

## Sexually Violent Predator Project: Conditional Release Program Housing and Community Placement Barriers



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## **I Purpose**

This paper addresses the housing and placement of individuals into the Conditional Release Program (CONREP) who are committed to the State pursuant to the Sexually Violent Predator (SVP) law. Since the SVP law was enacted in 1996, there have been 1,000 people committed as SVP and only 54 of those individuals have been granted CONREP. Only 19 of the 284 SVP individuals unconditionally released from commitment were SVP CONREP participants (DSH, October, 2022 CASOMB BOD Report), which means that more than 90% of releases from SVP are with no CONREP. Currently, 21 people are participating in the CONREP program and 14 individuals are ordered to CONREP pending placement (DSH, October, 2022 CASOMB BOD Report). The California Sex Offender Management Board (CASOMB) identifies significant barriers to the implementation of the SVP CONREP program. The CASOMB makes recommendations from a Risk, Needs and Responsivity (RNR) framework to enhance its efficiency and community safety. Because the CASOMB is comprised of professionals that work for different organizations, our approach to this analysis is through the empirical research-based model of managing of sexual offending individuals referred to as the RNR model. Readers are referred to read the Association for the Treatment of Sexual Abusers (ATSA, 2020) and Sex Offender Civil Commitment Network (SOCCPN, 2020) Civil Commitment guidelines and the [CASOMB Sexually Violent Predator Project: Introduction & Duration of SVP Detainee Status](#) papers prior to reading this paper.

## **II Description**

This paper is about housing and community placement issues for SVP individuals who achieve conditional discharge from inpatient commitment to the California Conditional Release Program (SVP CONREP). SVP commitment is involuntary but treatment participation, including CONREP, is voluntary and must be court ordered. CONREP is a step-down from full confinement and step toward community reintegration. CONREP is the last step in the Department of State Hospitals (DSH) Sex Offense Specific Treatment Program (SOTP) and involves intensive monitoring, supervision and treatment in the community. SVP CONREP is achieved by a small portion of SVP individuals and occurs between inpatient commitment and unconditional release (full discharge). The objective of SVP CONREP is to facilitate safe transition and community reintegration of SVP

individuals, many who have been institutionalized for well over twenty years, having served a prison sentence then transferred to civil commitment to the DSH secure hospital. CONREP participants are much less likely to reoffend than those released without CONREP (D'Orazio, Azizian, Olver, 2019). However, SVP CONREP is only utilized in about 5% of cases. Instead, most SVP releases are direct full discharges to the community, mostly without parole.

Contrary to public opinion, abundant research indicates the risk of sexual reoffending changes over time and in response to a number of factors including meaningful treatment participation. All individuals committed pursuant to the SVP law are at one point in time determined likely to reoffend (a legal criterion for commitment). Risk related changes can and do happen in SVP individuals during their state hospital commitment, notably when they meaningfully engage in the Sex Offense Treatment Program (SOTP). Research also indicates that community based treatment reduces recidivism (Gannon, Olver, et al, 2019).

The empirical research on sexual offending is vast and compelling, out of which best practice standards are agreed upon by professional organizations. The ATSA and SOCCPN recommend that every jurisdiction with civil commitment for sexual offenders (currently there are 21 programs across the country) have a viable CONREP program and that civilly committed individuals that achieve release do so through CONREP (i.e., ATSA, 2020). Simply put: while some SVP individuals will be too dangerous for release, others will make positive changes over the course of their treatment and confinement at the SVP facility (i.e., DSH-Coalinga) to such a degree that they can be safely monitored, treated, and reintegrated into the community. The safest and most effective release pathway for SVP individuals is through CONREP (D'Orazio, Azizian, Olver, 2019).

SVP CONREP should be utilized much more frequently than it is currently. In California, the vast majority of SVP releases are without CONREP making California discrepant from the research supported guidelines and from the other SVP programs across the country. Since CONREP is so effective and highly recommended by the evidence base and leading professional organizations (i.e., ATSA, 2020), why is it under-utilized in California? This paper identifies several inefficiencies and barriers to SVP CONREP, and recommends changes.

### **III Getting to SVP CONREP in California**

There are numerous steps to establishing suitable housing and placing SVP individuals in CONREP. The California (CA) SVP law requires community notification and public comment prior to judicial approval for placement; residency restrictions (DSH policy includes Jessica's Law residency restrictions, enforceable on a case-by-case basis, and there is a residency restriction provision in the SVP law for those with child victims); placement limitations to the county of domicile unless extraordinary circumstances are found, and it does not require completion of the inpatient treatment program. Additionally, the state does not own CONREP housing, and housing must be found on a case-by-case basis for every new CONREP order. Judicial allowance of open courtrooms, community notice, and public comment provisions trigger high levels of media attention and negative community reactance. Threats and acts of violence against the SVP individuals, judges and attorneys, landlords, and CONREP program staff are not uncommon. Further, the CONREP approval, housing, and placement process is unduly lengthy. In contrast, when SVP committed individuals are released from inpatient confinement without CONREP, they are unconditionally released. Meaning they are not subjected to community notice or public comment on where they live, and except in some cases with parole time remaining, there is no monitoring, mandated supervision or treatment. These factors lead to low levels of interest in obtaining SVP CONREP by SVP individuals.

#### ***Steps to SVP CONREP***

The required steps for moving from CONREP readiness to CONREP placement are complex and are listed below and described more fully in Appendix A. On September 30, 2022 Senate Bill (SB) 1034 was chaptered and will take effect in 2023, which will modify step 5 below as denoted with an asterisks (\*). SB1034 modifies the SVP law by requiring DSH to convene a committee comprised of the SVP individual's counsel, law enforcement, county counsel and the district attorney to provide assistance and consultation to DSH in locating and securing housing. The court may sanction members of the committee for failure to appear in status conferences. Only the county of domicile may petition the court to make a finding of extraordinary circumstances for out of county placement.

<b>Step</b>	<b>Description</b>
1. Determine Eligibility	Only those fully committed as SVP (not detainees, Welfare and Institution Code (WIC) 6602), are eligible to petition for SVP CONREP and only after they have been committed for minimally one year. Petition should occur when the person can show meaningful change on the underlying risk factors and mental conditions that led to SVP commitment.
2. Petition for Judicial Review	The person committed as an SVP must petition the court for CONREP.
3. CONREP Petition Hearing	At the CONREP hearing a legal determination is made on whether the SVP individual would be a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent predatory behavior due to his or her diagnosed mental disorder if under supervision and treatment in the community.
4. Housing Search Commences	When the CONREP hearing results in a finding the individual can be “safely and effectively” placed in CONREP (i.e., WIC6608) it orders CONREP (“CONREP Order”) to search for housing.
5. Identification and Collaboration with County Housing Designee*	By law (WIC6608.5) the county is to designate an agency to assist SVP CONREP in finding appropriate housing.
6. Consideration for Extraordinary Circumstances Ruling & Orders to Search Out of County	If suitable housing is unavailable or court rejected in the county of domicile, the Court has the authority to order CONREP, via an Extraordinary Circumstances determination, to expand housing placement options to any or all counties.
7. Consideration of Transient CONREP Placement Order	When there are not available residences in the domicile county, the placement options are transience or out of county placements. Transient SVP CONREP placement means the individual is not placed in a fixed residence but is transient, such as in mobile homes, tents, or hotels.
8. Proposal of a Residence to the Court	After identifying a residence, CONREP conducts a housing site assessment, confers with the housing designee, then proposes the residence to the court.

9. Ordering a Placement Hearing, Community Notification & Public Comment	When the court accepts a proposal for a residence, it orders a Placement hearing which occurs after a period of community notification (a statutorily determined period initiated through WIC6609.1) and an opportunity for public comment.
10. Placement Hearing	At the end of the community notification period, the court and the SVP program (separately) review the public comments. SVP CONREP provides a statement on whether the information causes the need to change the Terms and Conditions of Release, or the placement proposal. The judge either rejects or approves the residence.

#### **IV The SVP Conditional Release Program**

The CA DSH oversees the SVP CONREP program, which is run by a contractor. SVP CONREP is designed to be consistent with the RNR best practice principles as the outpatient component of the (SOTP) comprising four sequential inpatient modules followed by CONREP. There are no transitional living units or step down programs between full confinement and CONREP. As detailed above, the conditional release of an SVP starts with a petition to the court from the SVP individual with or without the concurrence of the DSH. In some of these cases, SVP committed individuals have been ordered to CONREP without inpatient treatment program completion.

Once CONREP is granted, a multidisciplinary community safety team (CST) is formed and a comprehensive individualized plan for the SVP individual’s safe and successful integration into the community is implemented. The CST guides the treatment and supervision of the participant and monitors compliance of the terms and conditions of release. The goal of CONREP is community safety and eventual full community reintegration of the participant (i.e., complete freedom from SVP commitment). The intensity of CONREP occurs within a service level system according to changes in the risk, needs, and responsivity of the person. CONREP helps manage and reduce the person’s risk, treat the underlying criminogenic needs and enhance protective factors. CONREP provides CASOMB certified providers for sexual offense individual and group therapy, and vocational and life skills training, routine polygraph examinations, sexual arousal assessments, substance abuse testing, behavioral monitoring including covert surveillance

and GPS. Circles of Support and Accountability are often utilized. Reintegration support is provided in independent living skills development (e.g., money management, cooking, utilizing technology, establishing credit, setting up utilities, budgeting, medical treatment, obtaining a driver's license, learning to use public transportation, vocational training, spiritual/religious activities, etc.).

## **V Relevant Data**

The statistics for 2022 are as follows (D'Orazio, Lowell, Herbert, Coryell & Yi, 2022):

- 54 SVP individuals have been placed in SVP CONREP since 1996
- 21 current SVP CONREP participants
- 19 (35%) of the SVP CONREP participants have gone on to achieve unconditional release
- 15% of SVP CONREP placements to date were transient
- 75% of SVP CONREP transient placements participants were rehospitalized or revoked from CONREP due to serious violations of the Terms and Conditions of Release (T&C)
- 30% of SVP CONREP fixed placement participants were rehospitalized or revoked from CONREP for the (T&C) violations
- After full discharge, 14% of SVP CONREP participants were arrested for any crime whereas 43% of SVP individuals fully released without having participated in CONREP were arrested for any crime (D'Orazio, Azizian, Olver, 2019)

## **VI Risk, Needs, Responsivity Analysis**

### ***Application of the Risk, Needs, and Responsivity Principles to SVP CONREP***

Scientific research findings indicate that all interventions with sexual offending populations should adhere to the three principles to be effective. Additionally, national guidelines exist for the civil commitment of sexual offending individuals that all programs should comply with (ATSA, 2020). The field of scientific research and national guidelines strongly support the RNR model. The largest world-wide professional organization for the treatment of sexual abusers, ATSA, published evidence-based policy recommendations for SVP programs (ATSA, 2020). SVP CONREP housing and placement was analyzed

according to RNR and national guidelines. Refer to Appendix B for the results of this analysis.

In short, when the following principles are met recidivism likelihood is most reduced but when one or more are not met recidivism is either not decreased or is increased.

- Risk Principle: Match the level of service to the offender's risk of re-offending.
- Needs Principle: Assess criminogenic needs and target them in treatment and supervision.
- Responsivity Principle: Maximize the offender's ability to learn from a rehabilitative intervention by providing cognitive behavioral treatment and tailoring the intervention to the learning style, motivation, abilities, and strengths of the offender.

## **VII Recommendations:**

There are significant problems establishing housing and community placements for individuals committed pursuant to SVP that are suitable for CONREP. These problems are departures from evidence based best practice guidelines, and cause inefficient use of state resources, undue delays, inaccessibility of SVP CONREP, and reduce hope and motivation in the confined population. The broken system undermines program credibility by impeding implementation of the SVP law, including releasing large numbers without mandated post release treatment, supervision, and monitoring in the community. Solutions are acutely needed.

1. Multiple agencies should be required to collaborate to find suitable CONREP housing and Judges should require timely housing assistance agency designation and collaboration pursuant to WIC6608.5.

True collaborative efforts from the state and county agencies (i.e., DSH, District Attorney, county counsel, county agencies, elected officials), and housing designee, will improve efficiency in finding suitable housing and enhance public safety. Currently, SVP CONREP carries the burden of finding all housing for its clients. WIC6608.5 indicates a county agency should be designated to work with *SVP CONREP provider* to find housing. This does not occur consistently and when it does occur, law enforcement and district attorneys



have interpreted it as meaning they approve or reject housing found by SVP CONREP and not that they are to collaborate with CONREP to finding suitable housing. County agencies, including the district attorney's office, law enforcement, and SVP counsel should be routinely required to collaborate with CONREP to find housing. County agencies and state parole regularly find housing for individuals registered for sex offending per Penal Code 290, and these county agencies should be required to assist in identifying placement locations for SVP individuals. To protect the range of stakeholders involved and the community, the results of housing committee meetings should not be provided to the public until the court so orders. The SVP law changes that will occur in 2023 resulting from the passage of SB1034 may lead to improvements in this area.

2. Transient SVP CONREP placements are inconsistent with evidenced based best practice guidelines and should be avoided.

Currently, under California Law, SVP individuals may be placed in the community under the auspices of CONREP without a fixed residence as "transient". Transient CONREP placement typically includes moving every few days between hotels, a tent, or a recreational vehicle. Compared to those placed in fixed residences, transient CONREP placed individuals are more likely to get rehospitalized or revoked due to high risk behaviors (i.e., violating the terms and conditions of release). They have higher disruption of protective factors and lower levels of community reintegration due to the ongoing pattern of relocation and residential instability. Unpredictable features of the dwelling and surrounds increase contextual risk features and deter external monitoring. A fix to the transient problem must occur alongside a fix to the problem of lacking housing solutions. Once someone is legally determined to meet the criteria for CONREP, it is unethical to hold them beyond a reasonable duration. Changes must occur to create timelier CONREP placement. Improved duration from readiness to CONREP placement will result in protecting the rights of the person, improved CONREP efficacy, and increased desire for individuals to participate in the CONREP program.

3. SVP CONREP should be required to supply the court with an individualized RNR based supervision plan prior to the placement of an SVP individual on CONREP and this should consider the impact of a transient release order.

At the time of the CONREP hearing, the Court is required to make a finding on whether conditions can be imposed that adequately protect public safety and promote effective community reintegration. The court should be presented with terms and conditions and a release plan for the person's community placement that are consistent with the RNR and ATSA best practice guidelines.

4. Current risk profile, treatment progress, and reintegration needs should guide residential placement decisions.

CONREP placement judicial decisions and stakeholder opinions often overweight historical risk, such as past offenses, and should more fully consider current risk, criminogenic needs, protective factors, and treatment progress for the individual. For example, an individual that completed all the inpatient treatment modules, has not shown risk or offense related behaviors for more than ten years, and whose most recent offense was 30 years ago would generally not require housing that is far away from people of the age and gender of their past victims. Conversely, an individual that has recently shown risk or offense related behaviors, has not completed the inpatient modules, and has had sexual offending within the past five years would generally require more intensive restrictions. Restrictions in housing and community placement should be directly tied to the individual's current risk profile, not their risk profile at the time of their last offense. With state and local agencies working with the CONREP program, local knowledge of the community can be applied toward safe and effective placement.

5. SVP CONREP placements should occur in the county of domicile, to the greatest extent possible.

This requires the county of domicile/or commitment to work collaboratively with the local 290 containment team, county agencies, the housing designee and CONREP to identify and secure housing. Pressure and accountability should be placed on the county of domicile to find housing for the SVP.

6. Changes to Residency Restrictions should occur.

The research does not support the need for blanket residency restrictions for highly treated individuals convicted for sex crimes such as those in SVP CONREP and a legislative

change is recommended. Research has shown that residency restrictions do not prevent or deter sexual offending and they disrupt protective factors (the strengths and resiliencies that reduce risk) and increase transiency (ATSA, 2020; MNATSA, 2019). Blanket application of residency restrictions should cease. Residence and location suitability decisions should be made on an individual case basis according to the current risk and needs of the SVP individual. Legislation and program policies should make changes such that neither Jessica's Law nor the SVP statute specific residency restrictions should be automatically applied across cases.

7. Community notification, courtroom access, and public comment should be regulated.

The public's desire to know where those placed in SVP CONREP reside and share their opinions should be balanced with the need to constitutionally implement the mental health law (SVP) that people with sex crimes can return to the community when they are legally determined to not present a serious risk in CONREP. Community notification, open courtrooms, multi-day placement hearings where members of the community can publicly comment and making the patient's personal information publicly available incites fear, threats, and violence and usurps program resources and efficacy. Disseminating any personal information about the SVP individual by any entity should occur only on a need to know basis. The legal provision for public comment should be regulated so that practices are consistently applied in each county across the state. In some states with civil commitment, the public is not noticed or notice happens only after a placement ruling. Judges, law enforcement and other stakeholders should monitor and mitigate practices that incite violence, harassment, and threats. To the greatest extent possible, closed hearings should occur because open hearings insert fear and threat into a legal process involving mental health vulnerabilities and contributes to the low interest in SVP CONREP.

8. A multi-agency SVP collaboration summit should occur regularly.

State leadership should require SVP CONREP or another state body to host an extensive and recurrent meeting among leaders from the primary stakeholder groups (i.e., judiciary, district attorney, legislation, patient counsel, patient's rights/advocate, DSH inpatient treatment program, SVP CONREP program, victim rights, law enforcement, CASOMB,

etc.). This event should result in identification and problem solving for barriers to efficacy and efficiency of the housing and placement features of the SVP CONREP program and associated SVP law implementation barriers. The summit should be framed by a training on best practice standards with SVP populations and should result in an ongoing cross agency collaboration that implements improvements that are grounded in the Risk, Needs, Responsivity empirical research base and professional guidelines (e.g., the ATSA & SOCCPN guidelines). DSH/SVP CONREP should provide an overview of the SVP law and SVP CONREP program, and the other stakeholder entities should present their role in the SVP continuum. The group should provide a list of barriers and creative ideas for solutions along with action plans and reporting.

#### 9. Durations analysis and report

The statutory landscape of SVP CONREP placements in California cause delay, making it an outlier compared to the many other SVP programs across the country and in ways that contribute to California's low treatment enrollment rate, ultimately compromising services that make communities safer. SVP individuals are CONREP suitable for multiple years before they are actually placed in CONREP. This means SVP individuals stay at the hospital in full confinement longer than necessary. Motivation for and credibility of SVP CONREP decreases across the long delays from completing the inpatient SOTP, obtaining judicial review, scheduling and having the CONREP hearing, housing procurement and proposal, community notification, placement hearing and finally, CONREP placement. Many give up any interest in CONREP, file Writs for Habeas Corpus, and build compelling cases for and achieve unconditional release. DSH should conduct an analysis of each duration in these CONREP steps; make this publicly available, and provide it to the courts, attorneys, and housing designee in each case. Focused efforts should be taken to reduce durations.

#### 10. Pre-existing housing inventory

A consistent finding in our analysis is that an increase in housing inventory is needed to effectively implement SVP CONREP. An immediate change should occur that requires the state to have on hand its own housing instead of requiring CONREP to find new residences to rent for each CONREP placement. The state should budget funds for this

purpose, and counties should be required to collaborate in establishing locations for SVP CONREP housing. Further, CONREP residential placement searches should commence well before the CONREP order.

#### 11. Create and implement other less restrictive alternatives to full confinement

Other, non-CONREP, less restrictive alternatives to full confinement at the state hospital are needed for those individuals whose risk has decreased for reasons other than treatment progress, for example medical infirmity or incapacity. CONREP is a step in the SOTP and not appropriate for the category of individuals who do not need full confinement but are unable to participate meaningfully in SOTP. Owing to it being an indeterminate commitment, the average age of the inpatient SVP population is increasing, with a substantial portion over the age of 75. The state should prioritize creating less restrictive alternatives for this population that no longer needs full confinement. Further, in cases where the individual no longer meets SVP criteria such as due to advanced age, illness, or infirmity they should be released from full confinement and not placed in CONREP. In some cases where the SVP individual cannot care for themselves due to medical conditions such as terminal illness, dementia, or other medically induced severe impairment, and no longer requires the inpatient DSH SVP facility to manage their risk, alternative placements to skilled nursing facilities are needed.

#### 12. Transitional housing at DSH

Much more can and should be done at the inpatient level to advance the SVP individual's reintegration needs. Transitional services, like independent living units, obtaining identification cards, cooking skills, money management, household maintenance, laundry, technology skills, volunteer and vocational skills, and other community living skills should become a strong focus of the later phases of the person's inpatient treatment and are strongly supported by national best practice guidelines (ATSA, 2020). Transitional housing within the secure perimeter should be implemented. Transitional housing allows greater freedom and increased practice and application of independent living skills (e.g., cooking, laundry, attire, etc.) with graduated opportunities for furloughs/day passes into the community, escorted and non-escorted on campus and in community outings. Numerous states with SVP laws have such transitional, community reintegration preparation

residential facilities, for example Minnesota, Washington and North Dakota. We recommend that California consider these models.

### 13. DSH to request Judicial Review

A deficiency of the current implementation of the SVP law is that the treatment program and the CONREP program do not initiate court review for CONREP placement. To place the burden of affirmatively petitioning with no legal support on the person that has been committed to an inpatient facility as a patient diagnosed with a mental condition(s) is unfair, inefficient, and could contribute to the low CONREP interest rate. DSH should initiate and assure steps are taken for judicial review in cases where the treatment program, including CONREP, or medical director opine the patient is CONREP ready.

### 14. The DSH SVP Program should conduct a thorough assessment of itself against the ATSA Sex Offender Civil Commitment guidelines and the RNR principles and make modifications then enlist an external audit by one or more experts in the field of sex offender civil commitment.

This should include the specific program components, implementation features and outcomes that reflect adequate and inadequate adherence to the Risk, Needs, and Responsivity Principles including specifically the low interest in and placement rate of CONREP, and patient experiences of hopelessness and lacking motivation for CONREP. A summary of this should be made available to the public.

### 15. The DSH should routinely provide budget, census, county projections, descriptions, and outcomes of SVP CONREP to the public.

Even the CASOMB has difficulty obtaining information about the DSH SVP program. Non-patient specific program descriptive and outcome information should be routinely made available to the public by placement on the DSH website, as part of an overall commitment to transparency and effort to proactively educate California citizens about the SVP program. Provision of this information should be routine and not by public records act requests.

### 16. Public and stakeholder education: Judiciary, District Attorney, Public Defender, and Citizenry

When the public possesses inaccurate information about sex offenders and the SVP program and highly influences SVP placement decisions, the likelihood of inaccurate and biased decision-making increases. CONREP placement decisions should be determined by current risk and needs. Stakeholders are lacking education and buy in that there should be a valid discharge pathway for SVP committed individuals including that the goal of CONREP is eventual full community reintegration. Blanketly opposing all residential proposal placements is an improper way of arguing disagreement with the SVP law's discharge provision. It is necessary that all SVP stakeholders understand the community reintegration goal. Superior Court, District Attorney, defense counsel and law enforcement in each county involved in SVP commitment and CONREP placement have vastly different resources and knowledge, which impacts the efficiency and efficacy of the CONREP placement process applied to individual cases. Further, the SVP statute does not detail many of its provisions, leaving much room for discretion and legal argument, which ultimately contributes vastly different procedures and durations across counties and even across cases. CONREP and these stakeholder groups should routinely engage in education efforts.

17. Outcomes research should be routinely conducted and include recidivism rates for SVP CONREP and other SVP releases

The fiscal cost of the SVP program and the cost of creating victims if not implemented successfully means that extra effort should be taken for high quality controls and standards. Outcome data on those committed pursuant to SVP is necessary to refine programming and inform decision making. This may require changes that allow ongoing DOJ criminal records access and increased resources.

18. Change SVP label

Calling people Predators and Sexually Violent elicits fear, disgust, and false impressions about perpetually high levels of dangerousness and these realities undermine outcomes. Those committed share the same fundamental human dignities as all humans. Across the world, agencies and organizations are moving toward person first language. The SVP law should be changed such that the people subject to its provisions are referred to as persons first, such as Sexually Violent Persons.

## **VII Summary**

Release of an individual committed as an SVP into a local community must come with careful consideration. If applied, these recommendations by the CASOMB regarding the housing procurement and placement of individuals in CONREP will improve the efficiency of the CONREP program and the safety of California citizens. They will facilitate the SVP individuals' effective community reintegration while also improving California's adherence with the research supported best practices and national standards.

Support from the courts and law enforcement, along with community education efforts, cross agency housing collaboration, and establishing a housing inventory are among the necessary changes to effectively overcome barriers to SVP CONREP. Procedures must be modified to remove undue delays, promote decision making that is empirically supported and not emotion based, and require cross agency collaboration in finding suitable housing, and improve community reintegration opportunities. CONREP court proceedings should not be blanketly open to the any member of the public and the individual's treatment information should not be available to the public. We further recommend education campaigns about the SVP law and CONREP. The state should secure its own SVP CONREP housing, and housing searches should start sooner. The inpatient program should develop numerous transition features to facilitate speedy and successful CONREP placement. The low level of SVP interest in CONREP is problematic but understandable given its serious access deficits. Select modifications of the CONREP referral, housing, and placement process must occur in order to improve the efficacy of the SVP program.



## Appendix A

### **Description of Steps to SVP CONREP**

#### 1. Determine Eligibility

Only fully committed SVPs (not detainees, WIC6602), are eligible to petition for SVP CONREP and only after they have been committed for at least one year. Because the SVP population at the state hospital is comprised of large numbers of both detainees and fully committed, this results in different discharge options for each. Detainees cannot be released to CONREP and their release plans cannot be verified, authorized, or monitored by the DSH. The presence of a high number and long duration of detainees at the SVP facility is a problem that has been described in the [Sexually Violent Predator Project: Introduction & Duration of SVP Detainee Status](#) paper. For the eligible population of SVP individuals (fully committed, WIC6604), the preparatory step to achieving CONREP is to show meaningful change on the underlying risk factors and mental conditions that led to SVP commitment. Whereas the DSH recommends every SVP individually participate, participation is voluntary and the majority of SVP individuals decline to participate in the SOTP. SVP CONREP is set up as the final step in the SOTP, and therefore the SVP CONREP eligibility pool is influenced by the SOTP participation rate. However, the courts have the authority to order CONREP without completion of the inpatient treatment modules and without the concurrence of DSH or the CONREP program which occasionally happens. This means the individual is ordered to CONREP despite that the professional consensus of those that work with the patient is that the person has not yet achieved the skills and behavioral changes necessary to safely continue treatment in the community.

#### 2. Petition for Judicial Review

The person committed as an SVP must legally petition the court to commence the process for CONREP placement. This makes SVP distinct from other forensic commitments, the DSH-SVP program requires that the SVP individual them self petition the court to request CONREP placement. Judicial Review then determines whether the petition is frivolous. If it is not frivolous a trial on the CONREP petition will be scheduled.

There is no procedure occurring for CONREP or the DSH to initiate a recommendation to the court that CONREP be considered. The SVP law indicates that DSH has an independent legal duty pursuant to WIC 6607(b) to notify the court directly when conditional release is found to be appropriate, and for DSH to initiate a judicial review. To date, DSH has not implemented a practice of initiating judicial review when the SOTP and CONREP determines the person is CONREP ready. An Annual Report (WIC 6604.9) by a forensic evaluator addresses whether CONREP is in the best interest of the person and whether “conditions can be imposed that adequately protect the community”. Individuals that petition for CONREP usually do so after an Annual Report in their favor, although they may petition when the Annual Report is not in their favor. The DSH facility medical director sends a letter to the court with the Annual Report on whether the person is CONREP suitable. There is no mechanism that requests judicial review, the patient still must affirmatively petition the court for CONREP. DSH does not provide legal assistance to SVP individuals who want to petition for CONREP.

### 3. CONREP Petition Hearing

After the court determines the petition is not frivolous, the next step is scheduling then having the CONREP hearing, which may take many months. The trial may be of a duration of days to many weeks and include expert and fact witness testimony. The purpose of the CONREP hearing is to legally determine whether the SVP individual would be a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent predatory behavior due to his or her diagnosed mental disorder if under supervision and treatment in the community. SVP CONREP court proceedings are often conducted in open courtrooms, which means any member of the public or the media can attend. Some judges utilize discretion to close courtrooms

### 4. Housing Search Commences

When the CONREP hearing results in a finding the individual can be “safely and effectively” placed in CONREP (i.e., WIC6608) it orders CONREP (“CONREP Order”) to search for housing, under an obligation for timely placement. It is at this juncture the SVP CONREP program starts searching for housing, in collaboration with the Housing Designee from the county, that is suitable to the person’s individual profile of risk,

treatment and reintegration needs, responsivity factors, and any residency restrictions that may apply. Housing proposals must consider proximity of victim, age and profile of victims, and public safety and the safety of the SVP individual. CONREP searches for housing only in the domicile county, after it is judicially determined. This step is detailed further below.

Establishing suitable housing for the individual is the SVP CONREP program's biggest implementation barrier. On average it takes about 300 days from CONREP order (suitability determination) to CONREP placement. Housing inventory for this purpose is low. There are no designated properties for SVP CONREP. Neither the state nor counties own properties designated for SVP CONREP. The burden is on DSH and ultimately its SVP CONREP contractor, to rent individual residences for each SVP individual. There is no regulation of rental costs for the SVP program, and owners commonly negotiate rental fees well above market value. SVP CONREP does not place individuals in apartments or duplexes. Housing for one individual is typically in full size single family homes. Shared living arrangements are nearly never utilized.

#### 5. Identification of and Collaboration with the County Housing Designee

By law (WIC6608.5) the county is to designate an agency to assist SVP CONREP in finding appropriate housing. Some counties blanketly oppose SVP CONREP placements and do not collaborate in finding suitable housing.

#### 6. Consideration for Extraordinary Circumstances Ruling & Orders to Search Out of County

CONREP housing searches start in the county of domicile (*place of residence prior to conviction*) which in most, but not all, cases is the county of commitment (*county where the conviction occurred*). If suitable housing is unavailable or court rejected in the county of domicile, the Court has the authority to order CONREP, via an Extraordinary Circumstances determination to expand housing placement options to any or all counties in California. For example, if the SVP individual lived and committed his sex crime in County A, existing statutory provisions for "extraordinary circumstances" allow County A to order his CONREP placement in County B. In this scenario, County B, is invariably irate that it did not have a voice in the SVP proceedings.

The inability to find suitable housing in the SVP individual's county of domicile, and/or the court's rejection of proposed housing are the typical causes for out of county search orders. The use of extraordinary circumstances to expand the housing search and ultimately place an SVP outside the county of domicile is intended to be used for rare cases where such placement is necessary for medical, employment, safety, or family support. Residency restrictions decrease housing inventory. SVP CONREP placements of participants with a past history of offending against a child(dren) are statutorily governed by restrictions for residence around a geographic distance from public or private schools.

#### 7. Consideration of Transient CONREP Placement Order

In CA SVP CONREP, when there are not suitable residences in the domicile county, the community placement options are transience or out of county placements. Transient SVP CONREP placement means the individual is not placed in a fixed residence but is transient. Transient placements have included living in a tent, in an RV, or relocating between different hotels every three days.

#### 8. Proposal of a Residence to the Court

Regardless of whether CONREP is ordered to search for housing solely within the domicile county or expand the search to other counties through the Extraordinary Circumstance provision, after identifying a residence with an owner willing to rent to an SVP individual, CONREP conducts a thorough housing site assessment to determine whether CONREP can safely and effectively treat the person at the statutorily compliant location, confers with the housing designee, then proposes the residence to the court. To date, there have been numerous acts of threat and violence levied against persons and properties involving proposed housing. Sometimes even after the person is placed the violence continues for many months or indefinitely.

#### 9. Ordering a Placement Hearing, Community Notification & Public Comment

When the court determines the proposed residence is satisfactory to proceed to the next step, it orders a placement hearing which occurs after a period of community notification (a statutorily determined period of community notification initiated through WIC6609.1) and an opportunity for public comment. By this point the rental is financially held.

SVP law provisions require the address and purpose of the rental to be provided to the community through community notification. DSH sends a notice of the date of the placement hearing whereupon considering public comment the judge will render a ruling on the specified residence. The notification is provided to Law Enforcement, the District Attorney's office and others specified in statute (i.e. WIC6609.1), who notice the community and solicit public comment. There are no statutory guidelines on how the noticed agencies may notice communities and practices range from notification on a website, town hall meetings, door to door visits by law enforcement, posting of flyers, and news and social media campaigns. When law enforcement conducts community notices, there are no constraints on the kinds of information they provide about the SVP individual.

For each residence proposed for an SVP CONREP individual, public knowledge of the location typically triggers high levels of negative community reactance. CONREP's housing search does not discriminate according to race or socioeconomic status, and the degree of community reactance and resistance is often a byproduct of how resourced a proposed residential area is. Community reactance to proposed housing includes coordinated protests, web based communication networks, multi-day protest events at the proposed residence, lawsuits against the homeowner, doxing, following program staff in their vehicles, vandalism (i.e. arson that completely decimated a home, throwing bricks through windows, flooding a roof, spray painted threats), media attention. Resultantly, many homeowners eventually withdrawal their willingness to rent, and judges do not approve the proposed residence. This process results in CONREP conducting exhaustive housing searches, often reviewing thousands of rentals, and placing financial holds on properties that are ultimately not utilized.

#### 10. Placement Hearing

At the end of the community notification period, the court and the SVP program (separately) review all the public comment. Judicial discretion results in some instances where individual community members address the court at the placement hearing and in others the submission of written comments only (no in court comments from the public). At the placement hearing, the SVP CONREP program provides a statement on whether the information provided causes the need to change the Terms and Conditions of Release, or

the placement proposal (i.e., do they continue to believe they can safely and effectively treat and supervise the person at the specified residence). If the property is not withdrawn and still available/habitable, the judge either rejects or approves the residence. Judicial approval results in a Placement Order indicating the person is court approved to reside at the specified residence by a specified date, and under the supervision of SVP CONREP. Except when a landlord withdraws, when proposed residences do not result in placement the cost of the financial hold is not refunded. The cost of financial holds not resulting in placement is likely *hundreds of thousands* of dollars to date.

## Appendix B

### **Risk, Needs, and Responsivity Analysis**

#### ***Application of the Risk, Needs, and Responsivity Model to SVP CONREP***

National guidelines exist for the civil commitment of sexual offending individuals that all programs should comply with (ATSA, 2020). These flow from the RNR model, and address the range of treatment and management issues to maximize the SVP individual's CONREP success.

#### **Risk Principle CONREP Analysis:**

1. The existence of CONREP within the SVP continuum is an example of adhering to the Risk Principle by providing an option for individuals whose risk is such that they do not need full confinement but are not safe enough for unconditional release.
2. The absence of other less restrictive alternatives to full confinement, specifically secure transitional facility and nursing care facility, are inconsistent with the Risk and Responsivity Principles.
3. That most released SVPs go from the secure facility to full discharge to the community violates the Risk principle indicating that interventions should match risk. Only about 5% of committed individuals participate in CONREP and the overwhelming majority of released SVPs are fully discharged.
4. Even high risk offenders do not stay high risk forever (Hanson et al., 2014) and any intervention that assumes risk is static is a violation of the Risk Principle. The risk and criminogenic needs of the individual SVP change over the course of inpatient

treatment. That neither the DSH program nor CONREP can initiate request for judicial review for CONREP creates delayed access to CONREP.

5. CONREP placement decisions that overweight historical risk such as past offenses and underweight current risk and needs, is not anchored in the Risk Principle.
6. When the public possesses inaccurate information about people that commit sex crimes and the SVP program and the public influences SVP placement decisions, the likelihood of inaccurate and biased decision making increases. CONREP placement decision making should be determined by current risk and needs.
7. Open hearings where media and the community can attend SVP CONREP proceedings inserts elements of fear and threat to the many parties, and can potentially bias judicial decision making and deter interest in CONREP. Decision making should be guided by the application of standards known to be most effective (RNR principles) and not public sentiment.
8. Transient CONREP placements of SVP individuals drive up risk and criminogenic needs and undermine treatment response, and reintegration possibilities which does not adhere to the RNR principles.
9. In cases where the individual no longer meets SVP criteria due to advanced aged, illness, or infirmity they no longer meet the statutory definition of SVP and they should be released from full confinement and not place in CONREP.

**Need Principle CONREP Analysis:**

1. Where the program is unable to allocate sufficient resources and interventions to address the underlying criminogenic needs is a violation of the Need principle. Needs shift over time and in response to treatment (Hanson et al, 2009) and CONREP decision making should be based on current risk and needs; not necessarily those present at the time of initial commitment. Extraordinary resource allocation is being paid toward establishing suitable housing.
2. The impact of site features on the risk, needs, and reintegration response of the specific SVP must be considered. Collaboration among the network of stakeholders involved in treating and managing the SVP should work with, not against, the CONREP program to assure placements are a good fit to the risk, needs, and responsivity of the SVP individual.

3. Blanket application of residency restrictions for all those with a history of child sex crimes is not warranted in all cases, because risk and needs can and do change especially in response to treatment. Likewise, proximity to places where members of a past victim pool reside or gather must be weighed on an individual basis in response to the nature and degree that the person poses a current risk.
4. Community notification (pursuant to WIC 6609.1) is empirically known to not make communities safer and as such is not an intervention that adheres to the Need Principle.

**Responsivity Principle CONREP Analysis:**

1. Adhering to the Responsivity principle means CONREP should happen in ways that maximize participant treatment access, response, motivation, and engagement. The low interest rate and low placement rate of CONREP shows lack of adherence to Responsivity Principle.
2. Lengthy and undue delays from CONREP readiness to CONREP placement do not meet the Responsivity Principle. Those interested in CONREP wait months or years to receive judicial review, then CONREP hearings, then wait for more than a year to get to placement hearings.
3. Efficiency problems with placing individuals on CONREP placement foster hopelessness, loss of trust, and program credibility which are signals that the Responsivity Principle is not met.
4. Responsivity means CONREP should be responsive to individual characteristics. Whereas new CONREP participants need higher levels of restriction, sustained skills application and risk management should lead to increased reintegration opportunities, to the point that the SVP individual is fully reintegrated into the community and released from CONREP.
5. Stakeholders are lacking education and buy in that the goal of CONREP is eventual full community reintegration. Blanket opposition of residential placements is an improper way of arguing disagreement with the SVP law's discharge provision. All SVP stakeholders should understand the community reintegration goal.
6. Special attention to SVP individual's well-being, autonomy, dignity, hope and planning for the future improves treatment response. The housing crisis and placement problems for SVP CONREP violates this principle. Those court ordered to CONREP are not



placed within a reasonable time period, transient releases occur, and there is a lack of collaboration from external stakeholders, along with media sensationalism due to open courtrooms and flyers, door to door, and web based information distributed to the public. New housing solutions and procedures for SVP CONREP are needed.

7. Community notification and other publicly available information incites fear, threats, and violence and is not necessary for program efficacy. CONREP individual's personal information should be highly restricted and not disseminated to people beyond a need to know basis.
8. When housing committees do not collaborate on identifying housing solutions it creates inefficiency and is inconsistent with the Responsivity Principle.