

Sexually Violent Predator Project: Introduction & Duration of SVP Detainee Status



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INTRODUCTION

I Description

Implemented in 1996, the Sexually Violent Predator Law (SVP, [Welf & Inst. Code, § 6600, et seq.](#)) represents the state's effort to treat and manage its highest risk sex offenders. The total number of individuals ever committed as SVPs represents less than 1% of all individuals registered as sexual offenders in California (D'Orazio, Azizian, & Olver, 2019). California's SVP program has more inpatients than any of the 21 states with "Sexually Violent Predator" laws (Schneider et. al, 2018). The current census of nearly 1,000 total SVPs represents roughly 15% of the national total and is comprised of detainee (WIC6602, Probable Cause) and fully committed (WIC6604) categories. California has the highest number of detainees nationally, representing nearly half its total SVP population. Not just the number of detainees is exceptional, but also the duration of detainee status is much longer than that of other states with SVP programs.

Since inception through 2018, 467 SVPs have been released unconditionally, comprised of 265 fully committed and 202 detainees (D'Orazio, Azizian, Olver, 2019). Due to statutory amendment, those fully committed as SVPs since 2006 have parole time after release from the SVP commitment whereas parole time after SVP detainment is relatively rare for detainees. This is because the law does not toll parole for the detainee category. Further, detainees are not required to register for life as an SVP and are subjected to the same registration requirements as non-SVP PC290 registered sexual offenders. As detailed in the [Duration of Detainee Status Paper](#), detainee issues significantly impact effective and efficient implementation of the SVP treatment program and the therapeutic milieu; and detainees get released with less treatment and supervision than those fully committed.

Roughly 40% of California's SVPs participate in sexual offense specific treatment, whereas the national median average is 90% (Schneider et. al, 2017). California's SVP program includes a high intensity less restrictive alternative to inpatient treatment, the SVP Conditional Release Program (CONREP), available to the fully committed SVP individuals whose risk can be managed on supervision and treatment in the community. CONREP is designed as a necessary step in treating SVPs to maximize the likelihood of successful reintegration with no future offending. In total about 5% of SVP individuals (47 individuals) were placed in SVP CONREP (D'Orazio, Azizian, and Olver, 2019). To date, SVP CONREP has been 100% successful in preventing sexually violent offending in CONREP. Further those SVPs released from CONREP are three times less likely to have future arrests than those released without having participated in CONREP (D'Orazio, Azizian, and Olver, 2019). However, by law, CONREP is not available to detainees (WIC6602, Probable Cause SVPs). Additionally, is difficult and resource intensive to find CONREP housing, giving rise to problems including transient releases and lengthy delays from court approval and CONREP placement.

Costs

The SVP program annual inpatient cost is \$205k per person (D’Orazio, 2019a;b). Annual outpatient cost is \$310K per person if the CONREP placement is a fixed residence and substantially more costly for transient releases. The yearly cost for evaluation services to determine if offenders meet SVP legal criteria is \$18M. Contrasting, in California, the tangible fiscal cost of sexual violence is greater than \$9 billion per year; preventing one rape of an adult saves \$164 thousand and preventing on child sexual assault saves \$228 thousand (CALCASA, 2018 as cited in D’Orazio, 2019c).

Pathway from Commitment to Release

The following describes the steps from evaluation for commitment as an SVP to release. DSH has evaluated more than 19k sexual offenders ultimately resulting in roughly 5% committed as SVPs (e.g., D’Orazio, 2019c). In roughly 12% of cases evaluated DSH found SVP criteria met. The court then legally determines if Probable Cause (WIC 6602) is met, at which time the individual is court ordered to remain in custody in a secure facility, -DSH Coalinga. There is only one female committed as an SVP and this is at Patton State Hospital (D’Orazio, 5/13/20). Detainees are held at the state hospital and offered treatment until a commitment trial occurs, at which time the detainee is either fully committed as an SVP or released having been determined by the judge or jury not to meet the SVP criteria Beyond a Reasonable Doubt. The detainees at the state hospital awaiting commitment proceedings have been there for an average of 6 years, and 25% have been there more than 10-years (D’Orazio, Azizian & Olver, 2019).

After the detainee is fully committed (the person committed as a WIC6602 is committed as a WIC6604), the discharge pathway is conditional or unconditional release initiated by their filing a court petition. Once fully civilly committed as an SVP, the individual is committed until such time that he or she no longer presents a serious and well-founded risk for sexual re-offense by nature of a mental disorder (roughly 25% of those fully committed SVPs have been unconditionally released (D’Orazio, 2019a;b;c). The DSH provides voluntary treatment to SVPs in its Sex Offender Treatment Program at Coalinga State Hospital that is described as based on the empirically based best practice standards called Risk, Needs, Responsivity, and Better Lives and Self-Regulation Models of sex offense treatment (SOTP Program Description, 2016). The DSH Sexual Offense Treatment Program (SOTP) is designed to be administered through four sequential inpatient modules followed by a conditional release component, CONREP, that is delivered in the community. Detainees are legally ineligible to complete the SOTP.

II Purpose

Toward the goal of maximally enhancing community safety, CASOMB promotes policies and practices that enhance outcomes and overcome barriers to effective management of adult sex offenders in California. CASOMB develops data driven recommendations to improve policies and

practices. Over the last thirteen years, CASOMB has identified ways to provide stronger safeguards and support for convicted sex offenders to re-enter our communities. In the 2018 Annual Report, the CASOMB prioritized understanding and making recommendations regarding key features of the state's implementation of the SVP Law.

The purpose of this Introduction Paper is to describe the context, method, and approach toward responding to four SVP topic areas identified in the [2018 CASOMB Annual Report](#):

1. **Duration of Detainee Status.** Detainee refers to the Probable Cause category of SVP (WIC6602). Detainee is a legal categorization preceding and distinguished from the fully committed category of SVP (WIC6604). Detainee means a Probable Cause threshold of proof the person meets the definition of SVP is met. Although detainees are commonly referred to as SVPs, legally, they are not yet SVPs. Indeed, many detainees go on to be released having been judicially determined not to meet SVP criteria Beyond a Reasonable Doubt. These Detainee individuals feel it was unfair to have been deprived of their liberty by being held at DSH- Coalinga for several years pending their SVP commitment proceedings. The duration that SVPs are in Detainee status prior to being judicially reviewed for full commitment is lengthy, -nearly one out of four Detainees currently at DSH-Coalinga has been waiting for their commitment proceeding for greater than ten years. Responding to due process rights violations arising from extraordinary delays for commitment proceedings, Superior courts have begun to release detainees without a commitment proceeding. The number of detainees and the lengthy duration of detainee status in CA is highly aberrant from other civil commitment programs nationally. This topic and its associated impacts are detailed in Paper 1. The duration of detainee status impacts the program's ability to comport with best practice standards and has been described in other reports (i.e. CASOMB Annual Report, 2016; California Coalition on Sexual Offending (CCOSO), 2009).
2. **Treatment Participation Rate.** Contrary to public belief and the purpose of the SVP law, the majority of those committed as Sexually Violent Predators in California do not participate in the Sexual Offense Specific Treatment Program afforded to them as part of their commitment. Paper 2 describes the treatment enrollment rate and resultant areas of concern. This topic has been described in other reports (e.g. CASOMB Annual Report, 2016; CCOSO, 2009; Schneider et. al, 2017).
3. **CONREP Housing and Community Placement Issues** for SVP individuals who achieve provisional discharge through the California Conditional Release Program. SVP CONREP is a step down program between inpatient commitment and unconditional release to facilitate safe transition back to the community, but it is only utilized in roughly 5% of cases. The SVP law requires community notification hearings, residency restrictions (DSH policy includes Jessica's Law residency restrictions); placement limitations to the county of domicile unless extraordinary circumstances are found and does not require completion of the inpatient treatment program. Further, the state does not maintain housing, and

housing is found on a case by case basis. There are formidable barriers to finding suitable housing and treating SVP individuals in CONREP. These challenges have led to transient releases (rate of \$647k per placement per year) with high failure rates. This topic is detailed in Paper 3 and has been described in other reports (e.g. Homelessness and Transient Registration paper, 2019; CASOMB Annual Report, 2018, 2016; CCOSO, 2009).

4. **Community Reintegration Resources for SVPs Unconditionally Discharged.** Of the nearly 1000 fully committed SVPs ever (1996-2018), 265 have been released from the state hospital. Only 47 have transitioned from the secure state hospital to the community through the Conditional Release Program (CONREP). The others were unconditionally released, although since 2006 most fully committed SVPs are released with parole supervision. Additionally, 202 detainees have been unconditionally released. The discharge path for the detainees does not permit CONREP, and parole supervision is rare, thus they are a group receiving less treatment and supervision services than the committed group. Paper 4 describes this topic and areas of deviation from best practice standards.

III Method

Individual papers addressing each topic follow this Introduction paper. Each paper describes the topic area, available relevant data, and applies an analysis of the topic area through the field's best practice principles, -the Risk, Needs, Responsivity principles. Each paper concludes with best practice informed areas of improvement or suggestions.

IV Guiding Principles

Since enactment in 1996, California's implementation of its SVP law has evolved in response to many factors including legislative changes, the availability of resources, and research on sexual offending and treatment efficacy. CASOMB's examination of the SVP implementation is not exhaustive. The motivation for CASOMB's examination is that it behooves the state's various criminal justice stakeholders to understand and strive to continually improve the network of services that enhance community safety by preventing sexual re-offense. The state budget is divided amongst its programs and limited. Every dollar spent on an SVP system is a dollar not spent on other social priorities including preventing sexual offending through other means.

In the face of diverse and often competing influences, criminal justice interventions must be evaluated through the lens of the empirical research base. Thus, the following papers describe select features of the SVP program within the context of what is known to be effective in sexual offense treatment, and specifically the best practice standards supported by the Risk, Needs, Responsivity Principles. Readers are referred to the [Association for the Treatment of Sexual Abusers](#), the California Coalition on Sexual Offending, and the [Sex Offender Civil Commitment Network](#) for resources and guidelines on these best practices applied to sexual offense treatment. Additionally, the book chapter "[Best Practice in SVP Treatment Programs](#)" is a helpful summary of the key empirically supported features of effective SVP programs.

Best Practice Standards in SVP Programs

Best practice in providing interventions to persons committed under SVP laws is guided by consideration of their purpose and prevailing research.

A social policy perspective considers what best serves the public good. SVP systems are intended to concentrate exceptional resources on managing those offending individuals who present exceptional risk. The exceptional resources include involuntary detention under mental health conditions and longer and more intensive treatment, detainment, and supervision than exist elsewhere on the continuum of interventions for sexual offending individuals.

The fiscal cost effectiveness of SVP civil commitment is conceptualized as the SVP “dollar cost”, -the dollars that have to be spent in order to (on average) prevent one additional person being sexually victimized. SVP programs make social policy sense *when they prevent more offenses for fewer dollars spent*. This depends on how risky the average person committed under SVP laws actually is, the cost of services provided, and how effectively the program prevents re-offending. Dollar cost depends substantially on the duration of commitment.

A social policy analysis also considers the justice costs of the system. Involuntarily committing someone based on what they might do in the future infringes upon the liberty rights of those committed. This cost is justified by extraordinary threat posed to the community by those committed. This justice cost is justified *when those committed present higher risks, when the number committed is small, and the duration of commitment is no longer than necessary*. Thus, SVP programs must sufficiently reduce the risk of those in their care in the shortest duration possible. Current available research indicates this is best accomplished when interventions adhere to the Risk, Needs, Responsivity Principles (Andrews & Bonta, 2017).

The Risk, Need, Responsivity Principles

The Risk, Needs, Responsivity Principles represent the overarching research supported guiding principles for effective offender interventions (Andrews & Bonta, 2017). Any program or policy involving offenders should strive to maximally comport to RNR.

Risk Principle: The level of treatment resources assigned to working with an individual that has committed a criminal offense should be proportionate to their risk for recidivism. Treatment dosage (e.g. frequency, duration, intensity of interventions) should be greatest for the highest risk offenders and lower for moderate risk offenders. Low risk offenders need little or no interventions. Risk estimates are typically provided by statistical measures. Dosage is modified according to reduction or sustained management of risk and the treatment plan and program is regularly modified in response to risk.

Need Principle: Treatment and management efforts should be concentrated on addressing psychological and social factors that predispose towards further offending, called criminogenic needs. Criminogenic needs are empirically associated with a raised recidivism rate.

Responsivity Principle: Interventions are more effective when they fit the learning style and abilities of participants. This means that treatment must feel like help to participants. Treatment and supervision should use methods that have generally been shown to work with offending populations; that are a good fit with the individual client; and adapted to maximize participants' responsiveness, attending to motivation, individual learning style, abilities, and culture.

Of particular interest as well is the research finding that when you hold constant the three RNR principles, demonstration projects get substantially better results than routine treatment practice. This means that when greater care is taken to implement a program as intended to be run there is better fidelity and outcome, while in routine practice there tends to be corner cutting and a drift away from therapeutic models.

Hanson et al (2009) tested the application of RNR principles to sexual offender treatment. They classified studies according methodological criteria that had been consensually developed among highly-regarded researchers (Collaborative Outcome Data Committee (2007a and b) and retained for analysis the limited number of studies they found to be minimally adequate. Like Andrews & Bonta, they found that the more studies complied with each of the RNR principles the greater the reduction in recidivism associated with treatment.

Finally, there are two other lines of research that guide effective sexual offender treatment:

Persisting in showing risk-related functioning late in treatment (or after treatment completion) is associated with elevated recidivism rates. For example, raised recidivism rates are associated with (1) Beginning treatment but failing to complete it (Hanson et al, 2002; Losel and Schmucker, 2005); (2) Failure to demonstrate treatment gains (Marques et al, 2005; McGrath et al, 2012); and (3) Continuing to show behavioral evidence of psychological risk factors at the end of treatment (Olver and Wong, 2007; Beggs and Grace, 2010). Thus, participation in treatment only implies reduced risk when there is sustained management of the underlying factors targeted in treatment.

Sexual offending often reflects the person having a positive attitude to offending and actively seeking or taking advantage of offense related opportunities. Evidence for this comes from studies of the prevalence of what Ward and Hudson call the "Approach" pathway to offending (Ward & Hudson, 1998; Ward et al, 1998) and from studies indicating that recidivism after treatment *reflect a failure to attempt to use self-management strategies rather than poor self-management skills* (Webster, 2005; Marques et al, 2005). Thus, effectively recruiting motivation to change and monitoring for risk related behaviors across the treatment and management period is particularly important among higher-risk offending individuals.

V Essential Features of Effective SVP Programs

Considering the purpose of SVP programs and the best practice principles, effective SVP programs are described as having the following features (Thornton & D'Orazio, 2013):

1. SVP systems should be part of an integrated response to sexual offending that includes a

continuum of services. For example, primary prevention programs (preventing offending before it starts) and secondary prevention programs (preventing offense in those that show symptoms), reducing the opportunity to re-offend through community supervision and imprisonment, and reducing the propensity to offend through community and prison treatment programs of different intensities. SVP commitment should only be applied when other less extreme and less costly interventions have failed or were insufficient. This means that every state with an SVP program should have a prison based sex offender treatment program that allows potential SVPs the opportunity for treatment while serving their sexual offense sentence.

2. SVP systems should be very selective in who gets committed. Only those who truly pose an exceptional risk should be committed. Every time someone is committed whose risk is not truly exceptional there is an increase in the dollar cost and justice cost. When the law attends to risk and judges, attorneys and evaluators involved in commitment hearings are trained well and do their job well they contribute to this aspect of SVP system effectiveness.
3. The legal steps involved in initial commitment as well as decisions regarding release under supervision and discharge should proceed efficiently and without preventable delays or costs. Achieving this kind of efficiency partly results from discretionary decision-making by judges, attorneys and evaluators but it also critically depends on the forensic decision-making structure defined by the law.
4. SVP programs should promptly provide treatment services that efficiently reduce risk below the "exceptional" threshold for a high proportion of those committed. This has three aspects: meaningfully engaging a high proportion of those committed in treatment; providing treatment that effectively addresses the factors that underlie their offending; and providing sufficient treatment to reduce risk over as short a period of time as possible. Achieving this depends on the quality of available treatment and assessment services, the resources allocated to treatment programs, the knowledge of those who design SVP treatment programs, and the skills of SVP treatment providers.
5. SVP programs should provide effective community reintegration services that gradually allow those who have been committed transition to the community and develop a healthy and safe lifestyle in which they contribute to the community through engaging in productive work. Community containment/reintegration teams including those who provide outpatient treatment and supervision to this population who do their job well contribute to this.
6. Throughout the SVP system the restrictions placed on persons who have been committed should be no more than is practically required for their safe management and treatment and should not be applied punitively. Restrictions need to be adjusted in response to reductions or increases in risk.

7. SVP programs should include active research programs designed to assess how well the best practice principles are met and to continually make improvements. SVP systems should be transparent in releasing information about programming, census, costs, and efficacy.

Duration of SVP Detainee Status

I Purpose

“SVP” refers to the Sexually Violent Predator Law ([Welf & Inst. Code, § 6600, et seq.](#)) and represents the state’s effort to treat and manage its highest risk sex offenders. The CASOMB prioritized understanding and consider making recommendations regarding four features of the state’s implementation of the Sexually Violent Predator Law. This paper addresses:

II Description

The focus of this paper is on the Detainee category of SVP and involves the number, duration, and impact of detainees on California’s implementation of its SVP law.

California has more civilly committed sexual offenders than any of the 21 states with “Sexually Violent Predator” laws. California is a national outlier due to its high number of detainees (WIC6602 Probable Cause SVP) and duration of detainee status. Detainees represent nearly half of California’s SVP population. The average duration of stay for current detainees is six years and one out of four has been detained more than ten years.

Detainee refers to the Probable Cause category of SVP (WIC6602) and is distinguished from the fully committed category of SVP (WIC6604). Statutorily, within six month from his CDCR release date, the inmate is judicially found to meet a Probable Cause (WIC6602) threshold. Detainees are variably also referred to as “Probable Cause SVPs” and “6602s”, is ordered by the Superior Court judge “to remain in custody in a secure facility until a trial is completed (WIC6602).” The detainee is then transferred to the Dept. of State Hospitals (DSH)-Coalinga until the commitment trial by judge or jury determines Beyond a Reasonable Doubt the person meets the definition of an SVP, at which time the person is considered a fully committed SVP (WIC 6604). The SVP statute does not specify a maximum time duration an individual can remain a detainee.

Delays from the judicial determination of Probable Cause to Commitment proceedings trigger a need for additional forensic evaluations, at a cost of several thousand dollars per detainee. District attorneys request Update Evaluations, typically when the period of time after the Probable Cause determination exceeds a year. When the Commitment Trial occurs within a year of the Probable Cause hearing typically no Update Evaluations are ordered. When Update Evaluations are requested, they must be conducted on all initial evaluations that went to court (i.e. at least two evaluations go to court). For example, if it takes six years to hold the commitment proceeding, the cost of Update Evaluations alone may exceed fifty thousand dollars. Roughly 6 out of 10 detainees are eventually fully committed (D’Orazio, Azizian, & Olver, 2019).

Since the legislative enactment of “tolling parole” in 2006, fully committed SVPs have substantial parole periods post release. In 2011, the law was modified to exclude detainees from tolling parole. Due to lengthy durations from Probable Cause to commitment proceedings, detainees rarely have

any parole time post release, although specific information on this is pending DSH reply. The non-tolling parole for Detainees essentially results in credit for time served at the state hospital pending commitment proceedings. Further, unlike the fully committed SVPs, Detainees are not required to register as a Sexually Violent Predator for life, but rather as non-SVP sexual offenders.

There are important treatment distinctions between Detainees and fully committed SVPs. Detainees are not able to complete the Department of State Hospitals Sexual Offense Treatment Program (SOTP). SOTP is specially designed by DSH to reduce risk of sexual re-offense in the SVP population. The DSH SOTP is comprised of four inpatient modules plus a supervised community release program, the Conditional Release Program (CONREP). The modules are designed to build upon each other as the person achieves greater internalization of treatment concepts and learns to manage his risk factors, until he is ready to practice treatment gains in the CONREP setting. The mandated treatment and supervision conditions of CONREP include 24 hour monitoring and are much more stringent than parole supervision for sexual offenders.

To date, SVP CONREP has been 100% successful in preventing any sexual violent offenses among program participants, and the average arrest rate for any crime after CONREP participation is slightly lower than that of other SVP CONREP programs across the country (i.e. CA SVP POST CONREP=14% “any arrest”, D’Orazio, Azizian, & Olver, 2019). Notably, SVPs unconditionally released without having participated in CONREP, are roughly three times more likely than those that participated in CONREP to be arrested for any crime after release. In terms of sexual reoffending after release from CONREP, there has been one case, this being Indecent Exposure.

CONREP is the only less restrictive alternative to the inpatient SVP program, and only fully committed SVP individuals are eligible. Thus, roughly half of the current population of SVPs, the Detainees, are ineligible for the final treatment component where inpatient treatment gains are practiced in the community. Because of the non-tolling parole, Detainees typically do not have parole supervision or mandated treatment when they transition back to the community after many years incarcerated then civilly detained at the state hospital. Thus, the post inpatient treatment, supervision, and support services available to detainees, is markedly less than that for fully committed SVPs.

Additionally, there is a distinction between the level of treatment engagement by Detainees and fully committed SVPs. Because of pending commitment proceedings, Detainees are often advised by their attorneys not to participate in components of the sexual offense specific treatment program so that when the case goes to trial the state will not meet its burden of proof Beyond a Reasonable Doubt. A significant finding underlying and perpetuating these Detainee issues, is that the intentional delay of commitment proceedings is often successful in preventing full SVP commitment.

It is common for high-risk sexual offenders to have perpetrated non-detected sexual offenses and possess a broader range of risk factors than evident in the case that goes to court. Risk related disclosures and documentation in treatment contribute to negative perceptions about their meeting

SVP criteria. It is not uncommon for Detainees to refuse to discuss certain aspects of their sexual offense history and current areas of struggle. Many Detainees withhold or refuse to disclose and therapeutically process their sexual offending problems in their years at the state hospital because of pending commitment hearings. Pressure by individuals not sincerely motivated to meaningfully engage in the treatment process contributes to a counter-therapeutic milieu in the SVP facility that undermines its objectives.

Protracted Detainee status as a legal strategy is also evident in court stipulations (sometimes referred to as “brokerings”) wherein the Detainee agrees to full commitment under the condition he will be placed in CONREP. These cases often do not succeed in CONREP due to the lack of programming through the inpatient treatment modules. In many cases District Attorneys withdraw petitions for commitment after the detainee shows years of good behavior at the hospital. This is another form of legal work around the SVP law, that avoids commitment court proceedings.

Readers are referred to the references listed in the Introduction Paper of this compilation and the California Coalition on Sexual Offending paper on the CA SVP law, particularly the recommendation for “Better management of resources relative to probable cause SVPs (CCOSO, 2009).”

III Relevant Data

1. DSH has evaluated (two* evaluators per case) nearly 19k sexual offenders (D’Orazio, Azizian, and Olver, 2019)
2. Evaluation found 12% of these positive (meeting definition of SVP)
3. The court found Probable Cause (WIC6602) in 73% of positive cases and they were sent to DSH (no probable cause in 3%)
4. 58% of those meeting Probable Cause got committed as SVPs
5. California has 534 fully committed SVP inpatients, i.e. WIC6604
6. California currently has 429 SVP detainees, i.e. WIC6602
7. California’s detainee population comprises nearly half the national total
8. California has five times more detainees than any other state, except Illinois, whose detainee population it more than doubles
9. The current Detainees at DSH have been there 5yrs 10mos (mean)
10. About 25% of the Detainees have been there 11 years (mean top 25%)
11. 202 Detainees have been released (265 fully committed SVPs have been released)
12. Yearly cost for one SVP at DSH= 205K this is for Probable Cause and fully Committed SVPs (D’Orazio, 2019a;b;c)
13. The cost of Initial and Update SVP Evaluations are each \$3250.00
14. The yearly total cost for evaluation services for SVP is \$18million.
15. Roughly 40% of SVP individuals participate in SOTP

*unless there is a Difference of Opinion than an additional two evaluations are ordered

IV Detainee Issues Best Practice Analysis: Are the Risk, Need, and Responsivity Principles met?

This examination of the SVP program is not exhaustive. This is an analysis of the impacts of Detainee issues on the ability to adhere to field best practice standards, described in the Introduction Paper. Because CASOMB is comprised of various agency stakeholders, often with competing interests (e.g. district attorneys strive to commit and defense attorneys strive to release offending individuals), we chose to set aside stakeholder roles and apply a perspective of what the research shows works in offender interventions at reducing recidivism.

Risk Principle

The Risk Principle means the intensity of intervention (supervision plus treatment) should match the risk of the offending individual. When programs overtreat, over supervise, or excessively detain lower risk offenders or conversely fail to sufficiently treat, supervise, or detain higher risk offenders there are higher rates of reoffense than when treatment dosage is applied properly. Application of the Risk Principle means that Detainees that are less risky than fully committed SVPs should not be subjected to the same intervention intensity as the fully committed. The lengthy duration of Detainee status means that some Detainees are being subjected to excessive interventions. However, determining the risk of Detainees is muddied due to the lengthy duration of detainee status. For the Detainee group eventually released having not met the commitment threshold, those who did not meet the burden of proof proximal to becoming a Detainee cannot be distinguished from those that met the burden at that time then fell below the threshold in the many ensuing years. This means that some are being detained much longer than necessary whereas other more risky Detainees are not being timely identified as such. It also means the legal steps involved in initial commitment and decisions regarding release under supervision and discharge are not proceeding efficiently and without preventable delays or costs.

1. To comport to the Risk Principle, SVP commitment proceedings should swiftly proceed from the Detainee proceeding to the commitment trial. This will promptly identify and release of those that do not meet commitment criteria, thus identifying and releasing the lower risk subgroup. Further, under the current statute for non-tolling parole for detainees, for each day the total duration detained is shortened, there is one day added to parole supervision after release. For the group of lower risk detainees (i.e. truly do not meet commitment criteria), supervision and treatment as a sexual offender parolee is the appropriate intervention dosage for their level of risk. California is violating the Risk Principle each time a lower risk offender is erroneously captured in the SVP net, thus causing an incorrect match between risk and intervention intensity. Considering the body of research indicating interventions that violate the Risk principle have higher re-offense rates than those that adhere, the impact of this SVP implementation failure poses a serious threat to community safety.

2. The current finding that Detainee delay often results in no commitment suggests that a significant portion of released detainees reduced their risk during the lengthy detainment period. This strategy of circumventing commitment through time delay does not adhere to the Risk Principle. It is a backdoor method of evading commitment for a group comparable in risk to the group committed proximal to detainee proceedings. It assigns differential treatment dosage and intensity to the same risk level which is a serious infidelity to program implementation. The remedy is to commit this group of detainees expediently then, adhering to the SVP statute, release from commitment when the person no longer meets criteria.
3. A positive example of RNR adherence is that the commitment evaluation procedure includes two independent evaluations. This exemplifies fidelity to the Risk Principle because it assures a type of inter-rater reliability thereby reducing the likelihood or erroneous commitment (erroneous commitment would be expected to have negative fiscal and justice costs and higher re-offense rates). Requiring consensus by experts that do not have access to the other's conclusions decreases the likelihood of incorrect findings. Because at least two independent experts conclude Detainees met the risk threshold at the time of Probable Cause commitment, it is likely the risk threshold was met. In fact, the research base behind the Risk Principle considered agreement across multiple objective raters a sign of strong research methodology.
4. When the duration of detainee status is protracted, it necessitates numerous additional evaluations. The sheer number of evaluations and evaluators involved in the case is not only extraordinarily costly, but it makes unduly difficult the court's ability decide on the risk prong of the law (e.g. when the case is so old the evaluator has deceased or stopped working; coordinating which of the many evaluator(s) will testify; numerous differing opinions on the case, etc.).
5. The complexities of prolonged detainment as a legal strategy confound the program's ability to comport to the Risk principle. As shown by the Need principle, in order to reduce risk sexual offending individuals must energetically and sincerely identify and therapeutically work through each of the factors that lead to their sexual offense pathway. Detainees are more likely to withhold treatment relevant personal information, refuse certain parts of the SOTP, and manage their level of participation in a way that focuses on being shown to not meet criteria. They are not eligible for essential program components and to complete the program, and research has shown that lack of treatment completion is associated with higher reoffense rates. Detainee distractions from full treatment engagement are highly influenced by excessive durations preparing for eventual commitment proceedings. Setting time limits on duration of detainee status is one means of overcoming this barrier. Another remedy is for the program to strategize on enhancing its treatment enrollment rate, which includes increasing its CONREP participation rate, as well as taking a close examination of the efficiency and efficacy of the SOTP modules.

6. Including a CONREP step of the SOTP program represents good adherence to the Risk Principle. However, this should occur only when the participants have appropriately completed the prior inpatient modules. The idea of a step-down program exemplifies the Risk Principle because it allows for gradual reduction in intervention intensity as the person increases their risk management and treatment gains. The fact that detainees have been found by at least two independent experts to present substantial risk is sufficient to warrant step-wise completion of inpatient treatment modules and the supervised community release component. The Risk Principle for higher risk offenders indicates that intensive treatment and supervision should gradually attenuate in response to treatment progress and risk management. Lengthy detainee status, skipping treatment steps and/or not having a conditional release step is a violation of the Risk principle.
7. The added fiscal costs of prolonged detainee status compromise adherence to the Risk Principle and undermine the integrity of the SVP system. It is well known that Detainees intentionally delay commitment proceedings and get released without having completed treatment. These realities undermine the program's credibility, and fidelity. Lengthy durations decrease participants' ability to meaningfully engage in treatment and they are not eligible to complete the treatment program. Length of detainment drives the need for additional evaluations. Costs associated with duration at the state hospital post probable cause and pre commitment and additional evaluations represent inefficient use of funds compromising the state's ability to reduce risk as quickly as possible. The net sum of this is compromised efficiency, -resources spent are not wisely used and stakeholders are aware of this. Many are aware of the wasted resources but are powerless to make changes.
8. Unnecessarily lengthy detainment of any SVP is contrary to the Risk Principle. The Risk Principle means that legal steps involved in initial commitment as well as decisions regarding release under supervision and discharge should proceed efficiently and without preventable delays or costs. Achieving this kind of efficiency partly results from discretionary decision-making by judges, attorneys and evaluators but it also critically depends on the allowable decision-making structure defined by law. Unnecessary deprivation of liberty is a serious impact of California's lengthy duration and high number of detainees. The SVP program should promptly provide treatment services that efficiently reduce risk below the "exceptional."

Need Principle

The Need principle means that interventions should target criminogenic needs, -the empirical factors shown to be associated with sexual offending. In order to maximally reduce the recidivism rate, interventions should be actively and strategically focused on the psychological and social factors that predispose SVP individuals toward offending. Relative to detainee issues, there are notable areas where the Need Principle is not met.

1. Most apparent is that the majority of detainees do not participate in the SOTP program that treats their criminogenic needs and they are not eligible to complete the vital final step, CONREP, where inpatient treatment gains are practiced under supervision in the community. In this sense, the need principle is not being met at all in the majority of the detainee population. More often than not the SVP individual is not receiving necessary treatment. In the minority that do participate, the Need principle is not fully met due to not being able to receive community based treatment and supervision in CONREP. Reducing the number of detainees would be expected to increase the treatment enrollment rate as the discharge pathway would narrow to showing change. The program must target its low treatment enrollment rate, and while this will be addressed in a separate paper, it is noted here that reducing the detainee number and duration will increase the enrollment rate.
2. Pending commitment proceedings result in legal maneuvering when the focus should be on risk reduction. Detainees are primarily motivated to appear they do not meet commitment criteria and this undermines sincere treatment engagement. The diluted treatment milieu caused by resistant or insincere participants undermines the overall treatment environment and the ability for other patients to get their treatment needs met (e.g. groups of individuals with the same goals increase the success rate of goal achievement). Separating those in treatment from those that refuse in dormitory living, reducing the number and duration of detainees, requiring all participants to complete basic inpatient program components, and including meaningful engagement as a requirement for advancement will enhance the milieu.
3. Worry that treatment disclosures will lead to commitment presents incentive to present as risk free and as psychologically adaptive as possible. This kind of context fosters insincere treatment participation and makes it difficult to accurately identify the criminogenic needs of detainees. Detainees are truly in a state of legal limbo, whereas fully committed have been determined to meet criteria and must show they have changed. Previously suggested recommendations will target this barrier. All treatment participants should have the same disclosure requirements.
4. The Need Principle is impacted by detainees (or any treatment participant) refusing or being resistant to treatment components. Treatment is designed to target the individual's specific treatment needs. A necessary objective of treatment is for individual to learn his own risk factors, be able to identify them on a daily basis, and develop and utilize a variety of methods of coping with these manifestations. It is very common for individuals to experience ambivalence and discomfort during the process of changing maladaptive behavior patterns. Further, since the maladaptive behavior patterns are strongly ingrained, lapses and mistakes are common. Due to pending proceedings to show he does not meet the definition of SVP, it is reasonable detainees would be resistant to this treatment process. The system bears the responsibility of fixing this impossible double bind of the detainee.

Responsivity Principle

The Responsivity Principle places the onus on the program to find ways to meaningfully engage offending individuals in treatment to address their specific criminogenic needs. In the CA SVP program, the majority of the patients are not responding favorably to the programs' attempts to engage them.

1. The fact that detainees are resistant to meaningful treatment involvement is an example of a lack of adherence to Responsivity Principle.
2. Treatment resistance by a sizeable portion of the population undermines the ability of the others to respond favorably. For example, if 60% of a dormitory are comprised of treatment resistant patients, it is challenging for the other 40% to maintain a high commitment to meaningful treatment engagement. The finding of the majority exerting influence on the minority is commonly accepted.
3. The deprivation of liberty to individuals excessively detained undermines the credibility of the SVP program. This group in limbo between probable cause and commitment usurps the program's ability to focus on treatment needs and programming because a large portion of residents are working steadfastly to be seen as not meeting commitment criteria. The mixed milieu of legal focused and treatment focused patients detracts from program efficacy, and likely patient and staff morale.

V Suggestions

1. CASOMB takes a stance that the duration of detainee status for individuals with sexual offenses subjected to civil commitment proceedings is excessive and problematic. It wastes state resources and undermines the efficacy of SVP as an intervention to enhance community safety. The duration from the Probable Cause judicial determination to the commitment trial should not be longer than two years. CASOMB will make known this stance to all SVP stakeholders and provide education to the judicial council and legislators. If restricting duration to less than two years cannot be done, we recommend a statutory modification of WIC6602(b), that tightens the requirements for the use of "good cause" for continuances, thereby making it harder to obtain continuances beyond two years. These actions are needed so that those who meet SVP criteria will be more quickly committed, and those that do not meet commitment criteria will be more quickly released, and with more parole time remaining to assist their community reintegration. Shortening the duration of detainee status will increase the treatment completion rate, the quality of treatment engagement, and the therapeutic milieu in the SVP Sexual Offense Treatment Program. It will improve the efficacy of the SVP law by assuring those confined at the state hospital meet commitment criteria. It will cease the undue waste of state resources caused by needlessly detaining those that do not meet necessary

criteria. This will significantly reduce the overall fiscal costs spent on SVP evaluation, commitment, and treatment. This will increase the integrity and credibility of the program.

2. Because the case has already gone through full evaluation and Probable Cause judicial proceeding by the time detainees status commences, attorneys will have ample records. Whereas timely proceedings will have a significant net cost savings, attorneys may need additional resources to prioritize their case management. Deputy District Attorney and Public Defender organizations should conduct an impact analysis of capping the amount of time for commitment proceedings to two years.
3. Intersecting the problem of lengthy detainee status, is the problem area of low treatment enrollment. As described in the Treatment Enrollment Paper, the program should develop and implement ways to increase the treatment enrollment rate and quality of treatment engagement in its existing participants. A task force to identify and recommend program implementation changes that would enhance treatment enrollment rate and quality is recommended. This should include the variety of SVP stakeholders.
4. The DSH SVP Program should create and implement a means for tracking detainee duration, duration of treatment modules, and treatment advancement. CASOMB has asked DSH to provide information on parole time of released SVPs.
5. Summaries of the above information should be made readily available to the various SVP stakeholder groups, including CASOMB.
6. In making determinations for readiness for conditional or unconditional release, courts should be instructed to consider the SVP's progress in the inpatient treatment program. This will result in more SVPs getting the treatment needed to reduce the likelihood of sexual re-offense rather than protracting Detainee status. This will help assure that higher risk sexual offenders are not released to the community insufficiently treated. Lower risk offenders should generally be progressing through treatment more quickly than higher risk offenders.
7. Recommend a legislative change to fix the disparity in tolling parole for Detainee and fully committed SVPs. Parole should toll (i.e. pause) for both the WIC6604 and WIC6602 SVP individuals.
8. Research should occur that determines the difference in reoffense rates between 1) those evaluated as not meeting SVP criteria, 2) Detainees released having never been found to meet the SVP criteria Beyond a Reasonable Doubt and 3) fully committed SVPs released having been determined to no longer meet the criteria.
9. Research should occur on the impact of duration of detainment and treatment participation on future reoffense rates.

VI Summary

California's number and duration of detainees make its SVP law implementation highly atypical compared to the other states that have implemented similar laws. This gives rise to procedural due process concerns where it takes an extraordinarily long time for individuals to get processed

through commitment proceedings, while being involuntarily detained past their prison sentence. For the portion of Detainees that will go on to get committed, the lengthy duration of proceedings is seen as time wasted where they could have applied themselves more meaningfully in treatment rather than prepare for pending commitment proceedings. For the portion of Detainees that go on to not get committed, the years lost to commitment proceedings are seen as an unfair and unnecessary loss of liberty. From a fiscal perspective, for every year one detainee that will eventually not be committed is held pending commitment proceedings, there is a wasted cost of \$211,500 (the cost of detainment plus the two update evaluations and this cost rises if the case is a difference of opinion); the actual cost is made greater by attorney and court fees. The justice cost to the detained individual is complete loss of freedom. The high number and excessive duration of detainee status results in deficient adherence of the Risk, Need, Responsivity Principles. The research shows that programs must adhere to RNR or else they will be less effective, meaning more reoffenses by participants. The program should strive to resolve the areas of deficit outlined in sections IV and V above. This would result in wiser use of state funds and improve the safety of California citizens.

References

- Bonta, J., & Andrews, D. A. (2017). *The psychology of criminal conduct* (6th ed.). Taylor & Francis.
- Beggs, S.M. & Grace, R.C. (2010). Assessment of Dynamic Risk Factors: An Independent Validation Study of the Violence Risk Scale: Sexual Offender Version. *Sexual Abuse: A Journal of Research and Treatment*, 22, 234-251.
- Collaborative Outcome Data Committee. (2007a). *Sexual offender treatment outcome research: CODC Guidelines for evaluation Part 1: Introduction and overview* (Corrections Research User Report No. 2007-02). Ottawa, Ontario: Public Safety Canada.
- Collaborative Outcome Data Committee. (2007b). *The Collaborative Outcome Data Committee's guidelines for the evaluation of sexual offender treatment outcome research Part 2: CODC guidelines* (Corrections Research User Report No. 2007- 03). Ottawa, Ontario: Public Safety Canada.
- Department of State Hospitals, Coalinga. Revised 2016. *Sex Offender Treatment Program: Program Description*.
- D'Orazio, D. (March 21, 2019a). *California in Context: Sexual Offender Civil Commitment Across the Country*. Presentation at CASOMB Meeting. Sacramento, CA.
- D'Orazio, D. (August 28, 2019b). *California in Context: Sexual Offender Civil Commitment Across the Country*. Presentation at DSH. Sacramento, California.
- D'Orazio, D. (October 23, 2019c). *Sexually Violent Predator Seminar: Risk Assessment & Static-99R Update*. Presentation to CA District Attorney Association. San Diego, California.
- D'Orazio, D. (May 13, 2020). *Monthly DSH Report to CASOMB, verbal*. May 2020 CASOMB Meeting. Sacramento, CA.

- D'Orazio, D. M. (2017). Evaluating the responsivity principle in prison-based programs for sexual offending behavior. *Journal of Criminal Psychology*, 7(3), 192-205.
- D'Orazio, D., Arkowitz, S., Adams, J., & Maram, W. (2009). The California Sexually Violent Predator statute: history, Description, and Areas of Improvement. San Jose, CA: CCOSO.
- D'Orazio, D., Azizian, A., Olver, M. (November 8, 2019). Recidivism and other outcomes of sexual offenders committed as "Sexually Violent Predators" in California. ATSA 38th Annual Research and Treatment Conference. Presentation at conference. Atlanta, Georgia.
- Hanson, R. K., Gordon, A., Harris, A. J. R., Marques, J. K., Murphy, W. D., Quinsey, V. L., et al. (2002). First report of the Collaborative Outcome Data Project on the Effectiveness of Psychological Treatment of Sex Offenders. *Sex Abuse: A Journal of Research and Treatment*, 14, 169-195.
- Hanson, R. K., Harris, A. J. R., Scott, T., & Helmus, L. (2007). Assessing the risk of sexual offenders on community supervision: The Dynamic Supervision Project (Corrections Research User Report No. 2007-05). Ottawa, ON, Canada: Public Safety Canada.
- Hanson, R.K., Bourgon, G., Helmus, L. & Hodgson, S. (2009). The principles of effective correctional treatment also apply to sexual offenders: A meta-analysis. *Criminal Justice and Behavior*, 36, 865-891.
- Lösel, F., & Schmucker, M. (2005). The effectiveness of treatment for sexual offenders: A comprehensive meta-analysis. *Journal of Experimental Criminology*, 1, 117-146.
- Marques, J. K., Wiederanders, M., Day, D. M., Nelson, C., & van Ommeren, A. (2005). Effects of a relapse prevention program on sexual recidivism: Final results from California's sex offender treatment and evaluation project (SOTEP). *Sexual Abuse: A Journal of Research of Research and Treatment*, 17, 79-107.

- Olver, M. E., Wong, S. C. P., Nicholaichuk, T., & Gordon, A. (2007). The validity and reliability of the Violence Risk Scale – Sexual Offender Version: Assessing sex offender risk and evaluating therapeutic change. *Psychological Assessment*, 19, 318-329.
- Schneider, J., Jackson, R., Ambroziak, G., D’Orazio, D., Freeman, N., and Hebert, J. (October 15, 2018). SOCCPN Annual Survey of Sex Offender Civil Commitment Programs 2018. Presentation at conference. Vancouver, Canada.
- Schneider, J., Jackson, R., Ambroziak, G., D’Orazio, D., Freeman, N., and Hebert, J. (October 24 2017). SOCCPN Annual Survey of Sex Offender Civil Commitment Programs 2017. Presentation at the annual SOCCPN conference, Kansas City, Missouri.
- Thornton, D., & D’Orazio, D. (2013). Best practice in SVP treatment programs. In L. C. Craig, L. Dixon, & T. Gannon (Eds.) *What works in offender rehabilitation: An evidenced based approach to assessment and treatment* (pp. 359-385). John Wiley & Sons.
- Ward, T. & Hudson, S.M. (1998), A model of the relapse process in sexual offenders. *The Journal of Interpersonal Violence*, 13, 700-725.
- Ward, T., Hudson, S.M., Keenan, T. (1998). A self-regulation model of the sexual offense Process. *Sexual Abuse*, 10, 141-157
- Webster, S. D. (2005). Pathways to sexual offense recidivism following treatment: An examination of the Ward and Hudson self-regulation model of relapse. *Journal of Interpersonal Violence*, 20, 1175–1196. doi:10.1177/0886260505278532.