank 47 percent of the time. As a result, we could not use this field to identify State Hospitals' employees who performed evaluations and took additional steps to manually identify their Social Security numbers.</li> <li>• We traced the universe of employees who performed evaluations during our audit period to the state controller's payroll system. We then randomly selected 29 contractors who performed evaluations during our audit period and verified that State Hospitals had contracts with these evaluators during our audit period.</li> <li>• As we previously described, the results of our accuracy testing of evaluations performed after commitment showed that the universe of evaluations during our audit period is not complete. Therefore, we lack assurance that we were able to identify all evaluators who performed evaluations during our audit period.</li> </ul>	Not sufficiently reliable for the purposes of this audit. However, we determined the numbers we present for evaluations prior to commitment are accurate due to the additional steps we performed. Further, the issues identified in accuracy testing may impact the precision of the numbers we present for evaluations performed after commitment. However, there is sufficient evidence in total to support our audit findings, conclusions, and recommendations.

Sources: California State Auditor's analysis of various documents, interviews, and data from the entities listed above.

# Chapter 1

## THE CALIFORNIA DEPARTMENT OF STATE HOSPITALS LACKS A ROBUST ASSESSMENT PROTOCOL AND REVIEW PROCESS FOR ITS EVALUATIONS FOR THE SEX OFFENDER COMMITMENT PROGRAM

### Chapter Summary

The California Department of State Hospitals (State Hospitals) has not been consistent in its evaluations of the sex offenders (offenders) whom the California Department of Corrections and Rehabilitation (Corrections) has referred to it for possible commitment as sexually violent predators (SVPs). Specifically, our review found that State Hospitals' evaluators did not always document that they considered all relevant information in their evaluations. State Hospitals' current assessment protocol likely contributed to the issues we noted. For example, the protocol does not give guidance on specific risk assessment approaches or list specific risk assessment instruments evaluators may choose to use. Further, although SVP evaluations completed by evaluators at State Hospitals' headquarters undergo several reviews, none is focused on ensuring the quality of evaluations from a clinical perspective. In October 2013 State Hospitals established a quality assurance and training team (quality assurance team) to provide guidance to State Hospitals' less-experienced evaluators at headquarters; however, the quality assurance team does not provide supervisory review.

Given that the courts, and not State Hospitals, have the final say on whether an offender is an SVP, we would expect State Hospitals to gather and analyze data on the extent to which the courts disagree with evaluators. However, State Hospitals has not consistently tracked the disposition of court cases. As such, State Hospitals is missing an opportunity to improve its evaluation process and better inform the training and supervision of its evaluators.

### State Hospitals' Evaluations of Current and Potential SVPs Have Been Inconsistent

State law requires that State Hospitals evaluate offenders for possible commitment as SVPs by considering criminal history; psychosexual history; type, degree, and duration of sexual deviance; and severity of mental disorder. However, our review of 29 evaluations found that State Hospitals' evaluators did not always document that they considered all relevant information. We reviewed 23 evaluations of current and potential SVPs completed by State Hospitals' evaluators at its headquarters in Sacramento and

*State Hospitals' evaluators have been inconsistent in the breadth of documentation they consider while performing evaluations.*

six annual evaluations of current SVPs that it completed at Coalinga State Hospital (Coalinga). We noted instances in which evaluators did not consider all relevant documentation, address elements of offenders' backgrounds, or use certain instruments to assess the risk of offenders committing additional crimes. When evaluators do not consider all relevant information, they may reach incorrect conclusions. Further, when they do not document the reasoning behind their conclusions, those conclusions are more likely to be challenged in court.

Our review demonstrates that State Hospitals' evaluators have been inconsistent in the breadth of documentation they consider while performing evaluations. According to State Hospitals' chief psychologist, State Hospitals expects its evaluators to review all documentation relevant to offenders they are evaluating; however, it has not formalized this expectation into a written policy or procedures manual, but rather informally communicates it to evaluators.<sup>3</sup> Nonetheless, when we reviewed evaluations by State Hospitals' evaluators in Sacramento, we found discrepancies in the ways that different evaluators assessed the same offenders. As discussed in the Introduction, at least two evaluators must independently evaluate whether an offender meets the criteria of an SVP. However, when we compared each of the 23 evaluations selected for review to companion evaluations performed by other evaluators, we noted differences in the documents evaluators indicated they reviewed.

At times, these discrepancies led to significant differences in the evaluators' descriptions of the offenders being evaluated. For example, in one case an evaluator listed that he reviewed several mental health records for a potential SVP that another evaluator did not list. The evaluator who listed reviewing these records noted that the offender experienced suicidal thoughts during incarceration, while the other evaluator stated that the offender did not have any mental health problems according to the offender's records from Corrections. This type of discrepancy is concerning and could ultimately prove problematic in court. We also observed other instances in which evaluators noted that they reviewed records others did not, such as probation reports, court complaints, behavioral reports, treatment records, and psychiatric notes.

In addition, the evaluations we reviewed did not always consider relevant background information. Specifically, four of the 23 evaluations did not contain sections describing that the evaluator

<sup>3</sup> In 2015 State Hospitals' contracts with independent evaluators require that the evaluators conduct a thorough file review, including a review of the offender's correctional file, criminal history, arrest record, and county probation reports. However, this language did not appear in past contracts.

considered the psychosexual history of the offenders, as state law requires. According to the Center for Sex Offender Management, a psychosexual history is a detailed and thorough sexual history that includes the exploration of sexual development, attitudes, fantasies, and adjustment.<sup>4</sup> Although two of these four evaluations contained sexual history sections and relationship history sections, they did not contain sections describing psychosexual history. According to State Hospitals' chief psychologist, the discussion in the sexual history and relationship history sections in these two evaluations did not adequately cover psychosexual history, although they addressed some elements of it. The remaining two evaluations did not contain specific sections on sexual history.

State Hospitals' evaluators also did not always fully document their use of static and dynamic risk assessment instruments, which we describe in the Introduction. A state regulation stipulates that the evaluator, according to his or her professional judgment, must apply tests or instruments along with other static and dynamic risk factors when making the assessment. The chief psychologist told us that State Hospitals has interpreted the regulations to mean that evaluators will apply both a static and a dynamic risk assessment instrument in conducting an SVP evaluation. However, the chief psychologist acknowledged that State Hospitals has not communicated this expectation to evaluators in a written policy. We could find no documentation of the use of a dynamic risk assessment instrument for one of the 23 evaluations we reviewed, and another evaluator used scores from a previous assessment of dynamic risk factors. Further, in four of the 23 evaluations, the evaluators did not include the scoring grids for some or all of the risk assessment instruments the evaluators used, even though the scoring grids allow evaluators to demonstrate how they reached conclusions regarding risks for reoffense. In another instance, the evaluator noted that he included the scoring instruments in an addendum; however, the evaluator did not note that he was referring to an addendum to his previous evaluation of the offender.

Further, State Hospitals' evaluators did not always document whether they took into consideration any potential barriers to communication with the offenders they evaluated. Forensic psychology specialty guidelines from the American Psychological Association state that when interpreting assessment results, forensic practitioners consider the purpose of the assessment as well as the various test factors, test-taking ability, and other characteristics of individuals being assessed that might reduce the accuracy of the evaluators' interpretations. These communication

*State Hospitals' evaluators did not always document whether they took into consideration any potential barriers to communication with the offenders they evaluated.*

<sup>4</sup> According to its Web site, the Center for Sex Offender Management is a national clearinghouse and technical assistance center that supports state and local jurisdictions in the effective management of offenders.

*When evaluators do not consider all relevant information, they risk drawing incorrect conclusions about whether offenders meet the SVP criteria.*

barriers could include situational, personal, linguistic, and cultural differences. Corrections uses the Disability and Effective Communication System (DECS)—a statewide disability and effective communication database—as a means of allowing its staff to view disability information and make necessary accommodations for inmates and parolees in parole proceedings. According to the chief psychologist, State Hospitals expects evaluators to review the DECS report and indicate that they examined it in their reports; however, it has not written this expectation into a policy. In eight of 23 evaluations we reviewed, the evaluators did not indicate whether they considered the DECS report, an important component that if not considered could result in an inaccurate conclusion by the evaluator.

When evaluators do not consider all relevant information, they risk drawing incorrect conclusions about whether offenders meet the SVP criteria. Further, if evaluators neglect to consider an adequate breadth of documentation or demonstrate how they reached their conclusions, courts may not have accurate and complete information to reach appropriate decisions. Consequently, a court may neglect to commit someone who poses a danger to the public or choose to commit someone who does not need to be in a state hospital.

In addition to not considering all relevant information, evaluators also did not always consider all three criteria for determining whether offenders might be recommended for commitment as SVPs. However, this decision created some efficiency. Specifically, the evaluators documented that they did not diagnose a mental disorder and therefore did not evaluate the third criterion for three of the 23 evaluations we reviewed. As the Introduction describes, diagnosing a mental disorder is the second of three criteria that offenders must meet to be considered for commitment as SVPs. In these cases, because the evaluators concluded that the offenders did not meet the second criterion, they chose not to assess the third criterion—whether the diagnosed mental disorder makes the offenders likely to engage in sexually violent, predatory criminal behavior in the future without treatment and custody. According to a staff legal counsel and chief psychologist, State Hospitals has directed evaluators to complete evaluations of all three criteria regardless of the outcome of one, even if that outcome means that the offender will not be considered an SVP. Nevertheless, if an evaluator determines that an offender will not meet the SVP criteria, we believe that stopping the evaluation is both sensible and efficient.

### **State Hospitals' Standardized Assessment Protocol Is Inadequate**

The inconsistencies we found in State Hospitals' evaluations are likely due in part to the fact that its standardized assessment protocol does not provide evaluators with adequate detail and

direction on how to perform evaluations. State law requires State Hospitals to conduct its evaluations of potential SVPs in accordance with a standardized assessment protocol, which it must develop and update in consultation with Corrections. State Hospitals' existing protocol, which it established in regulation in 2009, states that evaluators must make their assessments by applying tests or instruments along with other static and dynamic factors according to their professional judgment. However, the protocol provides little additional detail to assist evaluators on how to perform the assessments. For example, it does not describe specific risk assessment approaches or list specific risk assessment instruments evaluators may choose to use, such as the Static-99R or the Stable 2007.

State Hospitals' previous protocol from 2007 was significantly more detailed. It included a discussion of approaches to risk assessment and identified the different types of risk factors and risk assessment instruments evaluators could use. However, in August 2008, State Hospitals revised its protocol and removed this type of detail in response to a ruling by the Office of Administrative Law (OAL) that certain provisions within it should have been adopted in the manner required by the Administrative Procedure Act (Act). Specifically, the OAL ruled that provisions of the protocol that contained instructions to the evaluators on how to conduct evaluations, which questions to ask, and how to submit findings met the definition of regulations; thus, those sections should have been adopted pursuant to the Act. In response, State Hospitals revised its standard assessment protocol, stripping much of its detail, and established it in regulation.

However, without specific guidance regarding how to conduct evaluations, evaluators may not perform their work consistently or review all of the appropriate documents, increasing the risk that they will make erroneous assessments. When we discussed adopting a more detailed standard assessment protocol with State Hospitals, a staff legal counsel and the assistant deputy director of State Hospitals' Forensic Services Division (forensic services) told us that State Hospitals plans to update its assessment protocol by following the Act.

#### **State Hospitals Has Provided Evaluators With Limited Supervision, but Its New Quality Assurance Team Is Taking Some Steps to Improve Quality Control**

Another likely cause of State Hospitals' inconsistent evaluations is the limited supervision it has provided to its evaluators. Given its recent hiring of evaluators and the highly specialized nature of evaluating current and potential SVPs, we would expect State Hospitals to have established quality control measures, such as

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supervisory reviews, to ensure that evaluators complete adequate and consistent evaluations. However, none of State Hospitals' reviews of SVP evaluations focus on ensuring the quality of the evaluations from a clinical perspective. According to State Hospitals' chief psychologist, in October 2013 State Hospitals established a quality assurance team to improve opportunities for mentoring newer evaluators. Nevertheless, the quality assurance team's role is advisory, not supervisory. Further, at Coalinga—where evaluators generally focus on conducting annual evaluations of offenders who are already committed as SVPs—managers told us that evaluators should receive several levels of supervisory review. However, because Coalinga does not require supervisors to maintain a formal record of the reviews, it cannot demonstrate that they occur.

Although evaluations of potential SVPs completed at State Hospitals' headquarters undergo several levels of review, no level of review assesses the appropriateness of clinical conclusions the evaluators draw. According to State Hospitals' chief psychologist, a case manager performs a nonclinical review and checks evaluations for grammar and stylistic errors. A staff legal counsel at State Hospitals informed us that legal counsel also reviews certain evaluations: those that recommend commitment and those in which the two initial evaluators disagree about commitment and the two independent professionals who subsequently assess the offender also disagree. Further, she stated that legal counsel began reviewing update evaluations—evaluations that update information for prior evaluations—in January 2015. The staff legal counsel stated that the legal office checks for logic errors, continuity of thought, and consistent reasoning. The legal office also considers whether evaluations respond to the criteria necessary for legal commitment. However, it does not provide any analysis of whether evaluators correctly performed clinical elements, such as using a risk assessment instrument.

*If an evaluation lacks strong clinical elements, it may face scrutiny in court due to poor quality of the evaluator's analysis; ultimately, it may fail to adequately demonstrate the need to commit or not commit an offender.*

According to State Hospitals' chief psychologist, he signs off on some SVP evaluations, such as instances when a case manager or State Hospitals' legal services request a review. However, his reviews are more cursory than substantive. They critique the structure of an evaluation and ensure that its legal argument is sound but, like the legal office's reviews, they do not consider the quality of the clinical elements of the evaluation. If an evaluation lacks strong clinical elements, it may face scrutiny in court due to poor quality of the evaluator's analysis; ultimately, it may fail to adequately demonstrate the need to commit or not commit an offender.

State Hospitals' headquarters currently lacks the supervisory structure necessary to perform clinical reviews of evaluations. As of December 2014, 45 employee evaluators at State Hospitals' headquarters reported to the chief psychologist, who holds the only supervisory position. The chief psychologist stated that he is also responsible for overseeing the contract evaluators who perform SVP evaluations, and he expects there to be approximately 20 contractors for 2015. He also said that the clinical staff would like to expand case file reviews to ensure that the evaluators properly complete evaluations. However, he stated this would require an expansion of the quality assurance team and he estimates that he would need four or five veteran clinical staff on the team to fully run quality assurance of SVP evaluations. He told us that he requested the creation of such positions from the administration of forensic services in spring 2014, but the administration only approved an additional chief psychologist position in December 2014. He said that the process to fill this position will likely take several months.

Although State Hospitals does not have a process to perform a clinical supervisory review of evaluations, it has taken some steps to improve the quality of the evaluations. According to the chief psychologist, he established the quality assurance team shortly after joining State Hospitals in October 2013. Led by the chief psychologist and two field trainers who are veterans in the area of psychological evaluations, the team provides guidance to State Hospitals' consulting psychologists—a classification of evaluator that requires less experience—and assists in the development and implementation of State Hospitals' training plan. Although the team does not perform supervisory reviews, they are available to provide feedback to evaluators on their SVP evaluations upon the request of the evaluator, State Hospitals' management, or legal counsel. State Hospitals' chief psychologist provided an example of an instance in which he stated an evaluator requested that a quality assurance team member review a draft evaluation prior to its completion. In the review, the quality assurance team member noted multiple instances in which the evaluator could improve the quality of the writing and the clarity of the conclusion, and he also noted places where the evaluator neglected to include necessary information.

The quality assurance team is also responsible for State Hospitals' mentorship program for new evaluators. According to the chief psychologist, in August 2014 State Hospitals started a mentorship program for new SVP evaluators to shadow more-experienced evaluators, obtain feedback on evaluations, and receive assistance and training in courtroom testimony. State Hospitals has two classifications at headquarters responsible for conducting SVP evaluations: sexually violent predator evaluators and consulting psychologists. We discuss these classifications in more detail in Chapter 2. State Hospitals designed the mentorship program to

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*In contrast to State Hospitals' process at headquarters, the managers at Coalinga told us that multiple levels of review occur for the annual evaluations its evaluators perform of SVPs, but there is no evidence kept of their occurrence.*

assist only the consulting psychologists, because the minimum qualifications for this position do not require prior experience in the risk assessment and diagnosis of SVPs or an equivalent class of offenders. The quality assurance team is responsible for determining when new evaluators participating in the mentorship program are ready to complete evaluations on their own; according to the chief psychologist, the program usually lasts from a year to a year and a half. The chief psychologist stated that 12 consulting psychologists were participating in the mentorship program as of October 2014.

The chief psychologist said he would like to expand the supervisory review function and to continue the work of the quality assurance team; however, he acknowledges that he would need additional staff to do so. Without adequate supervision and review, State Hospitals' evaluators may not complete evaluations effectively, increasing the risk that the evaluators either will not identify offenders who meet the definition of an SVP or will erroneously conclude they do.

In contrast to State Hospitals' process at headquarters, the managers at Coalinga told us that multiple levels of review occur for the annual evaluations its evaluators perform of SVPs. However, Coalinga has not established a process to document these reviews. According to the acting chief of forensic services (forensics) at Coalinga, the forensic senior psychologist supervisor reviews each evaluation and identifies specific problems, such as missing risk factors, which she communicates to the evaluators. In addition, the acting chief of forensics stated that he conducts a quick read-through of the evaluations to ensure that they make sense and are convincing. Further, he said that an analyst reviews the evaluations for grammar, spelling, and punctuation errors. However, he also told us that Coalinga does not document these various reviews.

According to Coalinga's medical director, he signs the letters that transmit evaluations to the courts. The medical director stated that he reviews the evaluations at this time to ensure that they contain correct grammar and sentence structure and that the content supports the evaluators' recommendations. The medical director said that he does not use a checklist or follow any other guidance when reviewing these evaluations, and the only documentation to show his review is his signature on the letters to the courts. In the event that the medical director disagrees with an evaluation, he asks the evaluator to consider a modification, paying particular attention to the issue he deems to be important. If the evaluator declines to reconsider, the medical director submits a cover letter in disagreement with the evaluator's opinion.

Coalinga has a tool for documenting supervisory review but has not formally adopted its use. In 2012 Coalinga created a checklist to use for reviewing annual evaluations to ensure that they were accurate and complete. According to Coalinga's acting chief of forensics, he uses the checklist as a reference document when performing his reviews. Coalinga's forensic senior psychologist supervisor, on the other hand, stated that she does not use it. Coalinga's acting chief of forensics explained that he does not want to formalize the use of the checklist because courts could request checklists, and any errors or omissions might diminish the strength of the evaluations. However, we disagree with this reasoning since the reviews are performed before Coalinga finalizes its evaluations, so the evaluators would have a chance to correct errors. Further, using a formal checklist would assist both supervisors and evaluators in documenting that the evaluations are completed consistently and according to Coalinga's expectations.

#### **If State Hospitals Increased Its Tracking of Court Data, It Could Strengthen Its Evaluation Process**

State Hospitals could better use data related to court outcomes to identify areas for strengthening its evaluations. According to its Web site, one of State Hospitals' goals is excellence in forensic evaluation. As part of its effort to ensure that it meets this goal, we would expect it to examine the usefulness of its evaluations to those who use them—specifically, courts considering whether offenders meet the SVP criteria and should be committed. However, according to the chief psychologist, State Hospitals has not analyzed data regarding the disposition of its cases or established benchmarks to evaluate the rate at which courts agree or disagree with evaluators.

Courts do not always agree with State Hospitals' evaluators regarding whether offenders should be committed as SVPs. Under state law, State Hospitals' evaluators report on whether they believe offenders meet the SVP criteria based on their evaluations. However, a court or jury ultimately decides whether an offender will be committed to a state hospital. According to State Hospitals' assistant deputy director of forensic services, courts periodically disagree with its evaluators' findings. In our review of 23 evaluations, we noted one instance in which evaluators determined that an offender met the criteria as an SVP, yet the courts chose to release the offender. Given that the courts have the final say on whether offenders are SVPs, we would expect State Hospitals to gather and analyze data on court outcomes so that it can identify potential weaknesses in its processes for conducting evaluations.

*State Hospitals has not analyzed data regarding the disposition of its cases or established benchmarks to evaluate the rate at which courts agree or disagree with evaluators.*

***Because State Hospitals does not consistently track the courts' dispositions for its SVP cases, it is missing an opportunity to gain data that could improve its evaluation process and inform its training and supervision of its evaluators.***

However, State Hospitals has not consistently tracked the disposition of these court cases. The assistant deputy director of forensic services explained that before November 2014, State Hospitals' case managers tracked the disposition of court cases regarding SVP commitment by attempting to follow up with the courts and district attorneys directly. However, she indicated that this process was not always successful because court hearings were sometimes postponed or cancelled, so keeping up with the rescheduling of cases throughout the State demanded significant resources. She also stated that some counties were responsive to State Hospitals' requests for case outcomes and frequently reported their data, whereas counties with larger caseloads were often not as responsive. Moreover, she stated that when evaluators were primarily contractors, the courts sent notices to testify on their findings to the evaluators directly. Consequently, State Hospitals was often not aware of the court schedules, making it more difficult to consistently follow up on the outcome of cases.

Because State Hospitals does not consistently track the courts' dispositions for its SVP cases, it is missing an opportunity to gain data that could improve its evaluation process and inform its training and supervision of its evaluators. State Hospitals' chief psychologist agreed that analyzing the dispositions of cases could be beneficial. He stated that if, for example, the courts routinely reach conclusions that oppose evaluators' findings, State Hospitals could try to determine the cause, such as poor report writing or testimonial skills. It could then use this analysis to focus its training to best enhance evaluators' skills. We believe that collecting and analyzing such data would be an important element in its efforts to ensure high-quality evaluations.

State Hospitals recently changed its approach to tracking case outcomes. According to the assistant deputy director, the courts mail State Hospitals the notices for evaluators to appear in court now that most of the evaluators are employees and not contractors. As a result, case managers can better track the progress of cases through court and follow up with the district attorneys or courts for outcome results. Further, in November 2014, after our audit began, forensic services revised its process for its court scheduling. The revised process acknowledged that the previous court scheduling process was convoluted, confusing, and inefficient, with multiple instances of miscommunication between court officials, headquarters staff, and evaluators. Under the revised process, policy support staff are responsible for verifying which evaluators courts subpoena, inputting the relevant case data into the case management system, tracking key dates, and running reports for data and research. Policy support unit staff are also responsible for tracking initial and updated court appearance dates for evaluators. This new process may help State Hospitals

better track case outcomes, compile data, and evaluate trends in court decisions. However, given that State Hospitals only recently made these revisions, it is too soon to conclude that its process is effective.

## **Recommendations**

### ***Legislature***

To promote efficiency, the Legislature should change state law to allow State Hospitals the flexibility to stop an evaluation once the evaluator determines that the offender does not meet one of the SVP criteria.

### ***State Hospitals***

To improve the consistency of its evaluations, by June 2015, State Hospitals should create a written policy that requires its evaluators to include the following documentation in their evaluations:

- Detail describing all the documentation they reviewed.
- The offender's psychosexual history.
- A description of the risk assessment instruments the evaluator used and the scoring tool for those risk assessments.
- Acknowledgement of the evaluator's review of the DECS report.

To promote consistency and ensure that it provides sufficient guidance to evaluators, State Hospitals should update its assessment protocol by March 2016 to include more specific instructions on how to conduct evaluations, such as what assessment instruments evaluators may use and what documents they should consider. State Hospitals should also develop a timeline for periodically reviewing and making any necessary updates to the assessment protocol.

To comply with state law, State Hospitals should ensure that it follows the Administrative Procedures Act for future changes to its standardized assessment protocol.

To improve the consistency and completeness of its evaluations, by December 2015 State Hospitals should develop a plan for the formal, supervisory review of evaluations from a clinical perspective that balances the needs of the program with its resource limitations. For example, rather than attempting to review

every evaluation, State Hospitals could focus its review efforts on those evaluations most at risk of error or inconsistency, such as those completed by the newest evaluators. If State Hospitals adopts this or a similar approach, it should review the remaining evaluations on a sample basis.

To ensure that it can demonstrate the consistency of Coalinga's supervisory review of annual evaluations, by June 2015 State Hospitals should direct Coalinga to formally adopt its checklist for reviewing evaluations, provide the checklist to its evaluators, and include the checklist as part of its evaluation process. State Hospitals should also develop a checklist for the evaluations it performs at its headquarters and adopt it as part of its standardized assessment protocol by March 2016.

To ensure that it has the data necessary to inform its training and supervision of evaluators, State Hospitals should identify the most efficient means for obtaining the outcomes of past trials—at least the outcomes of three years of past trials if possible—and should ensure that it includes such outcomes in its database by March 2016. Additionally, by June 2015 it should establish procedures to ensure that it promptly collects the outcomes from current and future trials. Finally, State Hospitals should develop procedures to analyze these data at least twice annually to identify any trends in cases in which the courts' determinations differed from the State Hospitals evaluators' recommendations. It should use this information to provide training and supervision where they are most needed.

## Chapter 2

### THE CALIFORNIA DEPARTMENT OF STATE HOSPITALS HAS NOT PROVIDED CONSISTENT TRAINING TO ENSURE ITS EVALUATORS PRODUCE THOROUGH EVALUATIONS

#### Chapter Summary

The California Department of State Hospitals (State Hospitals) has not consistently offered training to the evaluators who assess sex offenders (offenders) to determine whether the State should recommend committing them as sexually violent predators (SVPs). Although in 2009 and 2010 State Hospitals offered training on a wide variety of topics to evaluators, it did not provide them with any training between August 2012 and May 2014, a period during which it hired many new employees. Also, State Hospitals developed a training plan that began with comprehensive training for its evaluators in May 2014; however, it has yet to implement most of the plan. Consequently, until recently State Hospitals did not provide many evaluators with training on critical risk assessment tools. Ongoing training is important to ensure the competence of those conducting evaluations of current and potential SVPs. Further, State Hospitals can improve its tracking of training records. If it cannot demonstrate that its evaluators received the required training, State Hospitals might compromise the integrity of evaluations.

We also noted additional areas in which State Hospitals could improve its evaluation process. Specifically, it has not documented its efforts to verify that its evaluators met the experience portion of the minimum qualifications for their positions. Further, it has only recently begun to analyze the trends in the rate at which its evaluators determine offenders meet the criteria as SVPs—what it refers to as its positive rate. In addition, in March 2013, State Hospitals developed a process for assigning and tracking the workload of its evaluators; however, evaluators expressed concerns about this process, which led to State Hospitals revising it in January 2015. Although the revised process addresses some concerns, it omits other elements. Finally, State Hospitals needs to address its backlog of annual evaluations of currently committed SVPs at Coalinga State Hospital (Coalinga). If Coalinga fails to promptly perform these evaluations, it is not fulfilling one of its critical statutory obligations, leaving the State unable to report on whether SVPs continue to pose risks to the public.

### **State Hospitals Has Not Consistently Offered Training to Its SVP Evaluators**

State Hospitals has been inconsistent in offering training to its SVP evaluators. During 2009 and 2010, it offered training to SVP evaluators on a wide variety of topics. In anticipation of hiring employee evaluators during 2011 and 2012, State Hospitals decided to develop and implement in-house training. This change in training approach had a greater focus on the basic principles of SVP evaluations. Nevertheless, State Hospitals did not provide any training to its evaluators between August 2012 and May 2014. Further, it did not provide current evaluators at Coalinga with any training related to performing evaluations. New management at State Hospitals has acknowledged the need for more training and recently began increasing its training efforts.

Ongoing training is important to ensure the competence of those conducting evaluations of potential and current SVPs. According to state law, only practicing psychologists and psychiatrists can perform evaluations of potential SVPs. In addition, according to the American Psychological Association's specialty guidelines for forensic psychology adopted in 2011, competence in forensic psychology can be acquired through a combination of education, training, supervised experience, and study, among other things. The specialty guidelines recommend that forensic practitioners make ongoing efforts to develop and maintain their competencies and keep abreast of developments in the fields of psychology and the law.

*State Hospitals offered a wide range of training to SVP evaluators in 2009 and 2010, and in 2011 State Hospitals implemented its own training in-house for conducting SVP evaluations.*

State Hospitals offered a wide range of training to SVP evaluators in 2009 and 2010. Specifically, State Hospitals offered its evaluators—at that time, mostly contractors—training on a variety of topics, including sex offender risk assessment tools, statistics on sexual recidivism, the effect of aging on recidivism, and the violence-risk scale. According to the assistant deputy director of State Hospitals' Forensic Services Division (forensic services), State Hospitals funded the cost of the trainings throughout the State, and the contract evaluators paid for their travel and expenses.

However, in anticipation of hiring evaluators as employees, in 2011 State Hospitals implemented its own training in-house for conducting SVP evaluations. Specifically, according to the assistant deputy director of forensic services, the previous acting clinical director developed training for its SVP evaluators in consultation with State Hospitals' legal division. She stated that State Hospitals developed its own training program to benefit both the experienced contract evaluators transitioning into state service and new evaluators with less experience in forensic evaluation and court testimony. State Hospitals offered trainings during September 2011 and July 2012 on topics such as the Static-99

assessment (described in the Introduction), forensic report writing, legal changes that impact evaluations, and expert witness testimony preparation.

From August 2012 to May 2014, however, State Hospitals' training documentation shows that it did not provide any training for SVP evaluators who worked in its headquarters. This nearly two-year gap may in part be the result of a staffing issue: The clinical director responsible for developing and implementing the training retired in April 2013. According to the assistant deputy director of forensic services, State Hospitals did not hire another clinical director—tasked in part with developing a training plan—until October 2013.

Further, according to the former forensic senior psychologist supervisor at Coalinga, State Hospitals provided evaluators at Coalinga with fewer training opportunities in recent years. Specifically, he stated that before 2011, evaluators at Coalinga trained with State Hospitals' evaluators on the Static-99 and dynamic risk assessment tools. However, according to the former forensic senior psychologist supervisor, in 2011 Coalinga evaluators were training with State Hospitals less frequently, and by 2012 they were not part of the training offered by State Hospitals. When we asked administrators at State Hospitals and Coalinga why their evaluators stopped training together, they were unable to provide an explanation. According to Coalinga's current forensic senior psychologist supervisor, Coalinga did not offer consistent training for its evaluators. The forensic senior psychologist supervisor stated that the lack of consistent training resulted in the evaluators producing inconsistent and at times inadequate evaluations. She said that if less-experienced evaluators do not receive consistent training in forensic evaluations to complement their on-the-job experience, they cannot adequately perform their jobs and are ineffective witnesses in court.

State Hospitals has recently begun taking some initial steps to implement more robust training for its evaluators at headquarters. In 2014 State Hospitals' chief psychologist and the quality assurance and training team (quality assurance team) developed a training plan for evaluators at headquarters. Specifically, in May 2014, State Hospitals offered a comprehensive SVP training for all consulting psychologists—who, as of December 2014, represent 33 of 45 evaluators on staff at State Hospitals—on the background of the SVP statutes, the various criteria under which State Hospitals evaluates potential SVPs, and the Static-99R risk assessment. As we discuss later in the chapter, consulting psychologists belong to one of two civil service classifications conducting evaluations at State Hospitals' headquarters. The other classification, which requires more experience, is a sexually violent predator evaluator (SVPE).

*From August 2012 to May 2014, State Hospitals did not provide any training for SVP evaluators who worked in its headquarters.*



*Coalinga's evaluators have continued to receive fewer training opportunities than the evaluators at headquarters.*

In December 2014 and January 2015, State Hospitals also held training about a dynamic risk assessment instrument for the current evaluators working at its headquarters. In addition, the tentative training plan included expected courses on the Stable 2007 dynamic risk assessment instrument, court testimony, and updates to risk assessment instruments. However, according to the chief psychologist, as of January 2015 State Hospitals had not scheduled any of these additional trainings.

According to the chief psychologist, a second aspect of State Hospitals' new training effort includes a mentorship program for evaluators at headquarters. The program began in August 2014 and is designed to help new consulting psychologists develop their evaluation skills by shadowing experienced evaluators. For the first year to year and a half, new evaluators will progress from performing smaller tasks to drafting written evaluations and preparing court testimony, while receiving constructive feedback from their mentors. State Hospitals' goal is to foster the new evaluators' development and help experienced evaluators—in their role as mentors—refine their basic skills.

Coalinga's evaluators have continued to receive fewer training opportunities than the evaluators at headquarters. According to Coalinga's forensic senior psychologist supervisor, Coalinga's evaluators do not participate in State Hospitals' mentorship program. Coalinga's forensic senior psychologist supervisor designed a training plan for fiscal year 2014–15 to help new evaluators at the hospital develop a basic understanding of state law affecting forensic evaluations, forensic report writing, and risk assessment. She indicated that Coalinga is also in the process of developing an ongoing training plan for experienced evaluators and has some trainings scheduled for 2015.

#### **Until Recently, State Hospitals Did Not Provide Training on Dynamic Risk Assessment Instruments**

Compounding the inconsistent training offered to evaluators, until recently State Hospitals has not provided training on dynamic risk assessment instruments. A dynamic risk assessment instrument may consider both stable factors, such as personality disorders or sexual preference, that help predict long-term risk; and acute, rapidly changing factors, such as a negative mood or intoxication, that signal the potential for reoffense. Although state regulation requires evaluators to apply tests or instruments and consider stable and dynamic risk factors when performing forensic evaluations, State Hospitals could not demonstrate until recently that it provided training to its evaluators on these instruments. The assistant deputy director of forensic services told us that

State Hospitals focused its training efforts during 2011 and 2012 on certain aspects of forensic evaluations, such as examining clinical and static risk factors, rather than on dynamic factors. Recently, in December 2014 and January 2015, State Hospitals provided training on dynamic risk assessment instruments.

Until December 2014 State Hospitals did not provide training on how to complete dynamic risk assessment instruments. In the two trainings on forensic assessment in 2012, State Hospitals' instructors provided high-level overviews of dynamic risk factors but did not provide instructions on how to use specific assessment instruments, such as the Stable 2007. Our review of training materials from January 2009 through November 2014 found no other instances in which trainings addressed dynamic risk assessment instruments, even though State Hospitals was hiring evaluators from 2012 through 2014 to replace the contractors who had been performing the evaluations of potential SVPs. Although some contract evaluators who later became employees may have obtained training on dynamic risk assessment instruments on their own, new evaluators with little or no forensic experience were not provided training from State Hospitals on how to perform dynamic risk assessments. According to the assistant deputy director of forensic services, the previous clinical psychiatrist viewed certain aspects of dynamic risk assessment to be less critical to reaching conclusions during forensic evaluations. However, the chief psychologist, who started in October 2013, stated that State Hospitals acknowledged the importance of assessing dynamic risk factors when performing evaluations.

State Hospitals' chief psychologist explained that State Hospitals' position is that sufficient evaluation of a potential SVP includes an assessment of both static and dynamic factors and that a dynamic risk assessment tool strengthens an evaluation by providing a higher degree of certainty when estimating the risk of a reoffense. Nevertheless, as of late August 2014, he estimated that about 75 percent of the consulting psychologists—one of the two civil service classifications conducting SVP evaluations at State Hospitals' headquarters had not had adequate, updated, or any training in dynamic risk assessment instruments and variables. According to the assistant deputy director of forensic services, several consulting psychologists attended trainings on the Stable 2007 dynamic risk assessment instrument offered by external trainers between February and May 2014. Moreover, although the chief psychologist stated that he thought the SVPEs had received training on dynamic risk assessment tools, he also told us that State Hospitals has not offered update trainings to keep its evaluators current on the possible changes and new research in the field regarding the instruments.

*Until December 2014 State Hospitals did not provide training on how to complete dynamic risk assessment instruments.*

*If the evaluators are not properly trained on the instruments they use, it may compromise the integrity of their evaluations and result in challenges to their findings.*

To ensure that its evaluators have adequate training related to dynamic risk assessment tools and other areas of knowledge specific to evaluating potential and current SVPs, State Hospitals must improve its tracking of training. According to the assistant deputy director of forensic services, State Hospitals did not track the training taken by each evaluator before 2011 because the majority of its evaluators were contractors who were experts in their field and whom it expected to stay current on training. She stated that in 2013 State Hospitals began tracking all of its evaluators' training to ensure they were meeting the continuing education requirements necessary to maintain their licenses. However, State Hospitals' tracking does not include an analysis of the specific types of training evaluators receive. For example, state law currently requires evaluators to use the Static-99R to evaluate male SVPs. Therefore, evaluators must be trained on the Static-99R instrument so they can properly use it when performing evaluations. However, because State Hospitals does not analyze the type of training its evaluators receive, it cannot demonstrate that its evaluators received the required training. If the evaluators are not properly trained on the instruments they use, it may compromise the integrity of their evaluations and result in challenges to their findings.

Training ensures that evaluators possess the latest and best information. State Hospitals' chief psychologist stated that to be effective, forensic evaluators must receive training every one to two years because of advances in the field of forensic psychology, changes to the way evaluations are conducted, and changes in case law that impacts evaluations, among other reasons. Without adequate training in dynamic risk assessment instruments, evaluators may use them incorrectly, increasing the likelihood of errors in estimating the risk of reoffense. In addition, evaluators who forgo tests of dynamic risk factors because they were not adequately trained may compromise their ability to fully support and defend their findings in court.

#### **State Hospitals Has Not Documented Its Efforts to Verify Its Evaluators' Qualifications**

State Hospitals uses employees and some contractors to conduct evaluations of potential and current SVPs. Table 4 summarizes the minimum qualifications of the four employee classifications as well as the contractors that conduct the various evaluations at State Hospitals' headquarters and at Coalinga. As Table 4 shows, only the SVPE position has comparable minimum qualifications to those state law requires for the contractors State Hospitals hires to complete difference-of-opinion evaluations. The other positions—consulting psychologist, senior psychologist specialist, and psychologist—require less experience and therefore receive less compensation and have lighter workloads.

**Table 4**

**California Department of State Hospitals' Evaluator Classification, Type of Evaluations Performed, Minimum Qualifications, and Number as of December 2014**

CLASSIFICATION	TYPES OF EVALUATIONS PERFORMED	LICENSE REQUIREMENT*	EDUCATION*	EXPERIENCE	NUMBER AS OF DECEMBER 2014
Contractor, State Hospitals	Difference-of-opinion Initial evaluations, update evaluations, initial evaluations	Valid license as a psychologist issued by the California Board of Psychology	Doctorate degree (implied by license requirement)	Five years postdoctoral, postinternship experience as a licensed psychologist in the practice of psychological evaluation and risk assessment and diagnoses of sexually violent predators (SVPs).	35
Sexually Violent Predator Evaluator (SVPE)	Initial evaluations, update evaluations, replacement evaluations, recommitment initial evaluations	Valid license as a psychologist issued by the California Board of Psychology	Doctorate degree in psychology	Five years postdoctoral, postinternship experience as a licensed psychologist in the practice of psychological evaluation and risk assessment and diagnoses of SVPs or equivalent class of sex offenders (offenders). The SVPEs must have 40 hours of expert witness testimony in high-risk offender cases or SPV cases.	12
Consulting Psychologist	Initial evaluations, clinical screens, update evaluations	Valid license as a psychologist issued by the California Board of Psychology	Doctorate degree in psychology	Two years experience in California state civil service performing clinical psychology duties equivalent to those of a psychologist or clinical psychologist; or  Three years of full-time postdoctoral, postinternship experience in the practice of psychology involving either training, research, consultation, or program planning in mental health services.	33
Contractor, Coalinga State Hospital (Coalinga) <sup>†</sup>	Annual evaluations	Valid license as a psychologist (implied by experience requirement) <sup>‡</sup>	Doctorate degree (implied by license requirement)	Five years post-licensure experience primarily conducting forensic evaluations. <sup>‡</sup>	7
Psychologist (Health Facility—Clinical-Safety)	Annual evaluations	Valid license as a psychologist issued by the California Board of Psychology	Completion of requirements for a doctorate degree with specialization in clinical or child clinical psychology	None.	2
Senior Psychologist Specialist	Annual evaluations	Valid license as a psychologist issued by the California Board of Psychology	Doctorate degree in psychology	One year experience in California state service performing the duties of a psychologist (health facility) or staff psychologist (any specialty); or  Two years postdoctoral, postinternship experience in the practice of psychology involving assessment and treatment and either training, research, consultation, or program planning in mental health services.	2

Sources: Classification bulletins from the California Department of Human Resources; California Welfare and Institutions Code, Section 6600 et. seq.; invitations for bid from the California Department of State Hospitals (State Hospitals); and employment files at State Hospitals and Coalinga, as well as interviews with the forensic senior psychologist supervisor and the acting chief of forensic services at Coalinga.

\* State law allows psychiatrists to conduct evaluations as well. However, the only psychiatrist conducting evaluations as of December 2014 was a contractor at Coalinga who possessed a license to practice medicine.

<sup>†</sup> Coalinga contracts with professional registries that employ individuals that it uses to evaluate SVPs.

<sup>‡</sup> During our audit period, Coalinga did not have a formal description of its minimum qualifications for its contract evaluators. According to the acting chief of forensic services, he expects contract evaluators to have five years of experience post-licensure. Starting September 2014, Coalinga contracts specify minimum qualifications for its contract evaluators that are in line with what is noted in the table.

State Hospitals demonstrated that it verified that its evaluators met some of their positions' minimum qualifications. We reviewed the files of 15 current evaluators at both headquarters and Coalinga—nine employees and six contractors—to determine whether State Hospitals verified that they met the minimum qualifications for their positions. Each file we reviewed contained a copy of the evaluator's license to practice psychology—or medicine, in the case of the one psychiatrist—which we also independently verified through the State's licensing boards. According to the California Board of Psychology, a doctorate degree is necessary for licensure as a psychologist in California. Similarly, the California Medical Board requires a doctorate degree for licensure as a psychiatrist. Therefore, although the files we reviewed did not contain evidence of doctorate degrees, the evaluators' possession of valid licenses demonstrates that they have such degrees.

However, State Hospitals could not demonstrate whether its evaluators met the experience portions of their positions' minimum qualifications. Although it retained job applications and other information the applicants submitted, it did not document that it had verified the information related to experience, for example, by contacting references or past employers. We reviewed 15 evaluators' personnel files—nine employees and six contractors. According to information the individuals submitted to State Hospitals, each of the six contractors had more than 10 years of experience as a licensed psychologist or psychiatrist, with four having 25 or more years experience. In contrast, only four of the nine employees had 10 years of experience or more. However, for 12 files we reviewed at State Hospitals' headquarters, we did not find any documentation that State Hospitals verified employees' or contractors' experience. For two of the three files we reviewed at Coalinga, there was a checklist that included a section for contacting past employers. In one instance, notes in the checklist indicated that Coalinga sent letters to past employers but did not indicate whether it received answers to the letters. In the second instance, the section on the checklist was blank. Without a formal process for documenting that they verify required experience, neither State Hospitals nor Coalinga can demonstrate that it has ensured that individuals hired meet the minimum qualifications for their positions.

*For 12 files we reviewed at State Hospitals' headquarters, we did not find any documentation that State Hospitals verified employees' or contractors' experience.*

### **State Hospitals Is Starting to Develop a Key Measurement for Assessing Evaluator Performance**

The Joint Legislative Audit Committee (audit committee) asked us to report on the number of offenders State Hospitals determined to be positive and negative for commitment. Table 5 presents the number of offender cases evaluated by State Hospitals' evaluators and the outcome of those evaluations for fiscal years 2009–10 through 2013–14. As the table notes, during that five-year period the rate by

which State Hospitals determined that offenders met the criteria to be an SVP remained below 8 percent. These data provide an overall picture of the number of offender cases State Hospitals determined met the criteria for commitment.<sup>5</sup>

**Table 5**  
**Final Case Outcomes of the Evaluation of Offenders Based on the California Department of State Hospitals' Clinical Evaluations of Potential Sexually Violent Predators**  
**Fiscal Years 2009–10 Through 2013–14**

FISCAL YEAR	CASES FOUND POSITIVE FOR COMMITMENT*	CASES FOUND NEGATIVE FOR COMMITMENT*	TOTAL CASES EVALUATED	PERCENTAGE OF CASES FOUND POSITIVE FOR COMMITMENT	TOTAL CASES EVALUATED THAT INCLUDED A DIFFERENCE OF OPINION†
2009–10	63	1,066	1,129	5.6%	108
2010–11	122	2,014	2,136	5.7	154
2011–12	105	1,216	1,321	7.9	131
2012–13	43	791	834	5.2	78
2013–14	31	730	761	4.1	52

Source: California State Auditor's analysis of data obtained from the California Department of State Hospitals' (State Hospitals) Sex Offender Commitment Program Support System.

\* When the required number of evaluators agree that an individual meets the criteria as a sexually violent predator (SVP), State Hospitals recommends to the designated counsel of the county where the offender was convicted that the State commit the individual to a state hospital.

† These cases are a subset of the total cases evaluated. State law requires that, if the first two evaluators do not agree that an individual meets the criteria of an SVP, two additional contract evaluators will conduct an evaluation. The two additional evaluators must both agree that an individual meets the criteria of an SVP for State Hospitals to recommend commitment.

However, it is also important to track the rate by which individual evaluators determine that an offender meets the criteria as an SVP. Although State Hospitals has accumulated data on its evaluations for several years, it has only recently begun analyzing those data. State Hospitals' administrators acknowledged the value of determining the rate at which State Hospitals' evaluators initially determine that offenders meet the SVP criteria—the positive rate—and of identifying evaluators whose positive rates are unusually high or low. Specifically, the chief psychologist stated that an evaluator with a consistently low positive rate should warrant attention.

Nevertheless, State Hospitals has not yet performed a comprehensive analysis to determine what constitutes a valid positive range. The chief psychologist noted that State Hospitals has performed 32,282 initial evaluations since 1996, and that 22 percent of these were positive. However, he stated that positive rates should

<sup>5</sup> In addition to offenders, the audit committee also asked us to report on the number of SVPs found positive and negative for commitment. We report on evaluators' conclusions regarding SVPs in the Appendix.

*Because the rate we calculated is at the bottom of the range State Hospitals identified, we are concerned that State Hospitals' range may not be appropriate.*

be between 8 percent and 18 percent based on State Hospitals' current analysis of the data. Our analysis of the data related to initial evaluations for the three years beginning in fiscal year 2011–12 shows that the positive rate of State Hospitals' evaluators is 9.2 percent. The rate may be lower in recent years because of the impact of Jessica's Law, which reduced the number of offenses needed to qualify as an SVP from two to one and increased the number of crimes considered qualifying offenses. These changes essentially made it more likely for an offender to be evaluated for commitment, but not necessarily meet all the criteria of an SVP. Because the rate we calculated is at the bottom of the range State Hospitals identified, we are concerned that State Hospitals' range may not be appropriate.

Further, the chief psychologist stated that in April 2014 State Hospitals began identifying consulting psychologists who have conducted a minimum number of evaluations yet have rarely concluded that offenders met the SVP criteria. Based on its analysis, the chief psychologist told us that State Hospitals identified 12 consulting psychologist evaluators who concluded that offenders met the SVP criteria less than 7 percent of the time. Six of these evaluators have never produced a positive evaluation. He also indicated that as of January 2015, several newly hired evaluators continue to produce very low positive rates that range from 0 percent to 3 percent. State Hospitals is reviewing these evaluators' evaluations and working with them to see whether there are ways to improve the evaluation process. However, the chief psychologist indicated that retraining or mentoring for this small group of psychologists has not yet been determined. Without an appropriate range for positive evaluations, State Hospitals risks that it will not be able to adequately identify those evaluators whose positive rates deviate from the norm.

#### **State Hospitals Recently Made Changes to Its Contract Practices That Reduce Incentives for Negative Evaluations**

State Hospitals' past practice of setting no minimum amount that contractors must bid to complete evaluation services may have created an incentive for evaluators to write negative evaluations. However, State Hospitals recently made changes to eliminate that possible incentive.

The audit committee asked us to review whether State Hospitals' policies or procedures provided any monetary or workload incentives to evaluators. In our review, we noted that the invitation for bids of evaluators to perform SVP evaluations may have created an incentive for some contract evaluators to write negative evaluations. Specifically, although State Hospitals

established maximum limits for contract evaluators' bids of services, it did not set a minimum bid amount in fiscal years 2009–10 through 2010–11 for the various services contract evaluators provide—including those associated with appearing as a witness at court trials to determine whether an offender should be committed as an SVP. As a result, possibly to be more competitive on price, two of 68 contractors bid zero on court testimony time and another bid zero on court travel time and court wait time. An additional seven evaluators bid significantly below the average cost on those activities as well. Having the ability to submit zero or lower-than-average bids for court-related costs may have knowingly or unknowingly created an incentive to determine that offenders did not meet the SVP criteria, because doing so decreased the likelihood that the evaluators would spend time and incur costs on court-related activities. Furthermore, State Hospitals assigned contract evaluators up to six evaluations at a time, and as they finished evaluations, it could assign them more. Therefore, contractor evaluators who did not have to go to court or who sped through evaluations would have had more time to perform additional evaluations.

However, in September 2012, State Hospitals addressed this potential problem when it issued a request for proposals (RFP) for contractors to perform SVP evaluations beginning in January 2013. Specifically, the RFP established both minimum and maximum rates for some services and set fixed rates for others. For example, it set a minimum rate for performing initial evaluations at \$1,500 per case and a maximum rate of \$2,500 per case. It also established an hourly rate for court testimony at \$200. According to its business services chief, the contracts for 2015 are exempt from competitive bidding using a provision from the *State Contracting Manual* that exempts contracts solely for the purpose of obtaining expert witness testimony—the California Department of General Services approved the 2015 contracts for SVP evaluators, which included fixed rates. State Hospitals' fixed rates will prevent evaluators from bidding low on court-related costs, which could have created an incentive to write negative evaluations.

Further, a 2008 State Personnel Board decision has significantly reduced the role of contractors in performing evaluations. The State Personnel Board found that a state law allowing state government entities to contract for work that state workers cannot perform did not justify State Hospitals' contracting for evaluators. State law authorized State Hospitals to continue using contract evaluators temporarily until it could hire employees to replace them. Historically, contract evaluators have completed more evaluations for the Sex Offender Commitment Program than employee evaluators have completed, but that trend is shifting. During fiscal years 2010–11 and 2011–12, contract evaluators

*Historically, contract evaluators have completed more evaluations for the Sex Offender Commitment Program than employee evaluators have completed, but that trend is shifting.*



produced 99 percent of all evaluations. However, this pattern changed significantly beginning in fiscal year 2012–13, as State Hospitals began hiring evaluators rather than depending solely on contractors: By fiscal year 2013–14, employees performed 53 percent of all evaluations. Given that State Hospitals claimed in September 2014 that it had completed hiring employee evaluators, we expect this number to increase in the coming years. Table 6 shows the number of contract and employee evaluators and the number of evaluations each group performed during the last five fiscal years.

**Table 6**  
**Evaluations Performed by the California Department of State Hospitals’ Employee and Contract Evaluators**  
**Fiscal Years 2009–10 Through 2013–14**

	FISCAL YEAR									
	2009–10		2010–11		2011–12		2012–13		2013–14	
	CONTRACTOR*	EMPLOYEE	CONTRACTOR*	EMPLOYEE	CONTRACTOR*	EMPLOYEE	CONTRACTOR*	EMPLOYEE	CONTRACTOR*	EMPLOYEE
<b>All Evaluations</b>										
Total number of evaluators	74	7	80	7	77	13	59	38	42	40
Total evaluations conducted	3,615	101	5,746	68	3,735	55	1,315	1,507	1,168	1,336
Percent of all evaluations	97%	3%	99%	1%	99%	1%	47%	53%	47%	53%
Mean evaluations per individual†	49	14	72	10	49	4	22	40	28	33
<b>Precommitment</b>										
Number of initial evaluations	2,272	0	4,295	3	2,624	18	493	1,296	476	1,048
Number of other precommitment evaluations‡	747	0	834	0	646	0	456	69	381	100
<b>Postcommitment</b>										
Number of annual evaluations	128	95	306	62	233	32	215	92	164	116
Number of other postcommitment evaluations§	468	6	311	3	232	5	151	50	147	72

Sources: California State Auditor’s analysis of data obtained from the California Department of State Hospitals’ (State Hospitals) Sex Offender Commitment Program Support System, State Hospitals’ payroll data obtained from the California State Controller’s Office’s Uniform State Payroll System, and additional documents provided by State Hospitals.

\* State Hospitals contracts with individual evaluators. Coalinga State Hospital (Coalinga) retains non-civil service evaluators from registries with which it has contracts—we include these evaluators in the “contractor” category. In some cases, an individual could have been both non-civil service and civil service in the same fiscal year. In such cases, we counted the individual twice.

† We present the mean evaluations per individual for informational purposes; however, the value of any conclusions drawn from this data is limited. As noted above, in cases where an individual was both a contractor and an employee in a fiscal year, we counted that individual twice. Further, not all individuals represented in the total number of evaluators were available and working the entire year, which affects the average evaluations per individual.

‡ This number includes evaluations where State Hospitals had to bring in two additional evaluators because the first two evaluators did not agree on whether individuals were sexually violent predators (SVPs). State law requires that contractors conduct these difference-of-opinion evaluations. The number also includes additional evaluations conducted at the request of attorneys or the courts.

§ Once a court commits an SVP, state law requires that person to receive annual evaluations. Nevertheless, attorneys or the courts may request that State Hospitals conduct additional evaluations. Also, some individuals committed prior to a 2006 law that made commitments indeterminate do not receive annual evaluations, but attorneys or the courts may request additional evaluations.

Despite State Hospitals' statement that it has completed its hiring of evaluators, it will continue to work with contractors in the future because state law requires contract evaluators to resolve difference-of-opinion evaluations. According to the assistant deputy director of forensic services, State Hospitals expects to continue contracting with about 20 evaluators in 2015 to provide independent evaluations in cases where the two original employee evaluators disagree about whether offenders meet the SVP criteria. She stated that contractors could also perform a limited number of initial evaluations if State Hospitals has a spike in evaluations or some other temporary need. Further, she stated that State Hospitals would likely not have sufficient work to keep its contractors fully occupied. Therefore, without additional work to perform, evaluators have less financial incentive to finish evaluations quickly.

*State Hospitals would likely not have sufficient work to keep its contractors fully occupied, and without additional work to perform, evaluators have less financial incentive to finish evaluations quickly.*

#### **State Hospitals Can Improve Its Efforts to Assess the Effectiveness of Its Evaluator Workload Matrix**

When State Hospitals reduced the number of contract evaluators and hired employee evaluators, it developed a process for assigning and tracking the workload of its evaluators. In March 2013 State Hospitals convened a group of four SVPEs and two consulting psychologists who developed a matrix that reflected the activities that affect the evaluator's ability to complete evaluations and the associated value of each activity. The matrix lists the various evaluations and related tasks evaluators perform and includes points assigned for each evaluation or task. For example, the matrix that will be in use until March 2015 assigns one point for an initial SVP evaluation and assigns two points for court testimony provided at a jury trial. State Hospitals set matrix workload expectations of eight points per month for SVPEs and five points per month for consulting psychologists. In the event of unforeseen circumstances, such as a lengthy replacement evaluation or extended court testimony, evaluators may submit a workload adjustment form, which management must approve.

State Hospitals recently revised the matrix and created one matrix for each of the two classifications of evaluators at headquarters. According to forensic services' evaluator workload summary, in the original matrix each point was equivalent to 20 hours of work. The assistant deputy director of forensic services stated that a prior hospital administrator had calculated that the SVPEs should be able to complete an evaluation in about 20 hours, based on invoices from contractors. Therefore, State Hospitals initially set the workload of SVPEs at eight points, or 160 hours per month. She stated that because consulting psychologists are less experienced and are compensated at a level of about a third less than SVPEs, their

workload was set at five points, or about a third less than SVPEs. However, she stated that SVPEs voiced concerns that evaluations will take longer than 20 hours due to a recent decision to require evaluators to complete an analysis of all SVP criteria even if one is negative. Based on further conversations with the evaluators, State Hospitals revised its workload matrix in January 2015, creating different matrices for SVPEs and for consulting psychologists.

The new matrices give evaluators more time to perform certain aspects of their work, but omit other elements. The new matrices, which take effect in March 2015, include a workload expectation of seven points a month for SVPEs, with each point equivalent to 23 hours, or 161 hours per month. In contrast, consulting psychologists will continue with a workload expectation of five points, with a point being equivalent to 30 hours, or 150 hours per month. However, probable cause hearings are worth no points on the consulting psychologists' matrix. According to the assistant deputy director of forensic services, based on conversations with SVPEs, a probable cause hearing is between eight and 12 hours, so giving consulting psychologists credit for one point for a probable cause hearing would mean giving them credit for 30 hours of work, more than twice what an average hearing would take. Nevertheless, the position specifications for consulting psychologists do not require the same level of experience as for SVPEs, and therefore it seems possible that preparing for and participating in a probable cause hearing could take longer for consulting psychologists than for SVPEs. Further, the matrix for SVPEs gives them one point for probable cause hearings; at 23 hours per point, this is still around twice what the expected duration of a probable cause hearing would be.

It is also not clear that the matrices account for administrative or other tasks evaluators may perform. The matrices account for time spent on evaluations, court testimony, multiday training, and time off. They do not specifically account for administrative tasks, such as staff meetings and training lasting less than one day, or other job-related activities, such as keeping up with research in the field. Further, the matrices do not specifically account for travel, stating only that State Hospitals will review travel on a case-by-case basis using the workload adjustment form.

***While State Hospitals has used the workload adjustment form to analyze the effectiveness of its workload matrices, its analysis is limited.***

While State Hospitals has used the workload adjustment form to analyze the effectiveness of its workload matrices, its analysis is limited. Specifically, between June 2012 and January 2014, State Hospitals assigned 59 replacement evaluations, and four evaluators submitted six workload reduction requests, of which State Hospitals approved three. The assistant deputy director stated that based on the analysis of workload adjustment requests, State Hospitals concluded that the equivalency for replacement

evaluations was appropriate. However, this analysis only reviewed one type of evaluation in isolation and not the overall effectiveness of the workload assignments in the matrix. Further, according to the assistant deputy director, few evaluators submit workload adjustments, even though management expects the evaluators to submit them to account for complex cases, additional time needed to prepare for court, or other unforeseen circumstances. She stated that management communicates the importance of completing the workload adjustment forms during its regular conference calls with the evaluators. Nevertheless, neither the policy instituting the form nor the form itself clearly indicates these expectations.

Finally, State Hospitals could track evaluators' hours to further validate the effectiveness of its workload matrix. As previously noted, revisions in the current matrices are the result of discussions with some evaluators, primarily with the more-experienced SVPEs. According to the assistant deputy director of forensic services, evaluation of the workload matrix has been driven by concerns raised by evaluators, not because of a regular evaluation of workload. For example, State Hospitals does not track the number of hours that evaluators spend on each evaluation. According to the assistant deputy director of forensic services, State Hospitals does not expect its evaluators to complete timesheets to this level of detail. Nevertheless, tracking the actual time spent conducting the various evaluation activities over time would be useful in analyzing whether the current workload expectations are reasonable. Although State Hospitals does convene regular monthly meetings with its evaluators to discuss various topics, including workload, without meaningful periodic analysis of the evaluator matrix and the time evaluators spend on evaluations, State Hospitals risks either increasing pressure to rush evaluations or wasting resources while evaluators are idle. If State Hospitals does not give evaluators adequate time to create evaluations or to prepare for court, it may create an atmosphere that discourages evaluators from doing thorough evaluations to determine whether offenders meet the criteria of an SVP.

### **Coalinga Has a Significant Backlog of Annual Evaluations That It Has Not Completed**

Coalinga has a backlog of annual evaluations of SVPs it needs to complete. State law requires State Hospitals to evaluate at least annually SVPs committed to it. According to Coalinga's January 2015 log of overdue annual reports, it had 261 evaluations that were due in court by the end of December 2014 that it had yet to complete. Coalinga's forensic senior psychologist supervisor stated that evaluators produce the oldest annual evaluations first;

*According to Coalinga's January 2015 log of overdue annual evaluations, it had 261 evaluations that were due in court by the end of December 2014 that it had yet to complete.*

however, when Coalinga receives a request from a judge, district attorney, or defense attorney for an expedited report, such a request moves that particular evaluation to the top of the list.

According to the acting chief of forensic services at Coalinga (forensics), part of the cause of its backlog is additional work State Hospitals assigned to it. Specifically, beginning in April 2011, State Hospitals' headquarters directed evaluators at Coalinga to conduct evaluations for offenders whom the State committed before Jessica's Law and who, therefore, only received a two-year commitment term. Before April 2011 State Hospitals' evaluators at headquarters conducted these evaluations, which it refers to as recommitment evaluations. According to a tracking log from Coalinga, as of October 2014, 125 offenders were awaiting trial to determine whether they should receive indeterminate commitments because they had completed their two-year commitments. Coalinga's acting chief of forensics stated that because evaluators at Coalinga were completing the recommitment evaluations, they were unable to complete as many annual evaluations. A State Hospitals' legal counsel stated that there were concerns about whether the assignment of those evaluations to Coalinga's evaluators was appropriate. Therefore, the assistant deputy director of forensic services told us that State Hospitals took back responsibility for completing recommitment evaluations in August 2013.

*Coalinga's acting chief of forensics stated that chronic staffing shortages at Coalinga also have contributed to the backlog of annual evaluations and does not have an estimate for when the backlog will be eliminated.*

Coalinga's acting chief of forensics stated that chronic staffing shortages at Coalinga also have contributed to the backlog of annual evaluations, a situation that Coalinga hopes to address. He stated that more attractive incentives available for evaluator staff at headquarters have resulted in evaluators transferring to that location. Coalinga had 11 evaluators as of December 2014, seven of whom were contractors. Coalinga's medical director told us that administrators are working on a plan to alleviate the backlog that includes using contract evaluators to perform annual evaluations, continuing to hire well-qualified evaluators, and providing incentives for evaluators to keep their employment with Coalinga by allowing them to work remotely. However, this plan is still in development, and Coalinga does not have an estimate for when the backlog will be eliminated.

When State Hospitals does not ensure that it completes annual evaluations on time, it is not fulfilling one of its critical statutory obligations. Without such evaluations, the State cannot determine whether an SVP continues to pose a risk to the public and whether an unconditional release or a conditional release to a less restrictive alternative might be in the best interests of the offender and the State.

## Recommendations

To ensure that its evaluators, including those at Coalinga, have the necessary training to conduct evaluations effectively and consistently, State Hospitals should complete development of comprehensive training plans for all evaluators by June 2015. In addition, by September 2015 State Hospitals should provide training on the Static-99R and dynamic risk assessment instruments to all new evaluators and those who have not yet received such training.

To ensure that all its evaluators are aware of changes in forensic evaluations, State Hospitals should provide annual training on updates to risk assessment instruments.

To demonstrate that it has provided appropriate training and that its employees have received that training, State Hospitals should immediately begin maintaining training records for all employee and contract evaluators.

By June 2015 State Hospitals should establish a formal process for consistently documenting that it has verified that the individuals it hires as evaluators meet all the minimum qualifications for their positions. State Hospitals should ensure that staff at Coalinga follow the process established in Coalinga's checklist for validating the past employment of employee and contract evaluators.

To improve its overall effectiveness, by December 2015 State Hospitals should further analyze the rate at which its evaluators determine that offenders meet the SVP criteria. State Hospitals should focus its analysis on evaluations it performed in the most recent three fiscal years because of its transition to civil service evaluators and because changes to state law have affected how it performs evaluations. State Hospitals should establish what the normal acceptable ranges for commitment rates are and work with evaluators whose findings consistently fall outside that range.

To ensure that it has an effective method for assigning and tracking evaluator workload, by September 2015 State Hospitals should establish a formal process for periodically reviewing its workload matrices. This process should include periodic assessments of how well evaluators are meeting their workload expectations and whether adjustments would be appropriate. The process should also include input from key stakeholders.

State Hospitals should explore options for tracking the time evaluators spend on each evaluation activity to increase the accuracy of the workload equivalencies it includes in its workload matrix and should implement such options by September 2015.

To reduce its backlog of annual evaluations at Coalinga and reduce the number of days these evaluations are overdue, State Hospitals should immediately determine the extent to which its evaluators who work at headquarters can provide assistance to Coalinga. To ensure that it does not develop a similar backlog in the future, State Hospitals should continue its efforts to hire evaluators sufficient to meet its workload.

We conducted this audit 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. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives specified in the scope section of the report. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Respectfully submitted,



ELAINE M. HOWLE, CPA  
State Auditor

Date: March 12, 2015

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For questions regarding the contents of this report, please contact Margarita Fernández, Chief of Public Affairs, at 916.445.0255.

## Appendix

### THE RESULTS OF EVALUATIONS OF SEXUALLY VIOLENT PREDATORS

The Joint Legislative Audit Committee asked us to report on the number of sexually violent predators (SVPs) that the California Department of State Hospitals (State Hospitals) found suitable or unsuitable for discharge or release. However, according to State Hospitals, it tracks the findings of individual evaluators rather than the number of SVPs found suitable or unsuitable for release. As a result, Table A on the following page reports on the conclusions of individual evaluations of SVPs. Because state law requires State Hospitals to evaluate SVPs committed to a state hospital for indeterminate terms annually, the number of annual evaluations in the table for each year generally corresponds to the number of SVPs evaluated each year. However, there is a population of individuals who were committed to State Hospitals' custody prior to changes in state law that made commitment terms indeterminate rather than the former two-year commitments. These individuals' two-year commitments have expired, and the courts have not yet held trials to determine whether these individuals are to be committed to indeterminate terms. According to a State Hospitals' staff legal counsel, these individuals do not receive annual evaluations. Designated county counsels, defense attorneys, or the courts may request additional evaluations of these individuals, sometimes requesting multiple evaluations for the same individual. As a result, the number of other postcommitment evaluations in the table does not equate to the number of individuals evaluated. Further, because this table presents data on the conclusions of individual evaluations, it cannot be effectively compared to data on the number of SVPs released—as we present in Table 1 on page 14—because courts may disagree with the findings of State Hospitals' evaluators.



**Table A**  
**Conclusions of Evaluations of Sexually Violent Predators**  
**Fiscal Years 2009–10 Through 2013–14**

FISCAL YEAR	ANNUAL EVALUATIONS			OTHER POSTCOMMITMENT EVALUATIONS*		
	EVALUATOR CONCLUDES THAT THE INDIVIDUAL CONTINUES TO MEET THE CRITERIA FOR A SEXUALLY VIOLENT PREDATOR (SVP) <sup>†</sup>	EVALUATOR CONCLUDES THAT THE INDIVIDUAL NO LONGER MEETS THE CRITERIA FOR AN SVP <sup>†</sup>	EVALUATOR CONCLUDES THAT THE INDIVIDUAL IS A POSSIBLE CANDIDATE FOR CONDITIONAL RELEASE <sup>†</sup>	EVALUATOR CONCLUDES THAT THE INDIVIDUAL CONTINUES TO MEET THE DEFINITION OF AN SVP <sup>‡</sup>	EVALUATOR CONCLUDES THAT THE INDIVIDUAL NO LONGER MEETS THE DEFINITION OF AN SVP <sup>‡</sup>	EVALUATOR CONCLUDES THAT THE INDIVIDUAL IS A POSSIBLE CANDIDATE FOR CONDITIONAL RELEASE <sup>‡</sup>
2009–10	223	3	1	405	69	0
2010–11	365	4	1	264	49	1
2011–12	267	0	3	197	39	4
2012–13	301	2	6	153	39	8
2013–14	275	3	7	168	48	3

Sources: California State Auditor's analysis of data obtained from the California Department of State Hospitals' (State Hospitals) Sex Offender Commitment Program Support System; legal counsel for State Hospitals; Coalinga's acting chief of forensic services; and California Welfare and Institutions Code, Section 6600 et seq.

\* Committed individuals may receive other evaluations from State Hospitals at the request of designated county counsels, defense attorneys, or the courts. For example, a portion of Coalinga State Hospital's (Coalinga) population was committed prior to changes in state law that made terms indeterminate and remains in Coalinga on expired, two-year commitments, pending a trial to determine whether an indeterminate commitment is warranted.

<sup>†</sup> These numbers represent the number of evaluations conducted and the conclusions of the individual evaluators. Because SVPs must receive annual evaluations, these numbers should generally correspond to individual SVPs; however, SVPs likely appear in multiple years.

<sup>‡</sup> These numbers represent the number of evaluations conducted and the conclusions of the individual evaluators. For this population of SVPs, there is no ultimate State Hospitals recommendation. According to the acting chief of forensic services at Coalinga, State Hospitals transmits these evaluations to the courts that requested them and, while individual evaluators opine on the suitability of SVPs for release, State Hospitals does not make an overall conclusion.

STATE OF CALIFORNIA — DEPARTMENT OF STATE HOSPITALS

EDMUND G. BROWN JR., GOVERNOR

**OFFICE OF THE DIRECTOR**

1600 Ninth Street, Room 151  
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February 20, 2015

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

Dear Ms. Howle:

The California Department of State Hospitals (DSH) has attached it's response to the draft report entitled "California Department of State Hospitals: It Could Increase the Consistency of Its Evaluations of Sex Offenders by Improving Its Assessment Protocol and Training". The DSH appreciated the work performed by the California State Auditor and the opportunity to respond to the draft report.

Please contact Sophie Cabrera, Assistant Deputy Director of the Forensic Services Division, at (916) 651-5296 if you have any questions.

Sincerely,

PAM AHLIN  
Director

Attachment

\* California State Auditor's comments appear on page 59.

### Response to the California State Auditor Draft Report Entitled

“Department of State Hospitals: It Could Increase the Consistency of Its Evaluations of Sex Offenders by Improving Its Assessment Protocol and Training”

**Recommendation:** To improve the consistency of its evaluations, by June 2015, State Hospitals should create a written policy that requires its evaluators to include the following documentations in their evaluations:

- Detail describing all the documentation they reviewed.
- The offender’s psychosexual history.
- A description of the risk assessment instruments they used and the scoring tool for those risk assessments.
- Acknowledgement of their review of the Disability and Effective Communication System (DECS).

**Response:** DSH will implement. DSH plans that by June 2015 a letter will be provided to DSH evaluators identifying inclusion of documentation that was reviewed, offender’s psychosexual history, description of risk assessment tools, and acknowledgement of DECS review.

**Recommendation:** To promote consistency and ensure that it provides sufficient guidance to evaluators, State Hospitals should update its assessment protocol by March 2016 to include more specific instructions on how to conduct evaluations, such as what assessment instruments evaluators may use and what documents they should consider. State Hospitals should also develop a timeline for periodically reviewing and making any necessary updates to the assessment protocol.

① **Response:** DSH will implement. DSH plans that by March 2016 the regulatory process will be initiated to update the standardized assessment protocol to include more specific instruction on how to conduct evaluations. DSH will develop a timeline for periodic review of the protocol to make updates as necessary.

**Recommendation:** To comply with State law, State Hospitals should ensure that it follows the Administrative Procedure Act for future changes to its standardized assessment protocol.

**Response:** DSH will implement. DSH will follow the Administrative Procedure Act for future changes to the standardized assessment protocol where appropriate.

**Recommendation:** To improve the consistency and completeness of its evaluations, by December 2015 State Hospitals should develop a plan for the formal, supervisory review of evaluations from a clinical perspective that balances the needs of the program with its resource limitations. For example, rather than attempting to review every evaluation, State

Hospitals could focus its review efforts on those evaluations most at risk of error or inconsistency, such as those completed by the newest evaluators. If State Hospital adopts this or a similar approach, it should review the remaining evaluations on a sample basis.

**Response:** DSH will implement. DSH is exploring options that will improve the clinical supervisory review process. DSH currently focuses its review process on newly hired evaluators and plans to adopt a process by December 2015 to review remaining evaluations on a sample basis.

**Recommendation:** To ensure that it can demonstrate the consistency of Coalinga supervisory review of annual evaluations, by June 2015, State Hospitals should direct Coalinga to formally adopt its checklist for reviewing evaluations, provide the checklist to its evaluators and include the checklist as part of its evaluations process. State Hospitals should also develop a checklist for the evaluations it performs at its headquarters and adopt it as part of its standardized assessment protocol by March 2016.

**Response:** DSH will partially implement. DSH plans that by June 2015; DSH-Coalinga will implement the use of a checklist for reviewing evaluations and provide the checklist to its evaluators as part of the evaluation process. DSH-Headquarters will develop a checklist for reviewing evaluations and provide the checklist to evaluators. However, the checklist document will not be included as part of the standardized assessment protocol as it will be used for administrative purposes and not be included as part of the evaluation. ②

**Recommendation:** To ensure that it has the data necessary to inform its training and supervision of evaluators, State Hospitals should identify the most efficient means for obtaining the outcomes of past trials – at least the outcomes of three years of past trials if possible – and should ensure that it includes such outcomes in its database by March 2016. Additionally, by June 2015 it should establish procedures to ensure that it promptly collects the outcomes from current and future trial.

Finally, State Hospitals should develop procedures to analyze these data at least twice annually to identify any trends in cases in which the courts' determination differed from the State Hospitals evaluator's recommendation. It should use this information to provide training and supervision where they are most needed.

**Response:** DSH will implement. DSH has established a procedure to ensure collection of information regarding trial outcome and plans to formalize the procedure by June 2015. By March 2016 DSH plans that it will seek and institute necessary modification to its database so that it can effectively capture the trial outcome information. DSH will analyze the data at least twice annually to identify trends in which court determinations differed from evaluator recommendation and use this information for training and supervisory purposes.

**Recommendation:** To ensure that its evaluators including those at Coalinga have the necessary training to conduct evaluations effectively and consistently, State Hospitals should complete development of comprehensive training plans for all evaluators by June 2015. In addition, by September 2015 State Hospitals should provide training on the Static 99R and dynamic risk assessment instrument to all new evaluators and those have not yet received such training.

**Response:** DSH will implement. DSH plans that by June 2015, DSH-Headquarters will complete and coordinate a comprehensive training plan with DSH-Coalinga. In addition, DSH plans that by September 2015, training will be provided on the Static-99R and a dynamic risk assessment tool to all new evaluators that have not received such training.

**Recommendation:** To ensure that all its evaluators are aware of changes in the forensic evaluations, State Hospitals should provide annual training on updates to risk assessment instruments.

**Response:** DSH will implement. DSH plans to provide annual training on updates to risk assessment instruments.

**Recommendation:** To demonstrate it has provided appropriate training and that its employees have received that training, State Hospitals should immediately begin maintaining training records for all employees and contract evaluators.

**Response:** DSH will implement. DSH has instituted this practice.

**Recommendation:** By June 2015, State Hospitals should establish a formal process for consistently documenting that it has verified that the individuals it hires as evaluators meet all the minimum qualifications for their positions. State Hospitals should ensure that staff at Coalinga follows the process established in Coalinga's checklist for validating the past employment of employee evaluators and contract evaluators.

**Response:** DSH will implement. DSH plans that by June 2015, DSH-Coalinga will institute a process and checklist for validating past employment and minimum qualifications of new employee and contract evaluators. DSH-Headquarters will continue to have the DSH Human Resources division check minimum qualifications of new hire employees and institute an additional review process for checking minimum qualifications.

**Recommendation:** To improve its overall effectiveness, by December 2015, State Hospitals should further analyze the rate at which its evaluators determine offenders meet the SVP criteria. State Hospitals should focus its analysis on evaluations it performed in the most recent three fiscal years because of its transition to civil service evaluators and because changes to state law have affected how it performs evaluations. State Hospitals should establish what the normal acceptable ranges for commitment rates are and work with evaluators whose findings consistently fall outside that range.

**Response:** DSH will implement. DSH plans that by December 2015, it will establish a normal acceptable range for commitment rates. DSH will analyze the commitment rates of evaluators to work with evaluators that consistently fall outside of the normative range.

**Recommendation:** To ensure that it has an effective method for assigning and tracking evaluator workload, State Hospitals should establish a formal process for periodically reviewing its workload matrix by September 2015. This process should include periodic assessments of how well evaluators are meeting their workload expectations and whether adjustments would be appropriate. The process should also include input from key stakeholders.

**Response:** DSH will implement. DSH plans that by September 2015, a formal process will be established, with input from key stakeholders, for periodically reviewing the evaluator workload matrix and assessing workload expectations and workload adjustments that would be appropriate.

**Recommendation:** State Hospitals should explore options for tracking the time evaluators spend on each evaluation activity to increase the accuracy of the workload equivalencies it includes in its workload matrix and implement such options by September 2015.

**Response:** DSH will implement. DSH plans that by September 2015, different options will be explored for conducting a time study to assess workload equivalencies and the evaluator workload matrix.

**Recommendation:** To reduce backlog of annual evaluations at Coalinga and reduce the number of days these evaluations are overdue, State Hospitals should immediately determine the extent to which its evaluators who work at headquarters can provide assistance to Coalinga. To ensure it does not develop a similar backlog in the future, State Hospitals should continue its efforts to hire evaluators sufficient to meet its workload.

**Response:** DSH will implement. DSH-Coalinga is currently exploring options to develop a contract to hire evaluators to liquidate the backlog of annual evaluations. DSH-Coalinga will continue efforts to hire evaluators to meet the workload demand. DSH-Headquarters will assess its employee workload to determine its ability to provide assistance to DSH-Coalinga.

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## Comments

### CALIFORNIA STATE AUDITOR'S COMMENTS ON THE RESPONSE FROM THE CALIFORNIA DEPARTMENT OF STATE HOSPITALS

To provide clarity and perspective, we are commenting on the California Department of State Hospitals' (State Hospitals) response to our audit. The numbers below correspond to the numbers we placed in the margin of State Hospitals' response.

We are concerned regarding the timeliness of State Hospitals' planned action. Rather than update its assessment protocol by March 2016 as we recommended, State Hospitals' response indicates that it only plans to initiate the regulatory process by that date, which means that the updated protocol will not be in place until much later—typically eight to 12 months. As we state on page 25, without specific guidance regarding how to conduct evaluations, evaluators may not perform their work consistently or review all of the appropriate documents, increasing the risk that they will make erroneous assessments.

①

We are disappointed that State Hospitals has chosen to stop short of including a supervisory checklist in its formal processes. We acknowledge that using the checklist as an administrative tool is an important step in ensuring consistent evaluations. However, including such a checklist in the evaluation process and the standardized assessment protocol ensures that State Hospitals and Coalinga State Hospital can demonstrate consistency.

②



No. S277072

# In the Supreme Court of the State of California

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IN RE VICTOR TELLEZ, ON HABEAS CORPUS.

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Fourth Appellate District, Case No. D079716  
San Diego County Superior Court, Case No. SCE369196  
The Honorable Roderick W. Shelton, Judge

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## [PROPOSED] ORDER

Respondent's motion for judicial notice, filed on July 20, 2023, is GRANTED. This Court takes judicial notice of the document attached to that motion.

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Presiding Justice

**STATE OF CALIFORNIA**  
Supreme Court of California

***PROOF OF SERVICE***

**STATE OF CALIFORNIA**  
Supreme Court of California

Case Name: **TELLEZ (VICTOR RAUL) ON  
H.C.**

Case Number: **S277072**

Lower Court Case Number: **D079716**

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **Joy.Utomi@doj.ca.gov**
3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

<b>Filing Type</b>	<b>Document Title</b>
REQUEST FOR JUDICIAL NOTICE	S277072 Respondent's Request for Judiical Notice.PDF
ADDITIONAL DOCUMENTS	S277072Proposed Order.PDF
BRIEF	S277072 Answer Brief on the Merits

Service Recipients:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

7/20/2023  
Date

/s/Lidia Hernandez  
Signature

Utomi, Joy (279983)  
Last Name, First Name (PNum)

Department of Justice, Office of the Attorney General-San Diego  
Law Firm