Applying Collaborative Justice to Sexually Violent Predator Civil Commitment

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Sexually violent predator (SVP) statutes are unique in that these laws allow for the indefinite civil psychiatric commitment of sex offenders after their criminal sentences have been served. In addition to the high cost of psychiatric hospitalization, recently observed low base rates of sexual recidivism of sex offenders released from custody suggest that, in select SVP cases, a collaborative justice model of outpatient placement may be feasible in lieu of lengthy and costly placement in state hospitals. Given its position as one of the states with a large number of SVP commitments, California offers an opportunity to implement a collaborative justice model for adult sex offenders found to meet SVP criteria. In this article, a template for such a model is suggested. Admittedly, this model faces multiple obstacles, both within the judicial system and in the public arena. Nonetheless, public concerns may be mitigated through high-control parole plus additional treatment and controls, interim halfway house placement, and community prosocial support systems.

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Sexually violent predator (SVP) laws seek to identify a small group of extremely dangerous incarcerated sexual offenders who represent a threat to public safety if released from custody.[1,2] These laws allow for the indefinite civil psychiatric commitment of sex offenders after their criminal sentences have been served. The commitment is frequently long (years in duration) and expensive (hundreds of thousands of dollars a year per individual).[3,4] Nationally there has been a trend toward a reduction in sexual recidivism.[5] The reasons for this trend are several: high intensity of parole monitoring and restrictions; electronic monitoring of movements; and longer sentences.[6] For select offenders, an alternative to indefinite hospitalization may be feasible through collaborative justice.

California is a state with a longstanding SVP law (since 1996) and arguably one of the largest numbers of individuals currently hospitalized under the SVP statute ($n = 949$ post-probable cause or under commitment) according to the most recent statistics.[4,7,8] California offers a unique opportunity to implement a pilot collaborative justice model for select adult sex offenders pending SVP civil commitment who are in the pre-probable cause hearing stage. In this article, a collaborative justice model is suggested. To that end, we provide a template for the implementation of SVP collaborative justice, identify criteria for acceptance into collaborative courts, and conclude with an examination of potential obstacles and challenges.

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SVP Laws

The first SVP law was enacted in the state of Washington in 1990.[9] Currently, 20 states and the federal government have implemented civil commitment statutes for sex offenders.[2,10] These statutes require the presence of a mental disorder that predisposes the individual to a serious and well-founded risk for future SVP behavior. SVP laws aim to protect public safety but also have legal safeguards for the sex offender facing civil commitment. Generally, but not always, these include a high standard of proof for such commitment (i.e., beyond a reasonable doubt)[11] given the potential for a life-time commitment. The most common diagnoses are the sexual deviancy disorders (paraphilic disorders); however, antisocial personality disorder is also used.[1,10,12] Some critics of the SVP laws argue that civil psychiatric commitment has been co-opted to incarcerate dangerous criminals and not dangerous individuals with a mental illness.[13] Despite such objections, the laws have withstood constitutional challenges.[14,15]

Current California SVP Commitment

In California, Welfare and Institutions Code Sections 6600 through 6609.3[16] cover the legal requirements of who qualifies as an SVP through the specifics of how that person is released into the community. The evaluations occur typically six months prior to the individual's scheduled parole release from prison custody. In California, under the determinate sentencing terms, the individual has a fixed parole date. The SVP law asks three questions, all of which must be answered in the affirmative by the forensic psychologists or psychiatrists of the California Department of State Hospitals (DSH) who conduct the evaluation for an SVP petition to be forwarded to the District Attorney's office:

> Has the individual been convicted of a sexually violent criminal offense against one or more victims?
>
> Does the individual have a diagnosable mental disorder that predisposes the person to the commission of criminal sexual acts?
>
> Is the individual likely to engage in SVP criminal behavior as a result of a diagnosed mental disorder without appropriate treatment and custody?[17]

The face-to-face evaluations are conducted by two forensic mental health experts (psychologists or psychiatrists). Pursuant to Section 6602 Welfare and Institutions Code,[16] once the probable cause hearing begins, the person alleged to be an SVP remains in custody until that person is no longer considered to meet the SVP criteria. The SVP procedure is civil in nature.[18] The law provides that individuals are entitled to a trial by jury, the assistance of counsel, the right to retain experts or professional persons to perform an examination on their behalf, and access to all relevant medical and psychological records and reports. In addition, the court or jury shall determine whether, beyond a reasonable doubt, the person is an SVP.

Since the inception of the California SVP law, nearly 19,000 sexual offenders in state prison were referred for an SVP evaluation.[8] Of these, only 2,216 were found to meet the criteria, and 1,585 were then sent for a probable cause hearing. Of these individuals, the court found probable cause in 72 percent of the cases ($n = 1{,}141$), and 949 individuals were housed in the state hospital.

The SVP proceedings for civil commitment begin after the individuals have served their prison term and are pending parole release. They are assessed by two forensic evaluators as to whether they meet all three criteria. If so, they do not get paroled to the community at their scheduled date. Instead, they are transferred from prison custody to a jail in the county where they were last adjudicated to await the scheduling of a probable cause hearing. Individuals can choose to waive time (i.e., allow the probable cause hearing to be delayed) and remain housed at the county jail until the hearing is held. For individuals who have a probable cause hearing and are found to meet the criteria, they are then transferred from the county jail to a locked forensic state hospital, where they will stay until their SVP commitment trial. In California, individuals can remain at this stage (post-probable cause hearing and pretrial) and be housed at the forensic state hospital for many years if they choose to waive time for the SVP trial.

The motivation to waive time and remain at the pretrial stage may be due to multiple reasons, such as an expectation that filed court appeals may be in their favor, hope for a change in the law, or anticipation that an evaluator will find in their updated evaluations that the individual no longer meets the SVP criteria due to changes in their status (e.g., age or health

effects, participation in treatment or community plans). Recent data from the California DSH indicate that persons at the post-probable cause stage ($n = 441$) remained in the state hospital for a mean of 5 years and 10 months, with 25 percent ($n = 110$) being detained for approximately 11 years.[8] Prior to trial, the deputy district attorney will request an update to determine if the individual continues to meet the SVP criteria.

Once an individual goes to trial and is found to meet the SVP criteria beyond a reasonable doubt, the person is committed to the state hospital for an indeterminate period and released only when the court deems that the person no longer meets the criteria for an SVP commitment. Annual evaluations by forensic evaluators (i.e., psychologists) occur at all the various stages to determine whether the individual continues to meet the criteria.[17] Approximately 29 percent ($n = 458$) have been discharged as no longer meeting the SVP criteria. Of these, 195 were post-probable cause and precommitment (pretrial), and 263 were postcivil commitment (following trial).[8]

Rationale for SVP Collaborative Justice

Declining Sexual Recidivism Rates

Nationally there has been a trend toward a reduction in sexual recidivism, from a prior estimate of almost 14 percent to current estimates of between 5 and 7 percent.[5,19] Moreover, the rate of sexual recidivism among those released from California prisons on parole has remained very low at 0.9 to 1.3 percent across several years.[20–22] Because outcome is defined by conviction and not arrest for a sex crime, and the follow-up period is only three years, these data may underestimate sexual recidivism. In one study of 1,198 California sex offenders released on parole in 2009 and 2010 where sexual recidivism was expanded to include arrest or conviction and with a longer (five-year) follow-up, the sexual recidivism rate remained low at 4.4 percent.[23] When individuals who did not have an opportunity in the community to reoffend, due to either death or deportation, were removed from the analysis, the five-year sexual recidivism rate in a sample of 371 released sex offenders was 6.2 percent ($n = 23$ offenders).[5] Those individuals found to meet SVP criteria by definition represent a subgroup of high-risk offenders as differentiated from the general sample of released sex offenders.

The above outcome data may underestimate sexual reoffending in portions of the sex offender population because the studies did not identify recidivism risk level. Supporting this limitation are the findings of a recent California study of sex offenders released from prison and followed for a five-year period where recidivism rates were examined by actuarial (Static-99R) risk level.[5] Substantially higher rates of sexual recidivism were found when high-risk offenders (30.3% or 10 of 33, Level IVb) were compared with those in a low-risk category (1.4% or 1 of 71, Level II).[5] The prison outcome data, although not segmented by risk level, nonetheless represent thousands of sex offenders released in each fiscal-year cohort group where very low sexual recidivism rates were consistently found (e.g., 8,942 sex offenders were released between July 1, 2009 and June 30, 2010, and 3,313 between July 1, 2012 and June 30, 2013).[20] These recidivism data described individuals who were not found to meet SVP criteria and were released under standard parole conditions. Given the intent of the SVP law to identify a small group of extremely dangerous individuals, it could be argued that these recidivism rates do not apply to those found to meet SVP criteria.

Low Recidivism in Released SVPs

Recent studies of released individuals found to meet SVP criteria report sexual recidivism rates that are either slightly higher or somewhat lower than current national estimates of sex offenders in general (5 to 7 percent). A large-scale study of sex offenders in Florida recommended for SVP commitment but later released reported a low rate of sexual recidivism of 10 percent (71 of 710 offenders with an arrest or conviction for a sexual offense, and a 4.5 percent rate of felony conviction for an average of 5 years).[24] When the follow-up period was demarcated as five to 10 years or more than 10 but less than 14 years, the sexual recidivism rates were very similar at 6.8 percent and 6.5 percent, respectively. These rates were, however, higher than the three to four percent rate for five to 10 years postrelease among approximately 1,200 Florida sex offenders who were not recommended for SVP commitment after undergoing an evaluation.[25] Among those recommended for an SVP commitment, most individuals in the sample were released without SVP

commitment or treatment ($n = 610$), whereas some ($n = 100$) were recommended, committed, and later released. Of that smaller group of those who were committed, most had several years of inpatient treatment prior to their court release when they were found to no longer meet criteria. This subgroup had a low sexual reconviction rate (three percent) after release; however, this finding is limited by the variable follow-up period, with some as little as under one year in the community.[24]

Among 102 released New Jersey sex offenders followed for an average of 6.5 years, the sexual recidivism rate was 10.5 percent.[26] In addition, among 1,928 Texas offenders considered for SVP commitment, there was a 3.2 percent rate of sexual recidivism; the follow-up period varied between 2.25 and 7.5 years.[27]

Released California SVPs

Two studies provide data on the risk level of those found to meet California SVP criteria and then released. Both reported low rates of sexual recidivism. One early report followed 93 individuals after the SVP probable cause hearing but prior to civil commitment who were later released from the state hospital. The rate of sexual recidivism for that group was 6.5 percent at almost five years postrelease.[28] A recent larger study of 399 individuals, who were released unconditionally from California SVP commitment by the court when considered by evaluators to no longer meet SVP criteria, reported that approximately half the sample were post-probable cause and still pending a trial and the other half had been committed.[8] This sample averaged seven years of placement in a forensic hospital prior to release; this does not imply, however, that such individuals participated in hospital treatment to reduce their risk. Approximately two thirds of individuals remanded to the state hospital under the SVP law post-probable cause hearing do not participate in sex offender treatment. The fixed five-year follow-up recidivism data mirrored the low national rate for sexual recidivism at approximately six percent.[7]

Civil Commitment Is Lengthy and Expensive

The indefinite nature of SVP commitment results in lengthy psychiatric hospitalization that is expensive. In certain cases, even among those identified as meeting SVP criteria, public safety could be achieved through outpatient monitoring. Among the 20 state jurisdictions and the federal government that have enacted SVP laws, admission, discharge, and length of hospitalization vary considerably but tend to be years rather than months.[7] Although the exact cost of SVP commitment is difficult to discern due to difficulty in separating expenses for evaluation, court proceedings, and hospital operation, it may be approximately $250,000 a year per patient using California data (i.e., hospital operation cost divided by total number of patients in a given year) or a total of $235 million each year.[4] These costs may be higher for the elderly or for those with serious health problems requiring community hospitalization for emergency and other medical interventions not available at the state hospital.

Some states, such as Minnesota,[29] New York,[30] and Texas,[24] have alternative outpatient programming that is less restrictive than hospitalization or have settlement agreements (as in Florida; see below) that permit SVPs to attend community treatment.[24] Florida's low recidivism rate of 10 percent (i.e., arrest or conviction at an average release period of five years) is similar to that of Texas (7.5%).[24] Those under mandated supervision in Texas had an even lower rate of sexual recidivism (0.8 percent) over an average release period of 4.77 years, thus strongly supporting supervised release as a method to reduce risk.

California has no alternative to inpatient commitment. For those civilly committed (i.e., post-probable cause and post-commitment trial), the SVP law requires inpatient psychiatric hospitalization with the option for outpatient treatment under conditional release after participation in the state hospital sex offender treatment program. As a practical matter, few individuals committed are actually released for outpatient treatment under DSH's conditional release program (CONREP). Since inception of the SVP law in 1996, only 46 individuals have been released conditionally to CONREP as of February 1, 2019; 17 have been unconditionally discharged, 18 have been revoked or hospitalized, four died while under release, and 14 are currently in CONREP.[8] The average length of inpatient stay prior to conditional release is 10 years.

Housing has been identified as a significant problem. The stigma of being identified as an SVP is evident in the amount of time it takes CONREP to locate housing for an individual ordered by the court to be released conditionally, which has ranged from

12 to 18 months. There is no state-owned housing for SVPs; therefore, CONREP must find houses to rent from owners for one individual, and such rents have been exorbitant. The average yearly cost for one individual under SVP CONREP is $653,000, well exceeding that of inpatient costs at the state hospital, which is estimated as an average of $250,000.[8] Such high costs for securing housing for released SVPs under CONREP are related to residency restrictions (e.g., cannot be close to a school, park, or places where children congregate) and finding homes in rural areas to meet residency restrictions. The requirement of community notification that an individual designated as an SVP is being released is another contributing factor to cost. Such notification requires added security measures, including live-in guards, stemming from community demands for their safety and a possible threat to the released individual.[8] The length of stay on conditional release prior to unconditional discharge is 4.4 years, with a range of six months to 101 months.

Sex Offender Diversion

Sex offender diversion remains limited and is largely confined to juvenile offenders.[31] Reentry programs for adult sex offenders face the obstacles of public mistrust and the belief that sex offenders pose a substantial risk for recidivism.[32] Consequently, there are few jurisdictions that have diversion programs for adult sex offenders. Colorado offers one example where it is possible to have the sentencing for a sex offense deferred.[33] For an offender to have a sex offense deferred under this statute, the prosecutor, the attorney for the defendant, the defendant, and the judge all must agree on the stipulated terms. If the individual successfully completes all the requirements in the stipulation, the guilty plea is set aside and the case is dismissed. Although the statute allows for sex offenses to be included in deferred sentencing of a defendant, the prosecutor has sole discretion in determining if the defendant and offense are appropriate for diversion.

SVP Outpatient Commitment in Some States

La Fond[34] proposed a model of outpatient commitment as an initial least restrictive alternative for those committed as SVPs. New York State's Mental Hygiene Law 10.03 allows for intense and strict supervision of sex offenders designated as SVPs who have a mental abnormality but are not at the threshold of dangerousness requiring confinement.[35] In a 2009 report, studies of civilly committed sexual offenders under New York's community supervision suggest a very low rate of sexual recidivism (2.6 percent).[36] Texas also has an intense outpatient supervision process for those found to meet SVP criteria,[37] with a low rate of sexual recidivism (0.8% over an average release period of 4.77 years).[24] It should be noted that, in 2015, Texas modified its SVP treatment program from being outpatient only to a tiered program including inpatient and outpatient treatment.[38]

Rare SVP Diversion Prior to Probable Cause Stage

Alternatives to SVP forensic hospital placement at the probable cause stage remain rare. Florida has settlement agreements initiated at the probable cause stage for those recommended for SVP commitment. Such offenders have factors (e.g., health, age, or other aspects that reduce risk) that are persuasive to state attorneys and the court and can hold the SVP proceedings in abeyance.[24] Although the offender has stipulated to being an SVP, this agreement allows the court to treat the offender as an SVP only if the individual violates the agreement. The person is released to the community under certain terms and conditions, including outpatient treatment. If those terms and conditions are violated, the commitment process may be initiated. Of the 140 offenders with such settlement agreements, there was a 3.6 percent rate of a new sex offense conviction, with follow-up of one to 10 years.[24]

Collaborative Versus Adversarial Justice

The U.S. justice system remains largely an adversarial system of law. In a typical court case, the party who bears the burden of proof presents evidence to the trier of fact by way of witness testimony or other documentary evidence. The opposing party rebuts that evidence by way of cross examination and, in some cases, may present affirmative evidence to support their party's position. At the conclusion of the presentation of evidence, each party provides a closing argument to the trier of fact. The judge or jury then renders a verdict that is based on their determination of the facts of the case presented in accordance with the law provided. The strength of the argument may be influenced by the skill of the presenter of the case (typically an attorney). Some have argued

that wealthier litigants can obtain more skilled lawyers than poor litigants; thus, it is wealth rather than the truth of the matter that may influence the case outcome.[39] Wealthier litigants are better able to retain expert witnesses to assist in the presentation of the evidence, expend resources in investigation, and perhaps retain the assistance of a jury consultant. Such an imbalance has led some scholars to question the fairness of the adversarial system.[40] Indeed, almost 35 years ago, U.S. Supreme Court Chief Justice Burger stated, "Trials by the adversarial contest must in time go the way of the ancient trial by battle and blood" (Ref. 41, p 62). In recent years, an alternative justice model, that of a collaborative system, has been implemented in certain criminal justice cases, typically those involving defendants with drug or mental health disorders.

Collaborative Justice Promotes Cooperation

In contrast to the adversarial system, collaborative justice promotes cooperation and team-based problem-solving between multiple parties: judges, prosecutors, defense attorneys, probation and parole representatives, corrections personnel, victim advocates, law enforcement officers, and public and private treatment providers. These collaborative courts coordinate judicial supervision with rehabilitation and treatment, and they include extensive monitoring with the goal of reducing criminal recidivism and managing the criminal defendant's behavior through treatment rather than punishment. In collaborative courts there is an identified nexus between the psychiatric or substance use disorder and the criminal behavior. Consequently, emphasis is on treatment rather than punishment of the individual. Frequently called "problem-solving courts," this system offers diversion in lieu of punishment; examples include drug courts and mental health courts.

Diversion Courts and Recidivism

Evaluations of the success of such courts in reducing recidivism via rigorous design (such as control groups) have been limited. A relatively recent meta-analytic review of mental health courts (18 studies) suggested small positive effects in reducing recidivism and improving clinical outcomes.[42] Despite the limitations in research methodology, reviews have noted, in addition to cost savings over the long term, that those diverted to mental health court had increased utilization of mental health services and had reductions in recidivism.[43–47]

Proposed Model for SVP Collaborative Justice

California's system of negotiation courts provide for collaboration between the defense attorney, prosecutor, judge, and probation officer in a review of the entire context of the crime and the characteristics of the accused individual (including criminal and medical histories) to decide what is best for the defendant and for the community.[48,49] In such cases, charges may be dismissed if all conditions of the treatment plan and supervision terms are met over a stated period of time. We propose that the collaborative justice hearing would be scheduled prior to the probable cause hearing. The DSH refers all positive cases (i.e., where two or more evaluators have found the individual to meet SVP criteria) to the District Attorney's Office in the county where the individual was last adjudicated. The District Attorney's Office can file or decline to file an initial petition for civil commitment pursuant to the Sexually Violent Predator Act. For cases in which the District Attorney's Office files the petition, the individual is not released on parole but is transferred from state prison to a county jail to await the probable cause hearing. Given that civil commitment is predicated upon a diagnosed mental disorder, the SVP collaborative court is envisioned to fall under a county's mental health or behavioral health collaborative court system. No statutory change to the law would be required to implement the SVP collaborative court. That is, Section 6602 (b) Welfare and Institutions Code indicates that "the probable cause hearing shall not be continued except upon a showing of good cause by the party requesting the continuance."[16]

In a collaborative court option, parties could agree to good cause for continuance, and the process would not require statutory changes for implementation. The collaborative justice team would include the judge, the deputy district attorney, counsel for the respondent, a representative from the parole board, independent forensic psychologists or psychiatrists experienced in sex offender evaluations, and victim's rights advocates. The independent forensic expert would not be either of the SVP evaluators who performed the original evaluation. The independent forensic expert would review all case materials to determine if the individual could be treated safely in the community with the enhanced restrictions and

requirements of collaborative justice. In addition, the forensic expert would play a continuing role in reviewing treatment participation and progress; results from penile plethysmograph and sexual history polygraph examinations would be considered, as well as additional measures that might be implemented to manage risk. This model would allow for a small number of cases to be included in the collaborative court. Figure 1 provides a template for SVP collaborative justice proceedings.

Release Conditions

The release conditions would include parole conditions for high-risk sex offenders, such as interim halfway house placement, GPS monitoring, residence restrictions, restrictions against association with children, drug and alcohol prohibitions, curfew, internet restrictions, work restrictions, relationship restrictions, prohibition of any use of pornography, and polygraph testing.[50,51] Such conditions are similar to those used for outpatient management of individuals found to be SVPs in New York and Texas.[30,37] In addition, the collaborative court would place other mandates, specifically participation in both sex offender and other psychosocial groups (e.g., anger management, substance abuse treatment, posttraumatic stress disorder treatment). The participant would be given assistance with prosocial integration, such as providing opportunities for employment and development of appropriate social networks. Quarterly reports to the court on the participant's progress and success in meeting treatment goals and objectives would be required. Any violation of these conditions could result in a revocation of the collaborative court agreement and reinstatement of SVP court proceedings.

Duration of Court Monitoring

As individuals accepted into the collaborative court are in the pre-probable cause stage and therefore not civilly committed under the SVP law, parole is the only supervised release option. Consequently, the period of collaborative court management would be restricted to the parole term; in California, this ranges from three to 10 years.[8] Admittedly, parole terms are of a short duration compared with indefinite commitment. The SVP collaborative court would follow mental health courts in their model with treatment as a core feature. Collaborative justice team members (i.e., judge, deputy district attorney, defense attorney, parole agent, forensic psychologist or psychiatrist, victim's rights advocate) would meet at regular intervals (e.g., monthly) to discuss supervision and reintegration of each participant. Facets of the collaborative court that enhance the success of the individual and facilitate community safety would also include program flexibility, which would allow terms of the program to be adjusted to either add or delete programmatic mandates based on the risk, need, and responsiveness of the participant.

Inclusion Criteria

Table 1 lists some guidelines for inclusion or exclusion from collaborative justice. Guidelines regarding risk factors for those at the highest risk for sexual recidivism would be based upon existing empirical research.[19,52–56] Factors such as time without offense in the community would be used as mitigating factors.[6] For example, an offender with a history of multiple hands-on offenses, such as rape and child sexual molestation, and who has engaged in sexual crimes while on parole, even after experiencing sanction, would be a potential case for exclusion. On the other hand, a sex offender whose criminal history is remote, even if substantial, and whose index offense is not sexual, and who has a history of being in the community for a lengthy period of time without sexual offending, would be a potential case for inclusion. The California SVP law does not exclude remote sex offense history.[16] Of note, remote sexual criminal history as an inclusion criterion for collaborative court may not be applicable in jurisdictions outside of California. This assessment could be made through a record review by one or more forensic psychologists or psychiatrists. The independent mental health evaluator(s) would supply the collaborative court team with an opinion as to whether the selected individual should be considered for the collaborative court and avoid having a trial on the initial petition for civil commitment. It would then be up to the collaborative court team to decide if the case should be accepted.

Enhancing Community Support

Attempting to navigate back into society from lengthy incarceration is daunting for anyone; however, when coupled with a sex offender label, the resources available are even fewer than those

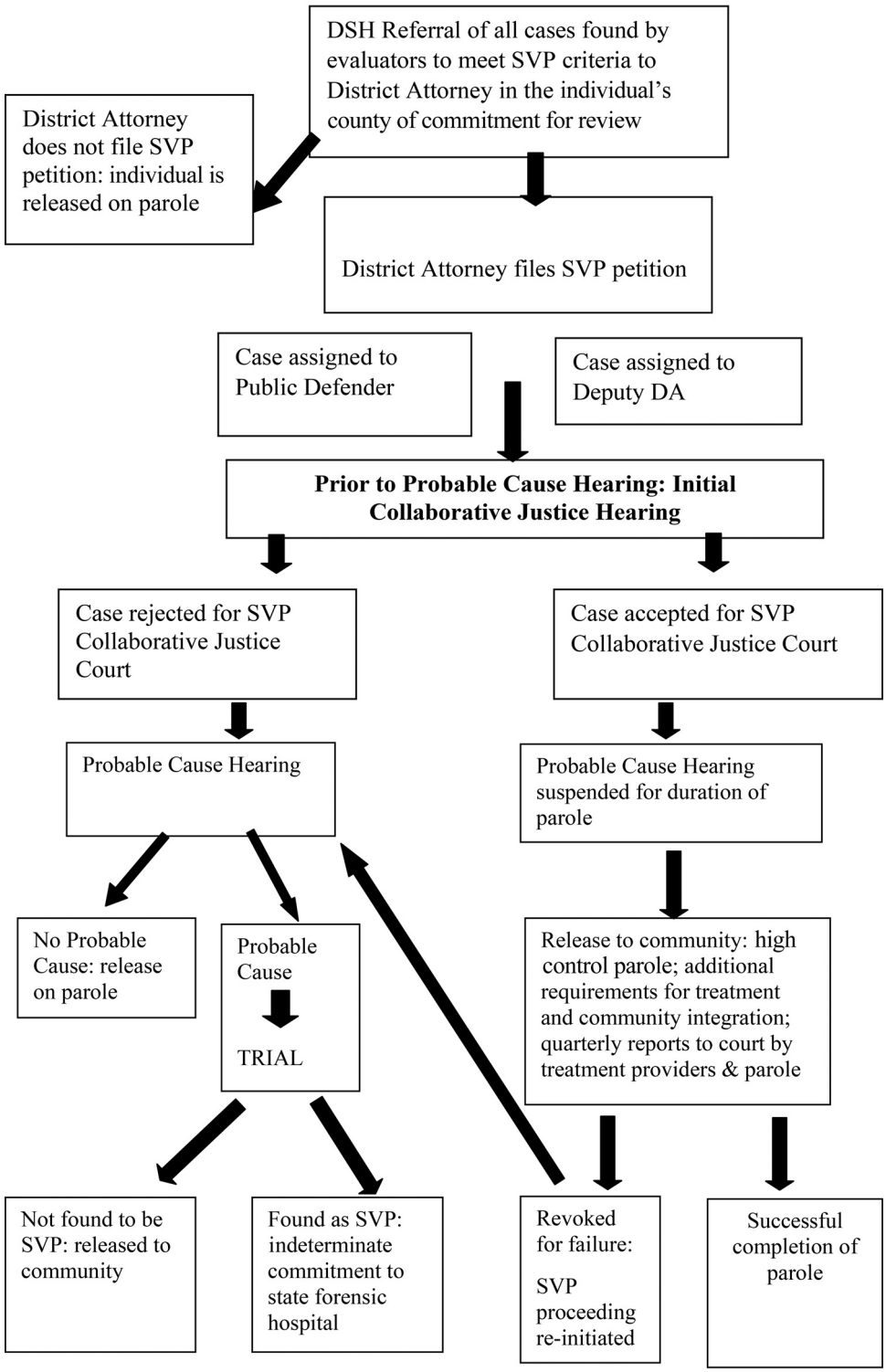

Figure 1. Collaborative Justice Model. DSH, Department of State Hospitals; SVP, sexually violent predator.

for individuals who have nonsexual offenses.[32,57] The stigma that is associated with sexual offenders may lead to their families becoming pariahs in their communities[58,59] and thus may influence family members and friends to cut ties with the offenders.

Employment and stable housing are core factors that enhance successful community integration for

Table 1. Parameters for Cases Accepted or Rejected for Collaborative Court

Case Characteristics for Acceptance	Case Characteristics for Rejection
One child or adult victim for qualifying offense where sexual conduct is not substantial	Multiple child or adult victims with substantial sexual conduct; sexually sadistic crimes against adult or child victims
Sexual history does not suggest preferential pedophilic or paraphilic interests	Sexual history suggests entrenched, preferential sexual interest in children or sadistic or coercive contact with adults
Victim selection is not clearly predatory (e.g., intrafamilial offending)	Victim selection: Clear predatory pattern: targeting strangers, kidnap or abduction involved Targets particularly vulnerable victims: elderly, toddlers/infants (neophilia), or persons with disabilities
Age is a mitigator:	Age is not a mitigator:
Older offender (over 60) with long-term incarceration whose qualifying offense occurred 15 years prior to sexually violent predator petition	Older offender (over 60) with last sexual offense occurring in an older age bracket
Offender is young (e.g., 20s) with sex offenses occurring at age 18 and only nonqualifying priors as an adolescent	Young offender (e.g., 20s) with a pattern of adolescent and early adulthood qualifying prior sexual offenses; trajectory of victim choice suggests sexual deviance
Motivation for treatment with evidence of participation in sex offender treatment in custody or self-help participation in management of coping skills to address anger, depression, or substance use	Little or no evidence of positive programing in custody; poor impulse control in custodial setting, such as drug use, sexual acting out, or violence toward others
Sex offending occurred under intoxication, has engaged with in-custody substance-abuse treatment	Sex offending occurred under intoxication and with evidence of in-custody use of substances
Protective factors of prior prosocial functioning: good employment, has social and financial supports	Protective factors absent; history of antisocial functioning, poor employment, negative influences as social support (e.g., gang), no financial support
Sex offending was situationally based, related to youth gang affiliation with no current history of such affiliation	Offense analog behaviors, such as habitual involvement in sexually deviant activities in custody (e.g., coercive sexual contact, child materials or pictures, stalking staff for sexual contact) or distributes or makes sexually explicit drawings, narratives, or photos
Offender special characteristics:	Offender special characteristics:
Developmentally delayed, receiving government support, or offenses indicative of emotional identification rather than sexual interest in children	Lack of compliance with authority in custody setting; multiple rules violations with anger or aggression indicative of a pattern of defiance toward authority
Medical conditions that limit mobility or create short life expectancy	Medical conditions that do not limit mobility or, if they do, offender has previously sexually acted out despite conditions
Offense characteristics or history:	Offense characteristics or history:
Offender's current offense is not sexual; offender has been in community for extended period without sexual offending	History of new sex crimes committed while on parole
Sexual offense is remote	Sexual offense pattern reflects trajectory of increasing sexual aggression and predatory behavior
History of one adult or child qualifying victim with more recent history of noncontact sexual offenses	Offender has wide range of victims (e.g., adults and children, males and females) and broad sexual deviance

paroled offenders, both general and sexual.[60] There are many restrictions placed on sex offenders that hinder their ability to secure stable employment. Most states prohibit sex offenders from obtaining a wide variety of occupational licenses and employment. Employment discrimination against sex offenders is also widely practiced in private businesses despite the promises of antidiscrimination reforms. Interim halfway housing by parole can provide a temporary solution, yet securing long-term housing remains problematic. Sex offender residency restrictions are not always commensurate with victim characteristics. For example, restricting an offender with an adult victim from living close to areas where children may congregate could contribute to homelessness and inadvertently increase the risk to reoffend.

Protective factors, such as coping and social integration, can mitigate the risk for sexual recidivism.[54] Although limited, there are community resources that can facilitate a healthy stable environment for released sex offenders. For those individuals who are military veterans, the Veterans Health Care System may provide access to housing, mental health, medical treatment, and employment opportunities that can enhance community reintegration. Circles of Support and Accountability (COSA) is a nonprofit organization that relies on community members to

meet with the offender on a weekly basis and talk with them about struggles, successes, and any other challenges the person might be facing that week.[61,62] In this model, three to five community "core" volunteers become integral in the reintegration of the offender and act as extra ears and eyes on the person to solve problems of daily living that could create a pathway for reoffense. A systematic review of 15 studies related to the effectiveness of COSA reported that participation in COSA helped offenders with community readjustment, such as engaging in prosocial activities and employment.[63] The studies reviewed, however, were limited by short follow-up and a low base rate of sexual recidivism that did not allow for assessing the efficacy of this support in reducing sexual reoffense.

Identifying Benchmarks

The more prosocial and structured daily commitments a person is able to develop, the better chance the individual has at living a lawful, meaningful life in the future.[63] Included among such benchmarks would be fostering healthy relationships with adults that are separate and apart from the client's sex offender treatment groups, gainful employment, financial stability, remaining substance-free, and community engagement, such as through religious affiliation or other prosocial activities.[54,63]

Confidentiality Parameters

As part of the client's mandatory sex offender treatment and supervision in California, clients must fully and truthfully answer all questions posed during polygraph examinations. Failure to answer a question would violate legally required terms of supervision. Because the answers are compelled, they cannot be used against the offender in subsequent criminal proceedings.[64] Guidelines developed by state sex offender management boards offer a useful template in addressing how information learned within treatment during parole and probation periods cannot be used for further criminal prosecution.[60,65] For a therapeutic alliance to be formed, which in turn enhances successful and safe reintegration of the individual into society, information disclosed by the client needs to remain confidential. When information is disclosed in treatment that causes concerns about the risk posed by the participant in the community, the collaborative justice team will work together to structure modifications necessary to ensure public safety without hindering progress made in treatment.

Potential Obstacles to Implementation

Public Protest

Sex offenders trigger great concern in the general public.[58,59] The SVP law was designed to identify sexual offenders with a well-founded risk to offend sexually in a predatory and violent manner. Indeed, those found to meet SVP criteria represent a small percentage of sex offenders referred for evaluation (eight percent of all individuals referred to the DSH for evaluation since the inception of the law).[8] Moreover, approximately 5 to 9 percent of individuals evaluated by at least two forensic psychologists were found to meet SVP criteria between 2010 and 2019.[66] Individuals referred for SVP commitment are likely to have the characteristics that create anxiety in the public regarding sex offenders: multiple victims, a predatory pattern, and a history of sexual recidivism.

Prosecutors' Incentive to Negotiate

If an individual is released through a collaborative justice court, there is always the potential for sexual recidivism, even with measures implemented to greatly minimize such risk. Consequently, there may be little reason for the prosecutor to deviate from legally established procedure and risk questions about why traditional practices were not followed if something goes awry. Under these conditions, it may be difficult to persuade a prosecutor to engage in an alternative resolution through collaborative justice court mechanisms. Nonetheless, individual variability exists among those who meet the legal criteria of an SVP, such as the facts of the prior offenses, their remoteness, length of incarceration and aging effects, and the intensity of the sexually deviant focus. In cases where the SVP criteria fit but the entire context of the person and case support community placement, the prosecutor's responsibility is to consider what is right for the community and the individual. Ideally, this should lead the prosecutor to find a resolution that considers community safety in an environment that gives the individual the tools needed for successful reintegration.

Respondent Objections

Alternatively, there may be potential barriers to accepting enhanced monitoring and expanded

conditions for treatment raised by the individual facing civil commitment. Individuals may wish to go to trial to secure unconditional community release because they have already served prison time and have been punished for their wrongdoing. Individuals may not view the state as being able to convince a trier of fact that they should continue to be detained in a state hospital for a crime they have yet to commit or more likely will never commit. These objections notwithstanding, the words "sexually violent predator" alone evoke a visceral response that immediately shifts the burden from the government proving the need for commitment beyond a reasonable doubt to individuals having to prove that they are safe to be released into society, which may be a difficult task. When there are only two options available for an individual faced with an SVP petition, having an opportunity to earn a way out of an indefinite civil commitment may very well be the best option instead of risking a trial and the outcome of trying to navigate out of a locked forensic facility.

Conclusion

California has one of the largest numbers of individuals in the country hospitalized under SVP civil commitment. The indefinite nature of the commitment renders it an expensive program. An additional benefit under collaborative court would be lowering the costs for the management of these individuals. The costs of collaborative court will vary across counties. SVP collaborative court would best fit under behavioral health or mental health collaborative courts. San Diego County data for a behavioral health court indicated that there were 120 participants for fiscal year 2018–2019, with an annual budget of $1,876,000, which is approximately $15,600 per participant.[67] Such costs are well below the DSH civil commitment cost of $250,000 per individual per year and the CONREP costs for the few individuals released ($633,000 per year). Recent recidivism data support a trend toward declining rates of new sex crimes by released sex offenders. Under close monitoring and mandated treatment in the community, even those found to meet SVP criteria and later released have shown low rates of sexual recidivism.[24,27] Such data suggest that select sex offenders meeting SVP criteria may be managed safely in the community. Given the small number of individuals referred by DSH to district attorney's offices across the state for filing a petition (i.e., 50 in 2018, 49 in 2019; California DSH, Public Records Act Request, February 26, 2020) the SVP collaborative court could be subsumed under each county's existing mental health court. The proposed collaborative court system provides diversion as an option to those who are found by evaluation to meet SVP criteria and are facing a probable cause hearing. The model encompasses containment risk-management strategies to assure public safety (e.g., polygraph examination, electronic monitoring, halfway houses, surveillance via parole or probation, state-paid mandated sex offender treatment)[3,34] and uses release from SVP proceedings as an incentive for the individual to remain crime-free. The focus of the collaboration would be identifying resources that can contribute to the person's overall success in reintegrating back into society in a prosocial way.

The case that fits the alternative treatment model through collaborative justice will have individual characteristics that are often found in traditional SVP cases, but treatment and supervision terms will be tailored to ensure community safety and productivity for the individual. An ongoing obstacle to such integration is that residence restrictions for sex offenders are such that remote areas are frequently the only feasible alternative and may provide few, if any, social interactions. That situation could paradoxically enhance rather than mitigate the risk for criminal recidivism, sexual or nonsexual. Creative solutions will need to be explored to improve the limited opportunities that are available to sex offenders in the community to ensure that isolation does not become the precipitant for reoffending.

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