

oppaga Progress Report

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Sexually Violent Predator Program Is Reducing Backlog, But Still Not Timely

at a glance

The Sexually Violent Predator Program is not meeting statutory deadlines for processing cases. Legal delays often result in offenders spending extended periods of detention while awaiting the outcome of the commitment process.

Because commitment processes have not been completed prior to the end of prison terms, the state has spent \$15 million to detain persons who were later released rather than committed. However, the program is reducing the backlog of persons waiting to complete the commitment process.

A small portion (5%) of offenders screened out by the commitment process and released have been subsequently arrested for new sex crimes; the program should revisit these cases to determine if any systemic improvements can be made in the assessment and commitment process.

The program has strengthened experience and education requirements for private evaluators who conduct the clinical and annual sexually violent predator evaluations, as we recommended.

Scope

In accordance with state law, this progress report informs the Legislature of actions taken since our 2000 report, *The Sexually Violent Predator Program's Assessment Process Continues to Evolve*.^{1, 2}

Background

As defined by statute, sexually violent predators are persons who have been convicted of a sexually violent offense and have a mental abnormality or personality disorder that makes them likely to engage in future acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment.

To address the treatment needs of these offenders, the 1998 Legislature passed the Involuntary Civil Commitment of Sexually Violent Predators Act, also known as the Jimmy Ryce Act.³ The act creates a civil commitment process for sexually violent predators that is similar to the Baker Act procedures to involuntarily commit and treat mentally ill persons.

¹ Section 11.51(6), *F.S.*

² OPPAGA [Report No. 99-36](#), February 2000.

³ Sections 394.910 through 394.931, *F.S.*

The commitment process entails several steps. First, the Department of Corrections identifies inmates that have committed a sexually violent offense (as specified by law) and notifies the Department of Children and Families' Sexually Violent Predator Program and the appropriate state attorney.⁴ The program then determines whether referred inmates meet program criteria. A multi-disciplinary team trained in identifying sexual deviancy reviews the offenders' files. If the team determines that an individual meets the sexually violent predator criteria, an evaluator conducts a clinical evaluation. The program then sends the case information to the state attorney, with a recommendation as to whether or not the individual should be civilly committed to the state for treatment. The state attorney determines whether to initiate legal action for commitment.

Ideally, the commitment process should be completed prior to the end of the predator's prison term. When the case is not completed in time, alleged predators are detained by court order and transferred to the Florida Civil Commitment Center in Arcadia to await the outcome of commitment proceedings. As of June 2004, the center housed 445 individuals: 293 detainees were awaiting commitment procedures and 152 had been committed.

At the center both detained and committed individuals may consent to treatment, which is voluntary. Treatment consists of differing levels of cognitive behavior modification, a process which requires the individual to admit to the crime for which he was sentenced and any other sexually violent acts, whether prosecuted or not. The treatment also places emphasis on teaching relapse prevention and pro-social life skills. Of the 445 individuals at the center, 181 have consented to treatment (68 of them committed residents). As individuals progress, they are moved to more advanced levels of treatment. The program assesses the treatment progress of committed

residents annually. Persons committed to the state under the Jimmy Ryce Act are detained until the court determines that they are no longer a threat to public safety.

The Department of Children and Families has contracted operation of the facility and implementation of the treatment plan to Liberty Behavioral Health Corporation. Under the current contract, which runs from January 1, 2003, through June 30, 2005, the state will pay Liberty \$50,794,750.

Prior Findings

Time limits were not being met. Our 2000 report concluded that program assessments had not been timely. The average case took 133 days from an individual's referral to the program by the Department of Corrections until program staff sent its report to the state attorney, considerably longer than the 45 days required by law.⁵ Also, the screening and commitment process was not being completed before the end of inmates' prison terms. We recommended that the program generate regular reports to track the movement of potential predators through the assessment process so that staff could clear cases in a timely manner.

The program needed to assess the screening process. Our prior report found that 56% of the individuals that progressed to clinical evaluation were not found to meet the criteria for sexually violent predator status. We recommended that the program conduct a longitudinal study of the recidivism of all offenders referred to the program, including individuals who were eliminated from consideration during various steps of the process and those who were committed, treated, and released. We recommended that

⁴ The Department of Juvenile Justice and the Department of Children and Families also review the offenses of persons in their custody to determine whether these individuals meet sexually violent predator criteria.

⁵ The 133-day average was calculated for the 2,808 referrals processed at the time of our 2000 report. However, those 2,808 referrals only accounted for 64% of the 4,377 total referrals from October 21, 1998, through December 31, 1999. The program staff updated this analysis using the 4,291 referrals (98%) processed as of August 2004. The program determined that these 4,291 referrals took an average time of 239 days from referral to decision.

staff assess the recidivism rates at each step of the assessment process to analyze whether any portion of the assessment process has been more successful than others in identifying predators.

Evaluators were inexperienced in assessing sexual predators. At the time of our prior report, the program contracted with private evaluators to conduct the clinical evaluation portion of the inmate screening process. Most evaluators had not had extensive prior experience working with violent sexual predators in their practices. We recommended that the department's Request for Proposals for a vendor to conduct the clinical evaluations stipulate formal criteria for contract evaluators, including appropriate experience, training in using appropriate risk assessment instruments, prior expert testimony in sexual deviancy cases, and a demonstrated ability to provide appropriate reports. We also recommended that the department require staff and contract evaluators to take continuing education hours in the study of sexual deviancy to enhance their overall expertise.

Current Status

Time limits are not being met. The program is not meeting time requirements for processing cases. In Ch. 2002-59, *Laws of Florida*, the Legislature extended the time the program is allowed to take to issue reports to state attorneys after receiving a referral from 45 to 180 days. However, the program is still not meeting its statutory deadline. The overall average time the program takes to complete this step is now 213 days.

Meeting the statutory time period is important because the longer the screening process takes, the greater likelihood that inmates' prison sentences will end and the state will need to detain them until the court determines whether they will be committed as a sexually violent predator. The length of time that offenders are spending in detained status is significant. According to our analysis, detained

offenders had spent an average of 916 days awaiting commitment proceedings.⁶

A significant part of the detention delay can be attributed to the legal process. Florida statutes require state attorneys to go to trial within 30 days of filing a petition for involuntary commitment. However, state attorneys report that it is difficult to prepare a meaningful case within 30 days and they usually ask for a continuance. Public defenders indicated that they also request continuances to have time to depose expert witnesses and prepare an adequate defense.

Due to these delays, the state is spending considerable resources detaining offenders who ultimately are not found to meet the sexually violent predator criteria and are released rather than committed. Since the inception of the program, the state has spent approximately \$15 million to detain 240 individuals who were ultimately not committed as sexually violent predators. If the screening and commitment process had taken place while the offender was still in prison, the state would have avoided these detention costs.

To process cases more timely, program administrators' primary goal is to complete screening a year before the projected end of inmate sentences. The 2002 Legislature changed the lead-time for the start of the inmate review process from 365 to 545 days prior to the end of prison sentences, which may help the program meet its goal. Our preliminary analysis indicates that the program may now be close to meeting this goal.

Despite these problems, we note that the number and percentage of detainees has slowly decreased. In July 2002, 334 of 398 residents were detainees (84%); by July 2004, that number had dropped to 286 of 449 (64%). The fact that this number has declined although new offenders are continually sent to the program shows that the backlog is being reduced.

⁶ As of January 31, 2004.

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While program administrators use internal processes to prioritize cases, they have not implemented our recommendation to generate routine reports tracking the statutorily mandated time frames between stages of the assessment and commitment process. We continue to believe that managers should use systematic tracking and analysis to improve program timeliness.

The program has not conducted a longitudinal study to inform its screening process. The program has not implemented our recommendation to conduct a longitudinal study of offenders referred to the program. This would include individuals who were eliminated from consideration during various steps of the process and those who were committed, treated, and released, to analyze whether there is any portion of the assessment process that has been more successful than others in identifying predators.

In 2002-03, the program investigated the feasibility of such a study with a doctoral student from Florida International University and determined that a valid study was not yet possible because statistically valid recidivism studies should have a large sample size that can be followed over a period of five years or more. We concur that since no individuals have completed treatment and been released from the facility, a complete recidivism study is not yet appropriate.⁷

⁷ Eleven individuals have been released before completion of the treatment program as a result of court orders.

However, we believe it is feasible and desirable to assess other aspects of the screening process, including the outcomes of the thousands of individuals screened for the program and determined ineligible who have since been incarcerated for sexually violent crimes and use this information to improve the screening process. Our analysis disclosed that 5% (577) of the 12,005 offenders who were released at various stages of the evaluation process and not found to meet the sexually violent predator criteria, subsequently were re-arrested for serious sex offenses, such as sexual assault and felony sex offenses against children, and 127, or 1% have been incarcerated for such crimes.⁸ These results suggest that the program may benefit from revisiting these cases to determine if systemic improvements would help to further identify individuals who present a threat to public safety.

Evaluator qualifications have become more stringent. The program has implemented our recommendation to strengthen requirements for private evaluators who conduct the clinical and annual sexually violent predator evaluations. The department now requires evaluators to have experience in the assessment or treatment of sex offenders and participate in related continuing education.

⁸ For this analysis, we defined recidivism as a re-arrest for a serious sex crime as defined in s. [944.606, F.S.](#)

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