

oppaga Program Review



February 2000

Report No. 99-36

The Sexually Violent Predator Program's Assessment Process Continues to Evolve

at a glance

In the first year, 4,377 offenders were referred to the Department of Children and Families' Sexually Violent Predator Program for assessment.

- Of the 2,808 that had been assessed as of December 31, 1999, 176 or 6% of referrals were found to meet the criteria for sexually violent predator and were recommended for civil commitment. The program should track recidivism of all referred offenders, including both those released and detained.
- Backlogs, bottlenecks, and shifting release dates have slowed processing times. The program took almost three times longer to refer cases to a state attorney than the 45 days required by law. The program is taking corrective action. (See page 6.)
- The program should have formal selection criteria and mandatory training for its contract evaluators. The study of sexually violent predators is an emerging field and there is no psychological certification in the study of this disorder at this time.

Purpose —————

Chapter 99-222, Laws of Florida, revised the process for involuntary civil commitment of sexually violent predators. This law also directed OPPAGA to study the Department of Children and Families' implementation of the law and report its findings and recommendations to the Legislature by March 1, 2000.

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, which became effective January 1, 1999.¹ The Ryce Act creates a civil commitment process for sexually violent predators that is similar to the Baker

¹ Sections 394.910 through 394.931, F.S.

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Act procedures to involuntarily commit and treat mentally ill persons. Offenders committed to the state under the Jimmy Ryce Act are detained until it is determined that they are no longer a threat to public safety.

The Jimmy Ryce Act requires the Department of Children and Families to assess persons who have committed sexually violent crimes to determine whether they are likely to commit further sexually violent acts after they are released. The department has established the Sexually Violent Predator Program to implement the requirements of the act and is in the process of developing administrative rules to govern program operations.² The program's current assessment process involves three major steps: notification, initial review, and clinical evaluation.

Notification. To begin the screening process, the three agencies with jurisdiction over potential sexually violent predators (shown in Exhibit 1) identify which offenders meet the general statutory criteria and notify the program and the appropriate state attorney.^{3,4} The period required for notification of pending release varies by agency. The substantial lead-time is intended to allow the program to conduct the assessment and the state to complete any subsequent judicial proceedings while the offenders are incarcerated, prior to the end of their criminal sentences (or release by competency hearing for the criminally insane).

² The Mental Health Program Office administers the Sexually Violent Predator Program. In Fiscal Year 1999-2000, the Legislature appropriated \$17.8 million to the program.

³ Criteria are prescribed in s. 394.912(9), F.S.

⁴ Generally the state attorney of the circuit where the crime occurred has jurisdiction.

Exhibit 1 Notification Requirements Vary

Agency with Jurisdiction	Notification Requirement
Corrections	365 days prior to release
Juvenile Justice	90 days prior to release
Children and Families	Prior to the release hearing for a person who has been found not guilty by reason of insanity

Source: Section 394.913, F.S.

Within 45 days of notification, the program must determine whether the individual meets the sexually violent predator criteria.

Initial Review. A review of the potential predator's offense history records follows notification. The review is conducted by one of three master's-level psychological specialists who are under the supervision of the program's Ph.D. clinical director. The psychological specialists review a variety of information, including police reports, arrest records, pre-sentence investigations, and court depositions. In addition, two psychologists independently evaluate each file.⁵ Upon completion of these file reviews, the members of this multi-disciplinary team meet as a group to decide whether the individual meets criteria to warrant further evaluation. (See Exhibit 2.)

⁵ These psychologists are under contract to help administer the program by working as part of the program's multi-disciplinary team.

Exhibit 2

Not All Sexual Offenses Are Considered Predatory

Offender Referred for Clinical Evaluation If	Not Referred for Evaluation
<ul style="list-style-type: none"> ▪ Sexually motivated offense ▪ Use of threats, violence or weapons ▪ Severe victim injury ▪ Pattern of sexual versus non-sexual charges ▪ Number of victims, age, whether known by the offender ▪ No prior sex offender treatment or treatment not completed ▪ Offender's age at time of offense and time of release. (Likelihood for re-offense decreases with age for rapists but not pedophiles) ▪ Lack of insight regarding the offense ▪ Unusual belief system 	<ul style="list-style-type: none"> ▪ Single event ▪ Sexual gratification not primary ▪ No physical contact ▪ Incest only ▪ Admitted guilt ▪ Completed sex offender treatment ▪ Older teen dating younger teen

Source: Sexually Violent Predator Program documents.

Clinical Evaluation. If the team determines that the individual meets the sexually violent predator criteria, the program will contract with an evaluator to conduct a face-to-face clinical evaluation with the individual. The contract evaluator must perform the evaluation and report the results within 21 days from the date he or she agrees to do the evaluation.

In a few cases, potential predators have refused to participate in the face-to-face interview.⁶ These individuals are evaluated on the basis of existing information.

If the evaluator conducting the clinical evaluation determines that the individual does meet the criteria of a sexually violent predator, the program prepares a written report and recommendation for the state attorney describing its findings. The state attorney may initiate legal action to take an alleged predator to trial to determine whether the individual should be civilly committed to the state for treatment.⁷

⁶ As of December 31, 1999, 18 individuals have refused to participate in screening interviews.

⁷ The state attorney may file a petition alleging that an individual is a sexually violent predator. If the judge makes a probable cause determination, the state attorney may take further legal action by filing a motion to have the individual committed. The alleged predator or the state attorney has the right to demand that the trial be before a six-member jury.

As directed by the Legislature, this report

- reviews the assessment process during the first year of the program;
- describes the education and experience of the evaluators conducting the assessments; and
- provides recommendations for improving the assessment process as it continues to evolve.

Program Implementation

Most potential predators have not been recommended for civil commitment

From the inception of the program in January 1999 through December 31, 1999, 4,377 offenders were referred to the Sexually Violent Predator Program. Of these, 1,569 individuals had not yet been processed. Of the 2,808 individuals that were assessed, 404 met program criteria for a clinical evaluation. After clinical evaluation, 176 individuals were referred to the state attorney for meeting the sexually violent predator criteria. Appendix A shows the disposition of individuals in the process as of December 31, 1999.

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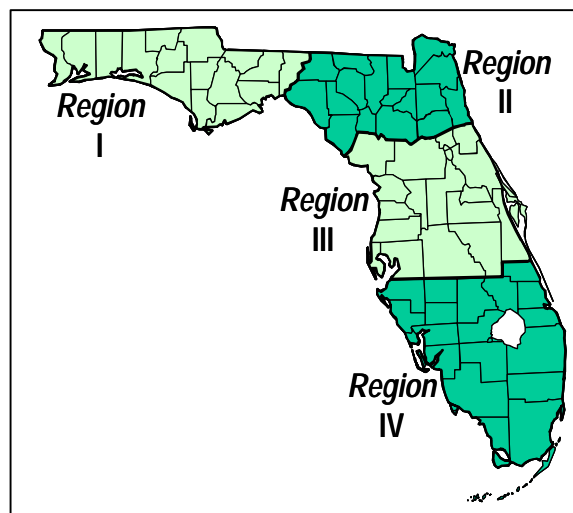
Currently, 56% of the individuals that progressed to clinical evaluation were not found to meet the criteria for sexually violent predator. As the program assesses more individuals, staff should be able to refine the assessment process. Staff should conduct a longitudinal study of the recidivism of all 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. Staff should assess the recidivism rates at each step of the assessment process to analyze whether there is any portion of the assessment process, including evaluators, tests, or test scores, that has been more successful than others in identifying predators.

Coordinating the locations of contract evaluators and potential predators for evaluations has not been a problem

One issue of legislative concern has been whether the program is being efficient in its use of contract evaluators and is minimizing travel costs and time in assigning cases. We found that the program does generally assign assessments to evaluators who are in close proximity to the facility where an offender is detained. Most offenders, 98%, have been detained by the Department of Corrections, which divides the state into four regions as shown in Exhibit 3.

The potential predators are scattered throughout the state, with generally 20 or fewer assigned to any given institution on any given day. As shown in Exhibit 4, contract evaluators conducted most evaluations in the same region in which they are located.

Exhibit 3
Department of Corrections Regions



Source: Department of Corrections.

Exhibit 4
Most Contract Evaluators Conduct Interviews within Their Own Region

Region	Percentage of Interviews Conducted (n= 650)
Within own region	70%
One region away	24%
Two regions away	4%
Three regions away	2%

Source: OPPAGA analysis of Sexually Violent Predator Program data.

The program's assessments have not been timely

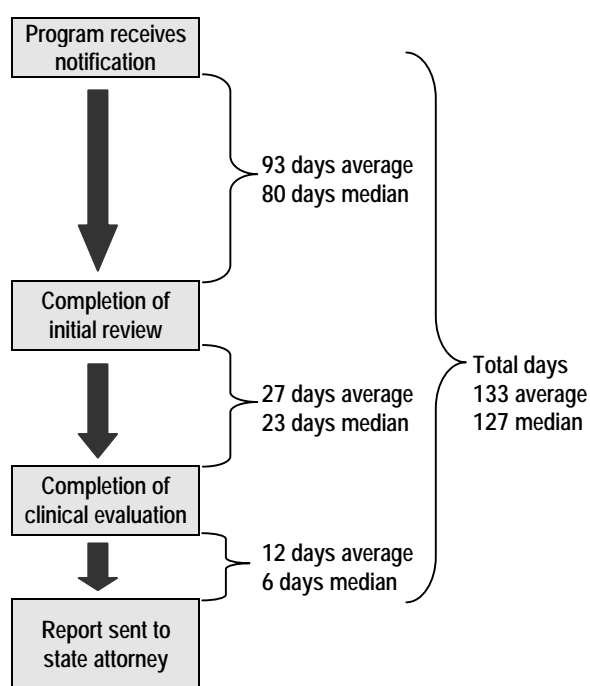
According to our analysis, during the first year of implementation, the average case took considerably longer to process than the 45 days required by law. We reviewed the dates for individuals that progressed through clinical evaluation.⁸ For these individuals, it took an average of 133 days from an individual's referral to the program

⁸ Offenders that were referred to the program but did not meet criteria during the initial review were not included in this time analysis.

until the program sent its report and recommendation to the state attorney. Backlogs, bottlenecks, and shifting release dates have contributed to the slow processing times.

Backlog. As shown in Exhibit 5, the longest span of time occurs between potential predators' referral to the program and completion of the initial review. Program staff have the largest workload during this step because at this point 85% of the potential predators are eliminated from the process. Another reason for the delays has been unanticipated surges in the workload.

Exhibit 5
The Process Did Not Meet Statutory Time Requirements During the First Year of Implementation



Source: OPPAGA data analysis of Sexually Violent Predator Program data.

The program began with an unexpected backlog of work that resulted from differences in interpretation of statutory language. The Department of Children and

Families interpreted the program's January 1, 1999, start date to mean that on January 1, referring agencies would begin notifying the program of offenders expected to be released. However, the Attorney General interpreted the law to mean that agencies needed to provide the program the names of all offenders who could be detained as of January 1. This interpretation resulted in the program starting with over 700 assessments that needed to occur in a very short period of time due to the offenders' imminent release.

Two other large surges of cases occurred that added to the initial backlog. When the Department of Corrections notification requirement was doubled from 180 days prior to release to 365 days prior to release, the program experienced a large influx of individuals that needed to be assessed. There was also a third surge of offenders as a result of the Gomez case that increased the backlog of assessments.⁹

According to program staff, start-up issues also contributed to the backlog of work. The program experienced delays in hiring staff and identifying and contracting with clinical evaluators. Staff also had to develop and implement administrative processes and identify appropriate assessment tools.

Bottleneck. The second longest time in the assessment process occurs after the initial file review, during the time the program assigns cases to contract evaluators and the evaluator schedules and conducts the clinical evaluation. One reason for delays during this time is the limited availability of evaluators, which are hired on a case-by-case basis, rather than for full-time work. Although the program has contracted with 32 evaluators, 6 evaluators have conducted

⁹ In *Gomez v. Singletary*, the Florida Supreme Court ruled that selected inmates had to be given overcrowding gain time credits previously denied to them. As a result, eligible inmates were released from prison earlier than anticipated. While this case was decided in May 1999, the release date for affected inmates was June 21, 1999.

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over half of the evaluations.¹⁰ According to the program director, these individuals have performed so much of the work because they are best able to accommodate it in their schedules; many of the other evaluators have active practices or teaching commitments.

Shifting release dates. An additional challenge in making timely assessments is that release dates are a moving target because of awards of gain time and changes in the legal environment (such as the Gomez case releases). For example, for offenders who had been processed and detained as of December 31, 1999, nearly three-quarters had reached their release dates earlier than originally anticipated. (See Exhibit 6.) Because individuals often come up for release sooner than originally anticipated, the program must constantly reprioritize its work to accommodate the need to quickly assess offenders who will soon be released.

Exhibit 6 Most Potential Predators' Release Dates Were Earlier Than Initially Expected

71%	Released prior to expected release date
	3 to 6 months 27%
	1 to 3 months 34%
	Less than one month 39%
12%	Released on expected release date
17%	Released after expected release date

Source: OPPAGA analysis of Sexually Violent Predator Program data.

The program is taking steps to improve timeliness

The program is taking steps to improve the timeliness of the assessment process through budget revisions for more staff, increased consolidation, and improved project management.

Budget revisions for more staff. In December 1999, the Legislature approved a department budget revision to hire additional staff. New staff positions include a senior attorney and four OPS positions: one psychologist, one psychological specialist, one records management specialist and one database analyst. These staff should speed up the initial review stage and assist with record management.

Consolidation. In March 2000, the program intends to issue a Request for Proposals for a statewide provider to administer the clinical evaluation process, effective July 1, 2000. The program director believes that consolidation of this component of the Sexually Violent Predator Program will help address the backlog and bottleneck problems because the vendor will hire staff who are willing to spend a greater portion of their time evaluating sexual predators.

Project management. While the program is currently inputting data on each offender into a database, it does not use this data to manage the flow of individuals through the process. Instead, staff use a manual system of grouping files according to expected release dates. This manual system makes it difficult to determine where a particular file is or when a specific individual is expected to be released, particularly since the release dates often change. In addition, the only way program staff can determine the status of any given individual in the assessment process is to find the file and review the enclosed paper trail, since the case events have not been recorded in the database.

To more effectively manage the program, staff need to have the capability to electronically track potential predators' progress through assessment and treatment. For example, the program needs to generate a regular report on the number of individuals at each stage of the process so that staff can review all necessary cases in a timely manner. This type of ongoing

¹⁰ As of October 1999, the program had contracted with 32 evaluators.

analysis should lead to more efficient program operation. The addition of two data support staff as approved in the budget revision should improve this situation.

Evaluator Experience and Education

The SVP program contracts with one psychiatrist and 31 psychologists throughout the state to assess whether offenders meet sexual predator criteria. Neither the Jimmy Ryce Act nor the program specified criteria for selecting and hiring evaluators. To identify possible contract evaluators, the program contacted the Florida Mental Health Institute and obtained a list of doctoral-level licensed psychologists and board-certified physicians who had worked in the area of sexual deviancy or had experience working with forensic or Baker Act cases.

The Legislature asked us to report on the education, prior related experience, expert witness experience, and professional certifications of the contractors hired by the program. To collect this information, we reviewed the resumés of the 32 contractors. We also sent contractors a questionnaire requesting additional information; 18 contractors responded to the survey with useful information.

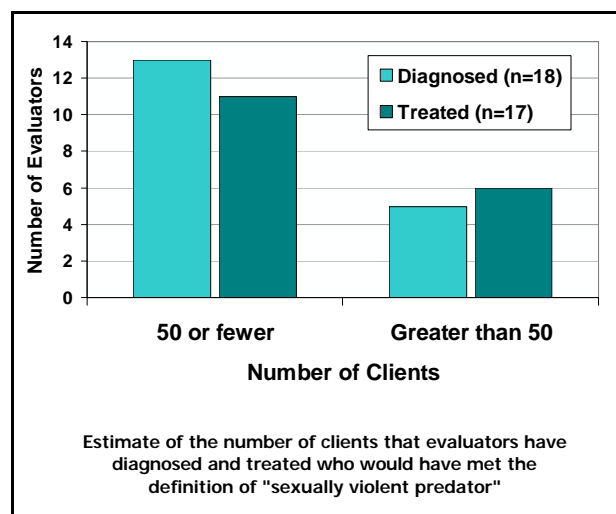
Education. As required by statute, the contracted evaluators are all doctoral-level licensed psychologists or psychiatrists. In addition, of the 32 contracted evaluators, 6 have been affiliated with a college or university as a professor or assistant professor, and 12 have been adjunct professors.

Prior experience. The contractors that responded to our survey reported that they have been licensed to practice from 4 to 37 years. More than half of the evaluators had been licensed for 10 years or more. According to Agency for Health Care Administration records, none of the 32

contractors have had a professional complaint upheld against them.

Prior to contracting to perform Ryce Act evaluations, most of the contractors who responded to our survey had not had extensive prior experience working with violent sexual predators in their practices. (See Exhibit 7.) For example, 13 of the 18 sampled evaluators reported diagnosing 50 or fewer clients that would meet the sexually violent predator statutory criteria. This is reasonable because, given the nature of the disorder, most predators would probably be seen in institutions rather than private practices.

Exhibit 7
Most Evaluators Had Limited Prior Experience with Sexual Deviancy Cases



Source: OPPAGA analysis of data provided by contract evaluators.

The evaluators that responded to our survey had limited experience with the required, validated risk assessment instruments prior to their work with Ryce Act cases.¹¹ Ten of the 18 evaluators had not used any of the required instruments previously. This is

¹¹ The required actuarial tests are: RRASOR (Hanson Rapid Risk Assessment for Sexual Offender Recidivism); MnSOST (Minnesota Sex Offender Screening Tool and the revised version); VRAG (Violence Risk Appraisal Guide); SVR (Sexual Violence Risk-20); and SORAG (Enhanced version of Violence Risk Appraisal Guide for Sex Offenders).

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probably due to the fact that the evaluators had not specialized in this population, and that most of the instruments have been developed or revised within the last four years.

Expert testimony. Another indicator of evaluator experience is the number of times an evaluator has provided expert witness testimony in trials dealing with sexual deviancy. Eight of the evaluators responding to the survey reported having this type of courtroom testimony experience. Of the eight evaluators who did report past experience, four indicated that they had provided testimony 20 or more times.

Professional certification. While sexual deviance is not a new social problem, the study of violent sexual predators is an emerging field. It is not currently possible for psychologists to be certified by the American Psychological Association as having a specialty in this area of study, as such a specialty has not been defined or approved.

The Association for the Treatment of Sexual Abusers (ATSA), an international organization focused on the management and treatment of sexual offenders, offers membership to sex offender clinicians who have engaged in 2,000 hours (one year) of clinical assessment or treatment of this population. Seven of the 32 evaluators are current or former members of ATSA.

Future standards. When the department issues its Request for Proposals for contract evaluators, we recommend that it include formal criteria for evaluators, including appropriate prior experience, training in using required risk assessment instruments, prior expert testimony in sexual deviancy cases, and a demonstrated ability to provide appropriate reports.

The department currently has no requirements for continuing education for

its contract evaluators. The American Psychological Association requires 40 hours of continuing education every two years, 36 of which are selected by the individual psychologist. The department should require that staff and contract evaluators obtain a minimum number of their continuing education hours in training related to sexual deviancy.

In July 1999, the Department of Children and Families provided training to the program's contract evaluators on working with sexually violent predators and arranged for the American Psychological Association to award the evaluators 16 continuing education units. In January 2000 the program hosted a meeting of contract evaluators to provide information on how to prepare reports describing their findings after evaluating potential predators. Sixteen of the 32 evaluators attended the training, which was not mandatory.

Conclusions and Recommendations —

From the inception of the program in January 1999 through December 31, 1999, 4,377 offenders were referred to the Sexually Violent Predator Program. Of these, 1,569 individuals had not yet been processed. Of the 2,808 that were assessed, 176 were referred to state attorneys for meeting the sexually violent predator criteria.

To refine the assessment process, we recommend that the program conduct a longitudinal study to assess the recidivism rates for both released, detained, and treated offenders. Staff should analyze whether there is any aspect of the assessment process that has been more successful than others in identifying predators.

The program's assessments have not been timely. Backlogs, bottlenecks, and shifting

release dates have contributed to the slow processing times. However, the program is taking steps to improve the timeliness of assessments.

In December 1999, the Legislature approved budget revisions to authorize the department to hire a senior attorney for the program as well as a psychologist, a psychological specialist, a records management specialist, and a database analyst.

In March 2000, the program intends to issue a Request for Proposals for a statewide provider for clinical evaluations. Program consolidation could help address backlog and bottleneck problems because the private vendor will be able to hire staff who can spend a greater portion of their time conducting Jimmy Ryce Act evaluations.

The program is also developing a database of alleged predator information, however more work is needed to improve project management. We recommend that the program generate regular reports to track the movement of potential predators through the assessment process so that staff can clear all necessary cases in a timely manner.

Many of the evaluators contracted by the program to assess potential predators had limited experience with this type of case prior to the Jimmy Ryce Act. We recommend 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 recommend that the department require staff and contract evaluators to take continuing education hours in the study of sexual deviancy to enhance their overall expertise.

Agency Response



FLORIDA DEPARTMENT OF
**CHILDREN
& FAMILIES**

Jeb Bush
Governor

Kathleen A. Kearney
Secretary

February 10, 2000

Mr. John W. Turcotte, Director
Office of Program Policy Analysis and
Government Accountability
111 West Madison Street, Room 312,
Claude Pepper Building
Tallahassee, Florida 32399-1475

Dear Mr. Turcotte:

Thank you for your January 27 letter enclosing the preliminary findings and recommendations of your program review entitled "The Sexually Violent Predator Program's Assessment process Continues to Evolve."

Attached are responses to the discussion and recommendations found in the report. I trust this information will assist in finalizing your report. If I may be of further assistance, please let me know.

Very truly yours,

/s/

Judge Kathleen A. Kearney
Secretary

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The Sexually Violent Predator Program's Assessment Process Continues to Evolve

The Department does not disagree with any of the findings made in the Office of Program Policy Analysis and Government Accountability (OPPAGA) review. The Department does, however, feel that some points would benefit from additional information.

Program Implementation - Longitudinal Study

Recommendation:

1. We recommend that the program conduct a longitudinal study to assess the recidivism rates for both released, detained, and treated offenders. Staff should analyze whether there is any aspect of the assessment process that has been more successful than others in identifying predators.

Response:

The Department fully concurs that a study as proposed in the report should be initiated. The Jimmy Ryce Act Enforcement Task Force convened by the Governor in November 1999 recently made a similar recommendation. The Department's Legislative Budget Request for FY 2000-2001 requests funds for the design and potential initiation of such a study. The Department has already made some overtures to potential researchers to determine who may be interested in working on the project. It should be noted that longitudinal studies are large, long-term undertakings. With the sexually violent predator population, at least a decade of study may be needed to make statistically significant findings as to recidivism of various portions of the population of individuals referred to the program.

Timeliness of Assessments

Comment:

The Department agrees with OPPAGA's data on the time periods for assessment, evaluation, and referral to State Attorney offices. The Department also agrees that each of the reasons identified by OPPAGA are contributing factors to the identified delays.

The OPPAGA report indicates that the longest step in the assessment/evaluation process for the period reviewed was an average of 93 days from the date the Department is notified of a referral until the initial review is completed. The addition of staff, as noted in the report, will reduce this time period. Another element in this 93 day initial review period has been the great difficulty the Department has experienced in compiling the documents which are needed to perform an initial review. Documents compiled include some records from the Department of Corrections; detailed criminal and juvenile delinquency records; pre and post-sentencing reports; medical and psychological history records (if available); school records, and the like. Most of these records are compiled and sent to the Sexually Violent Predator Program (SVPP) by the State Attorney's office that will handle the case if a petition is filed. These documents can be difficult to obtain, and the process often takes time, even when the State Attorney's office is able to provide an investigator to help track records down. Frequently, documents must be obtained from other states, which can be very difficult.

The Department and the SVPP has very little control over the amount of time required to obtain critical records. Decisions at this initial assessment phase must often be delayed until records are collected. Because this record review results in eliminating approximately 85 percent of the referrals to the program, it is important to have as much information as can be gathered. The Department continues to explore methods for collecting information more expediently (such as

National Crime Information Center [NCIC] and juvenile database access for SVPP), but review of cases will continue to be slowed by the information gathering process.

The Task Force convened by the Governor, recently recommended that the Jimmy Ryce Act be amended to increase the time the Department has in which to conclude the assessment/evaluation phase from 45 days to 90 days in recognition of the time consuming nature of this process.

Recommendation:

2. We recommend that the program generate regular reports to track the movement of potential predators through the assessment process so that staff can clear all necessary cases in a timely manner.

Response:

The Department concurs that electronic tracking of the movement of referrals through the assessment and evaluation process would benefit the timely processing of cases. The Department will attempt to implement such a system as staffing and resources permit.

Future Standards

Recommendation:

3. We recommend that the Department's Request for Proposals for a vender 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.

Response:

The Department fully agrees with the recommendations as to standards for education and experience of psychologists and psychiatrists. These recommendations are consistent recommendations made by the Governor's Task Force, and by the private consultant hired by the Department as part of a Legislatively mandated study of the SVPP.

Recommendation:

4. We also recommend that the Department require staff and contract evaluators to take continuing education hours in the study of sexual deviancy to enhance their overall expertise.

Response:

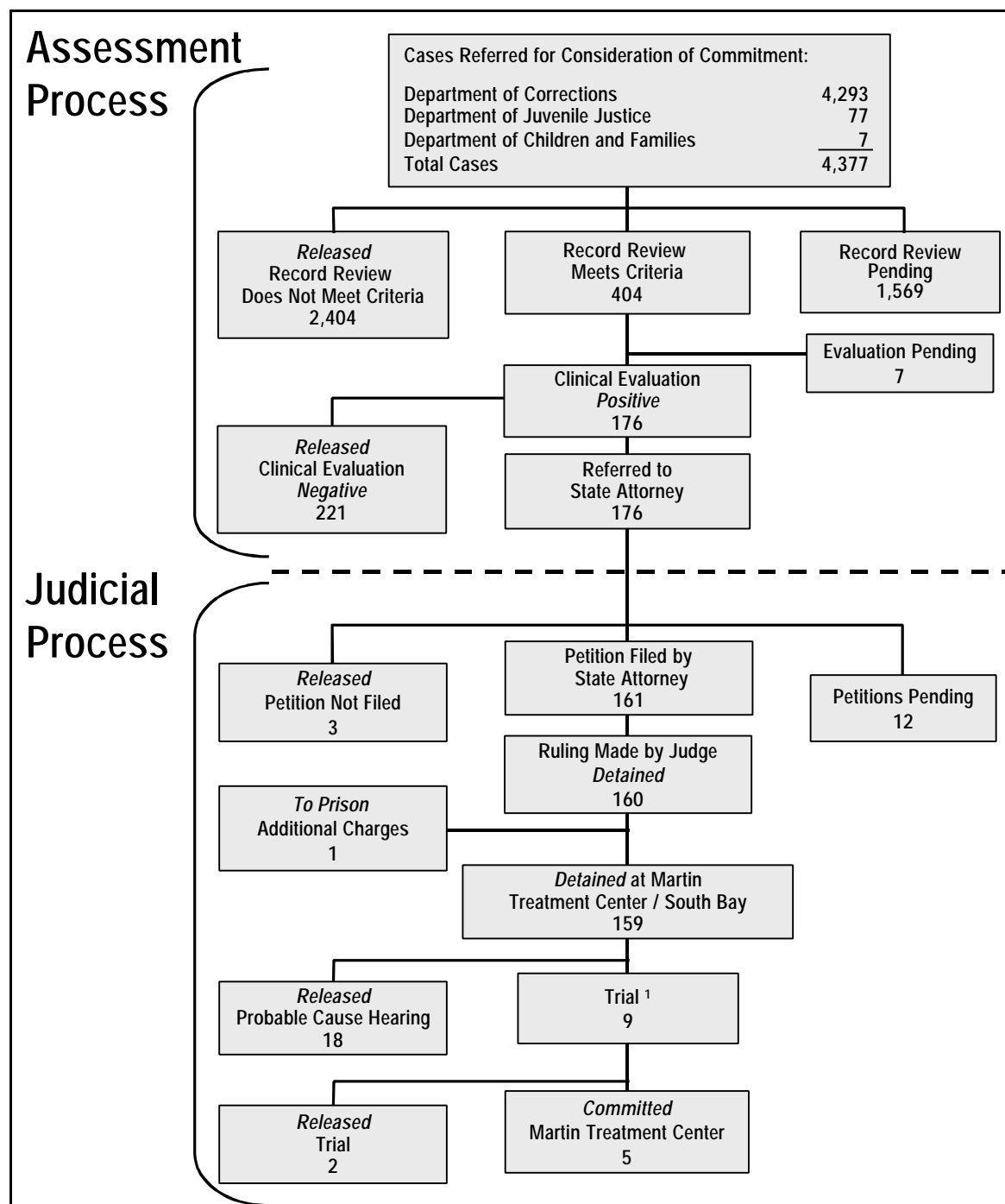
The Department has already notified its evaluators that continuing education hours will have to include an as-yet undetermined number of hours in sexual offender recidivism risk assessment and sexual offender treatment. Subject to availability of funding, the Department intends to sponsor three or four training seminars annually, as well as semiannual, less-structured evaluator discussion meetings where evaluators and SVPP staff can meet and work through structural and operational issues. The first discussion meeting was held on January 28, 2000, and the first training seminar (with continuing education credits) will be held on February 25, 2000.

Exhibit 2

The exhibit on page 2 lists factors that indicate referral for evaluation and factors that do not indicate referral for evaluation. The Department would clarify that the lists of factors are generalizations, and the presence or absence of any one or combination of these factors in a given case is not determinative of whether or not a clinical evaluation is ultimately conducted.

Appendix A

Most Assessed Offenders Have Not Been Recommended for Civil Commitment



¹ Trials that did not result in commitment or release were "hung juries" and petitions were refiled.

Source: Department of Children and Families data for the period January 1 through December 31, 1999.

OPPAGA provides objective, independent, professional analyses of state policies and services to assist the Florida Legislature in decision making, to ensure government accountability, and to recommend the best use of public resources. This project was conducted in accordance with applicable evaluation standards. Copies of this report in print or alternate accessible format may be obtained by telephone (850/488-0021 or 800/531-2477), by FAX (850/487-3804), in person, or by mail (OPPAGA Report Production, Claude Pepper Building, Room 312, 111 W. Madison St., Tallahassee, FL 32399-1475).

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