

Chris Johnson

November 3, 2009

Honorable Jerry Brown
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Re: DMH breach of public trust and violations of Jessica's Law

Dear AG Brown:

I represent a consortium of current and former California Department of Mental Health (DMH) Sexually Violent Predator (SVP) evaluators who are deeply disturbed by current policies of the Department of Mental Health's Sex Offender Commitment Program (SOCP). They believe the policies in place today violate the letter and spirit of the law and result in serious breaches of protection against violent sexual predators. My clients wish to remain anonymous for the time being due to potential retaliation for exposing these violations. The policy violations are twofold. Firstly, the DMH is allowing the release of tens of thousands of potential Sexual Violent Predators without a mandatory evaluation by trained experts. Secondly, the DMH has recently instituted a bidding process which strongly incentivizes no commitment proceedings of potential SVPs.

In November of 2006, an overwhelming majority of the California electorate voted to pass Jessica's Law which strengthened the SVP/SOCP laws in the state. Jessica's Law mandates that, prior to release from prison, violent sex offenders who meet certain offense criteria be evaluated in person by two expert panelists, psychiatrists or psychologists who have training and expertise in assessing the risk for violent sexual re-offense. If the two experts agree that the prisoner is a sexual violent predator with a high risk of committing another violent sexual offense upon release, the prisoner must be referred to the District Attorney's office for civil commitment proceedings under the SOCP. The DMH Sexual Offender Commitment Program (SOCP) managers have decided to ignore the law and conduct their own "paper screen" process of potential predators to reduce the number of psychological and psychiatric evaluations sent for in-person evaluation by trained experts. The current DMH policy violates the law, violates the trust of the people of California, and results in the loss of life of untold victims, all for the sake of economic expediency.

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DMH's subversion of the law and the people's will is clearly borne out by statistics reported on DMH's own website. Of the 21, 941 violent sexual offenders referred to DMH by the Department of Corrections since Jessica's Law came into effect, only 4941 were sent for SVP panelist evaluations. Shockingly, since Jessica's Law was passed, more than 70% (17,000) of all offenders flagged as potential sexual violent predators were never referred for an SVP panelist evaluation. In fact, each year fewer cases make it past DMH's paper review, and according to the latest statistics over the last 10 months, an outrageous 89% were screened out of the system by DMH. To put this in very real terms, the DMH has allowed the release of more than 20,000 sexual criminals into our communities without the risk evaluations mandated by Jessica's Law. This "cost-savings" has undoubtedly resulted in the sexual assault, rape, and sexual homicide committed against children and other vulnerable persons in our state.

A case in point is worth mentioning. Gilton Petri is a convicted rapist whose history was known for having chained and sexually assaulted his victim who nevertheless was deemed "clear" for release by DMH paper screening in 2007. Four days after being released, Petri raped and murdered 15 year-old Alyssa Gomez whose body was found near a dumpster wrapped in a blanket. Petri is back in confinement facing prosecution for that rape and murder. On information and belief, this is not the only instance of a violent sexual offender being released after DMH's "paper review" to horrifically attack again. The families of Alyssa Gomez, Polly Klass and Jessica Lunford should be asked whether the agonizing last moments of their children's young lives would be worth these revenue savings. The people of California have already answered this question in the negative – not once but twice – by enacting laws to protect their children.

The DMH recently compounded the problem by instituting a new contract bidding process that favors the least experienced evaluators and strongly incentivizes no referral for commitment proceedings. This new bidding policy undermines the entire SVP program and the clear mandate of Californians. Rather than assigning cases to a core group of competent and experienced evaluators with national reputations as experts in sexual recidivism as was done in past years, the DMH has now adopted a system whereby all SVP evaluations are granted to the lowest bidders. The evaluators are required to bid a flat fee for both evaluation and testimony, providing a strong incentive to not refer the prisoner for civil commitment. Although seemingly a cost saving method, this system undercuts the spirit and purpose of the law, whereby the neutral trained experts in this field evaluate potential SVPs for risk of re-offense and are able to competently testify in those cases where civil commitment is recommended. The newer, inexperienced evaluator can both avoid the test of cross-examination and bid near zero value for trial testimony by never recommending civil commitment. Again, the numbers bear this out. One of the newer panel evaluators evaluated 44 cases and found not one met the SVP criteria. This is in stark contrast to the average positive rates of between 20 to 35% found by the original expert panel members. Not surprisingly, since implementation of the new contract (#09-79029-00A) in the 2009 fiscal year, the rate of a positive finding on SVP cases has dramatically decreased overall. The L.A. County D.A.'s office (the largest and historically busiest office for SOCP proceedings) received

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zero referrals for SVP commitment for the months of July and August this year, an unheard of statistic. By comparison, last year they received more than 40 SOCP case referrals for the same period.

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Under the direction of DMH, California's SOCP program has gone from the model SVP program in the United States to an ineffective and unsafe program. My clients cannot countenance the continued injustice being done and will not allow their names to be associated with a system being hijacked by what amounts to a renegade agency. Although some of the original expert panel members still review cases and thereby have a pecuniary interest in continued referrals, others are no longer part of the panel by choice and have no monetary interest. My clients, instead, are motivated to act by a deep-seated interest in the prevention of the most heinous offenses committed against some of our most vulnerable citizens. They share a deep concern for the continued viability of the program and the rule of law. They do not wish to give up on the ideals of the laws behind the system, but will fight to reform it.

Seventeen thousand sex offenders who should have been evaluated under Jessica's Law have been released. Currently only about 11% of sexual criminals referred to DMH are being referred for expert evaluation. And finally, with the perverse incentives of the flawed low-bid policy, even the few sexual criminals being referred for in-person evaluation are being released anyway. As a result, California's SVP program is now an utter charade. It is a con being perpetrated on the people of California that has cost Alyssa Gomez and untold other victims their young lives.

Now that you have been put on notice of these violations, we are certain you are as concerned as we are and that you will take immediate action to assure procedures at DMH are brought back into accord with Jessica's Law. Given the serious consequences of DMH's ongoing violations, please respond within the next week.

Sincerely,


Chris A. Johnson

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