

**SEXUALLY VIOLENT PREDATOR
REFERRAL, COMMITMENT, AND BED UTILIZATION
FORECAST FOR 2006 – 2012**

**Submitted by the
SECRETARY OF HEALTH AND HUMAN RESOURCES**

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I. Executive Summary

During the 2006 session, the Virginia General Assembly enacted two changes in the Code of Virginia that are projected to increase the number of people committed to the sexually violent predator (SVP) program. The first change, which became effective on July 1, 2006, changed the screening instrument used to identify individuals for assessment as a sexually violent predator from the "RRASOR" to the "Static 99." The second change, which will go into effect on January 1, 2007, expands the number and type of qualifying crimes to be considered when evaluating someone for commitment to the program.

While the SVP program began in 2003, it is difficult to forecast six years into the future with limited data on the impact of these policy changes. Early indications suggest significant growth. Evaluations for SVP eligibility have increased from an average of 4 per month to about 12 in recent months. Actual commitments to the Virginia Center for Behavioral Rehabilitation (VCBR) have increased from an average of less than one per month to about 5 per month. Referrals to the conditional release component of the program are also increasing, from a total of five cases between April 2003 and July 2006 to more than one per month recently.

At the forecasted rate of growth, the new VCBR facility in Nottoway County is expected to exceed its maximum capacity of 300 by January 2012. After that date, accommodation of additional commitments to the program would require consideration of other options, including a second facility, continued use of the current temporary facility in Dinwiddie County, and expanded use of conditional release.

II. Introduction

Chapter three of the 2006 Appropriations Act, Items 278.B1, B2, and B3 direct that:

"B.1. The Secretary of Health and Human Resources in collaboration of the Office of the Attorney General and the Secretary of Public Safety, shall present a six-year forecast of the adult offender population presently incarcerated in the Department of Corrections and approaching release who meet the criteria set forth in Chapter 863 and Chapter 914 of the 2006 Acts of the Assembly, and who may be eligible for evaluation as sexually violent predators (SVPs) for each fiscal year within the six-year forecasting period. As part of the forecast, the Secretary shall report on: (i) the number of Commitment Review Committee (CRC) evaluations to be completed; (ii) the number of eligible inmates recommended by the CRC for civil commitment, conditional release, and full release; (iii) the number of civilly committed residents of the Virginia Center for Behavioral Rehabilitation (VCBR) who are eligible for annual review; and (iv) the number of individuals civilly committed to the Virginia Center for Behavioral Rehabilitation and granted conditional release from civil commitment in a state SVP facility. The Secretary shall complete a summary report of current SVP cases and a forecast of SVP eligibility, civil commitments, and SVP conditional releases, including projected bed space requirements, to the Governor and Senate Finance, and House Appropriations Committees by October 1 of each year.

2. As part of the forecast process, the Department of Corrections shall administer a STATIC-99 screening to all potential Sexually Violent Predators eligible for civil commitment pursuant to § 37.2-900 et seq., Code of Virginia, within 6 months of admission to the Department of Corrections. The results of such screenings shall be provided to the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) on a monthly basis and used for the SVP population forecast process.

3. The Office of the Attorney General shall also provide to the Commissioner of the DMHMRSAS, on a monthly basis, the status of all SVP cases pending before their office for purposes of forecasting the SVP population."

III. Background

In 1997 the Commonwealth took steps to protect its citizens from sexual victimization by enacting several key pieces of legislation. Through the so called "Megan's Laws", enacted into law in 1998 and 1999 (SB369/Howell and HB570/Deeds), the Commonwealth created a system for tracking known sex offenders through mandatory registration and notification of local law enforcement of their presence in the community and by helping employers to screen sex offenders out of certain jobs. The Commonwealth has also enacted stiffer sentences for all types of sex offenders.

In 1999 the General Assembly passed, and the Governor signed, legislation to civilly commit sexually violent predators (SVP).

In April 2003, the Governor signed legislation to enact the SVP civil commitment statutes mandating that the Department of Mental Health, Mental Retardation, and Substance Abuse Services (DMHMRSAS) build and run a secure civil commitment program for individuals found to be sexually violent predators. In October that year, the Department opened the Virginia Center for Behavioral Rehabilitation to house and treat SVP. The first civilly committed SVP resident arrived at the program during the first week of December 2003.

In 2006, the General Assembly replaced the Rapid Risk Assessment for Sexual Recidivism (RRASOR) with the Static-99 risk-screening instrument. This provision became effective on 1 July 2006. The 2006 Legislature also expanded the list of predicate crimes that make individuals eligible for SVP civil commitment. This provision will go into effect on 1 January 2007. Changing to the Static-99 increased the number of inmates becoming eligible for SVP civil commitment by approximately 350 percent. We anticipate that adding new predicate crimes in January 2007 will also increase the number of inmates who become SVP-eligible.

The Department currently operates a secure SVP program on the campus of Central State Hospital in Dinwiddie. It was converted from housing originally designed to serve persons with mental retardation. It is unsuited for its present purpose as a SVP facility, having many spaces that are difficult to monitor. Additional staff is required to make this facility safe for staff and residents. This facility has an ultimate capacity of about 96 beds.

A new, secure SVP facility has been designed specifically to serve the SVP population and is currently under construction on the grounds of the Piedmont Geriatric Hospital in Nottoway County. This facility will have an ultimate capacity of 300 beds. This facility is of a more open, and therefore, safer design. The efficiency of this design allows fewer staff to provide greater monitoring than the Dinwiddie facility.

IV. Definitions

SVP-eligible pool. All inmates being released between target dates, which are currently serving a sentence for being convicted of one of the predicate crimes. For the present this ignores unrestorably incompetent individuals.

RRASOR hit rate. The percentage of inmates in the SVP-eligible pool, during the period April 2003 to April 2005, who scored 4 or more on the RRASOR.

STATIC-99 hit rate. The percentage of inmates in the SVP-eligible pool, during the period April 2003 to April 2005, who scored 4 or more on the STATIC-99.

CRC-evaluation pool. All individuals who are SVP-eligible and who are scored at or above the inclusion threshold on the STATIC-99.

SVP commitment to VCBR hit rate. The percentage of inmates in the CRC-evaluation pool, during the period April 2003 to April 2005, who were ultimately civilly committed to VCBR.

SVP commitment to conditional release rate. The percentage of inmates in the CRC-evaluation pool, during the period April 2003 to April 2005, who were ultimately civilly committed as an SVP to conditional release.

V. Methodology

The Secretary of Health and Human Resources instructed the Department of Mental Health, Mental Retardation, and Substance Abuse Services to complete this SVP forecast. In response, a multi-agency work group was created including stakeholders from the Department of Corrections (DOC) and the Department of Mental Health, Mental Retardation, and Substance Abuse Services, the Commitment Review Committee (CRC), and the Office of the Attorney General (OAG). The latter two stakeholders provided information to the work group on cases under active consideration for SVP civil commitment.

Potential SVP-eligible inmates, currently incarcerated and in the Virginia DOC database, were identified from the total DOC population using a search by offense type code. The identified cases were checked against Pre-Sentence Investigation (PSI) Report and the Sentencing Guidelines (SG) databases to verify SVP-eligibility in accordance with VCC (Virginia Crime) codes.

- Where a VCC code could not be obtained automatically, the PSI Reports for these offenders were researched on the web-based PSI Report databank.
- Where a VCC code could not be obtained using this method, the offenders' files were manually searched.

Next, the offenders' good-time release (GTRD) dates were used to identify those offenders who are scheduled to be released within each of the six years (2007 – 2012) of the forecast horizon. Where:

- An offender's good time release date was not available (either due to data entry or time computation backlogs), a GTRD date was calculated if there was enough sentencing information available.

- This approach was not possible, then an offender's mandatory parole release date was used as a proxy.

Following these steps:

- **4,931 offenders were identified as potential SVP civil commitment candidates out of an incarcerated population of 36,017**
 - These 4,931 offenders constituted 13.7% of the incarcerated population on 08/11/06.
 - 2,128 (43.2%) of these 4,931 offenders were identified via automated matches to the PSI and/or SG databases.
 - 1,155 (23.4%) of these offenders were identified through manual searches of inmate folders.
 - For 1,648 (33.4%) of these offenders, a VCC code could not be located either electronically or manually. They are still potential SVP's because their NCIC code is either Kidnapping or Rape/Sexual Assault.
- **2,158 SVP-eligible inmates, out of the 4,931, are scheduled to be released between now and 2012. Broken down by year:**
 - Remainder of 2006 = 137
 - 2007 = 548
 - 2008 = 446
 - 2009 = 324
 - 2010 = 271
 - 2011 = 238
 - 2012 = 194

VI. Assumptions

Both of these numbers (4,931 SVP's and 2,158 SVP Releases) do **NOT** take into account any new SVP offenders who will be sentenced, incarcerated and possibly released in the next 6 years, or who are already on probation and parole, are violated and re-incarcerated and then reach release eligibility during this forecast horizon. It seems necessary to account for this aspect of possible releases, and therefore a chart has been developed that incorporates a growth rate for SVP offenders who will be received into the system and an estimated number that will be released from DOC.

VII. Findings

Crime Commission Projections. In 2005 the Crime Commission, working with the DOC and the DMHMRSAS, developed SVP civil commitment projections to evaluate the effect of changing from the then current instrument, the Rapid Risk Assessment for Sexual Offense Recidivism (RRASOR) to the STATIC-99. The data set used for this review was all SVP-eligible cases that became eligible for release between April 2003 and April 2004. Using the rate of cases that were actually civilly committed as SVP, conditionally released, or found not to be SVP, the Commission extrapolated the rate at which future cases would be civilly committed, conditionally released, or found not to be SVP.

SVP-eligible cases undergoing CRC evaluation.

- Adjusting for the addition of new predicate crimes and changing to the Static-99 screening instrument, 1038 cases were found to be SVP-eligible for this period.
- Of these, about 28% (285 cases) were found to score at or above the screening threshold on the Static-99 and completed CRC evaluations. This Crime Commission predicted rate is close to, and lends credibility to, the observed rate (27.6%) for July and August 2006.
- **This year's forecast, then, assumes that 27.6% of SVP-eligible cases will score at or above the Static-99 threshold and will be evaluated for the CRC.**

CRC evaluated cases recommended for civil commitment.

- The Crime Commission study predicted that, based on previous history of the CRC using the RRASOR, of the cases evaluated by the CRC, 78% would be recommended for civil commitment to VCBR.
- The actual observed July and August 2006 CRC commitment recommendations, using the Static-99, are lower; about 42%. Because of this significant difference, this forecast uses the observed rate for July and August 2006 as the basis for its calculations.

SVP civil commitment, conditional release, or full release.

- The Crime Commission predicted that 58% of (RRASOR) cases taken forward would be found to be SVP.
- Of these cases, 77% would be civilly committed as SVP to the VCBR.
- Of these cases, 22% would be found SVP but conditionally released.

Total previous experience (April 2003 to April 2005).

- 79 cases were evaluated for SVP civil commitment
- 58 were SVP civilly committed to the VCBR (73%)
- 5 were given SVP conditional release (6%)
- 16 were fully released as not SVP (20%)

Current experience. For the months of July and August this year (Static-99):

- 42% of cases reviewed by the CRC were recommended for SVP civil commitment.
- 11% of the cases reviewed by the CRC were recommended for conditional release.
- 47% of the cases reviewed by the CRC were recommended for full release.

VIII. Forecast

Limits on reliability. Clearly, operating under the new screening instrument for two months provides insufficient data with which to make accurate forecasts for the next six years. For this forecast we chose to be guided by the Crime Commission data as well as by the experience of July and August 2006 under the new Code.

The data available for this forecast are presented in descending order of confidence:

Most reliable

- Number of SVP-eligible inmates scheduled for release
- Static-99 hit rate
- CRC evaluation rate

Least reliable

- CRC recommendation rate
- SVP civil commitment rate
- SVP conditional release rate
- Full release rate

What we know. Our most reliable data (as shown in rows one through four in each of the following tables), based on extensive actual experience and finite numbers, tells us how many inmates are currently incarcerated in Virginia's Department of Corrections. Of these:

- about 13.5% during any year will be SVP-eligible;
- about 8.9% of these cases will become eligible for release during any given year of the forecast period; and,
- using the current Code criteria and the Static-99, 27.6% of these will be evaluated by the CRC for SVP civil commitment.

What we predict. Our least reliable data (shown in rows five through nine in each of the following tables), based on a scant two months experience, tells us how many of the individuals evaluated by the CRC will be ultimately civilly committed as SVP, conditionally released, or fully released. However, as weak as this data is at this time, it is useful to project out the current pattern of CRC and commitment outcomes.

What will improve reliability? This data will be greatly improved in subsequent forecasts as we gain more real-world experience with the civil commitment process under the currently enacted Codes.

In Table 1, all of the data for the next six years is presented. Tables 2 through 9 break this data out by year for total and monthly average.

Figure 1 shows how the interaction of referral rates, census growth, and bed opening at the new facility.

Table 1: SVP FORECAST NUMBERS FOR FY2007 TO FY2012, INCLUDING VCBR BED CENSUS BY YEAR

| FISCAL YEAR | FY2007a ¹ | FY2007b ² | FY2008 | FY2009 | FY2010 | FY2011 | FY2012 |
|---|----------------------|----------------------|--------|--------|--------|--------|--------|
| DOC population | | 37,545 | 38,143 | 38,883 | 39,908 | 40,991 | 42,201 |
| SVP-eligible population (13.5%) | | 5,069 | 5,149 | 5,249 | 5,388 | 5,534 | 5,697 |
| SVP-eligible yearly release rate (8.9%) | 225.60 | 225.57 | 458.26 | 467.16 | 479.53 | 492.53 | 507.03 |
| CRC evaluation rate (27.6%) | 62.26 | 62.26 | 126.48 | 128.94 | 132.35 | 135.94 | 139.94 |
| SVP civil commitments (42%) | 26.14 | 26.15 | 53.12 | 54.16 | 55.55 | 57.09 | 58.77 |
| SVP conditional releases (11%) | 6.84 | 6.85 | 13.91 | 14.18 | 14.56 | 14.95 | 15.39 |
| Found non-SVP and released (47%) | 29.26 | 29.26 | 59.45 | 60.60 | 62.20 | 63.89 | 65.77 |
| Total VCBR bed census at end of period ³ | 38 | 64 | 117 | 171 | 227 | 284 | 343 |
| Total conditional released census by end of period | 11 | 18 | 32 | 46 | 61 | 76 | 91 |

Table 2: July 1, 2006 to December 31, 2006

| | July 1 to December 31 2006 | Average By Month |
|---|----------------------------|------------------|
| SVP-eligible inmates | 225.60 | 37.60 |
| CRC evaluations | 62.26 | 10.38 |
| SVP civil commitments | 26.14 | 4.36 |
| SVP conditional releases | 6.84 | 1.14 |
| Found non-SVP and released | 29.26 | 4.88 |
| Total VCBR census at end of period | 38 | NA |
| Total conditional release census by end of period | 11 | NA |

¹ Half year, July to December 2006.

² Half year, January to June 2007.

³ Cases recommended for civil commitment and conditional release by the CRC can take up to a year to be committed by the court. At this time there is insufficient data with which to make an accurate forecast of when cases will actually be received by VCBR or conditional release. As such, for this forecast, cases are assumed to reach VCBR or conditional release in the year they are processed by the CRC.

Table 3: January 1, 2007 to June 30, 2007

| | Yearly Total | By Month |
|---|--------------|----------|
| SVP-eligible inmates | 225.57 | 37.60 |
| CRC evaluations | 62.26 | 10.38 |
| SVP civil commitments | 26.15 | 4.36 |
| SVP conditional releases | 6.85 | 1.14 |
| Found non-SVP and released | 29.26 | 4.88 |
| Total VCBR census at end of period | 64 | NA |
| Total conditional release census by end of period | 18 | NA |

Table 4: FY2008

| | Yearly Total | By Month |
|---|--------------|----------|
| SVP-eligible inmates | 458.26 | 38.19 |
| CRC evaluations | 126.48 | 10.54 |
| SVP civil commitments | 53.12 | 4.43 |
| SVP conditional releases | 13.91 | 1.16 |
| Found non-SVP and released | 59.45 | 4.95 |
| Total VCBR census at end of period | 117 | NA |
| Total conditional release census by end of period | 32 | NA |

Table 6: FY2009

| | Yearly Total | By Month |
|---|--------------|----------|
| SVP-eligible inmates | 467.16 | 38.93 |
| CRC evaluations | 128.94 | 10.75 |
| SVP civil commitments | 54.16 | 4.51 |
| SVP conditional releases | 14.18 | 1.18 |
| Found non-SVP and released | 60.60 | 5.05 |
| Total VCBR census at end of period | 171 | NA |
| Total conditional release census by end of period | 46 | NA |

Table 7: FY2010

| | Yearly Total | By Month |
|--|--------------|----------|
| SVP-eligible inmates | 479.53 | 39.96 |
| CRC evaluations | 132.35 | 11.03 |
| SVP civil commitments | 55.55 | 4.63 |
| SVP conditional releases | 14.56 | 1.21 |
| Found non-SVP and released | 62.20 | 5.18 |
| Total VCBR census at end of period | 227 | NA |
| Total conditional release by end of period | 61 | NA |

Table 8: FY2011

| | Yearly Total | By Month |
|--|--------------|----------|
| SVP-eligible inmates | 492.53 | 41.04 |
| CRC evaluations | 135.94 | 11.33 |
| SVP civil commitments | 57.09 | 4.76 |
| SVP conditional releases | 14.95 | 1.25 |
| Found non-SVP and released | 63.89 | 5.32 |
| Total VCBR census at end of period | 284 | NA |
| Total conditional release by end of period | 76 | NA |

Table 9: FY2012

| | Yearly Total | By Month |
|--|--------------|----------|
| SVP-eligible inmates | 507.03 | 42.25 |
| CRC evaluations | 139.94 | 11.66 |
| SVP civil commitments | 58.77 | 4.90 |
| SVP conditional releases | 15.39 | 1.28 |
| Found non-SVP and released | 65.77 | 5.48 |
| Total VCBR census at end of period | 343 | NA |
| Total conditional release by end of period | 91 | NA |

Figure 1: Flow chart of census growth and bed utilization between VCBR Petersburg and VCBR Nottoway.

| | Jan-06 | Jul-06 | Jan-07 | Jul-07 | Jan-08 | Jul-08 | Jan-09 | Jul-09 | Jan-10 | Jul-10 | Jan-11 | Jul-11 | Jan-12 | Jul-12 |
|------------------------------|--|--------|----------------------------------|--------|--------|--|--------|---|--------|--------|--------|--------|---|--------|
| New Commitments ⁴ | | 8 | 8 | 26 | 27 | 26 | 27 | 27 | 27 | 28 | 28 | 29 | 29 | 30 |
| Census | 22 | 30 | 38 | 64 | 91 | 117 | 144 | 171 | 198 | 226 | 254 | 283 | 312 | 342 |
| PPEA Facility | New Facility on line with 100 beds | | | | | | | | | | | | | |
| | | | Phase 2 on line – total 300 beds | | | | | | | | | | | |
| VCBR Petersburg Option 1* | Six living units on line – double bunked | | | | | | | | | | | | | |
| | | | | | | Overflow from Nottoway – up to 44 beds before Jan-09 | | | | | | | VCBR Nottoway overflow to VCBR Petersburg | |
| Option 2** | | | | | | Planning 2nd Facility | | Design/Construction 2nd SVP Facility - PPEA | | | | | | |
| | | | | | | | | | | | | | | |

Option 1: VCBR Petersburg remains on line

Option 2: Construct 2nd SVP facility

⁴ This jump in commitments reflects the lag time between enacting legislative changes and when the impact is felt.

IX. Discussion

The preceding Tables and Figure forecast SVP civil commitments, conditional releases, and full releases for each of the upcoming six years. This forecast is based on the best data available to the DMHMRSAS at this time. The reader is cautioned that, for this forecast at least, the available data is limited and the actual rate of SVP eligibility, commitment and release could change during the course of the next year. The accuracy of the forecast will improve with experience.

The growth in SVP civil commitments described in this forecast reflects a widening of the net brought about by changes to the Code of Virginia enacted by the 2006 Legislature. The current and new VCBR facilities were planned using the commitment rates developed under the previous SVP Codes and did not take into account the 350% increase in SVP eligibility resulting from these Code changes. If nothing in these patterns of SVP eligibility changes, the Commonwealth will run out of available SVP civil commitment bed space by approximately 2012.