



COMMONWEALTH of VIRGINIA

Office of the Governor

Marilyn B. Tavenner
Secretary of Health and Human Resources

October 3, 2007

The Honorable Timothy M. Kaine
Governor of Virginia
Patrick Henry Building, 3rd Floor
1111 East Broad Street
Richmond, Virginia 23219

Dear Governor Kaine:

Chapter Three of the 2007 Appropriations Act, Item 278.B1, B2, and B3, requires that the "Secretary of Health and Human Resources 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" each year.

Attached is the report for this year. If you have any questions, please feel free to contact Steven Wolf, Director of the Office of SVP Services, at 804-347-8291 or via e-mail at steve.wolf@co.dmhmrsas.virginia.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Marilyn B. Tavenner".

Marilyn B. Tavenner



COMMONWEALTH of VIRGINIA

Office of the Governor

Marilyn B. Tavenner
Secretary of Health and Human Resources

October 3, 2007

The Honorable John H. Chichester, Chairman
Senate Finance Committee
Senate of Virginia
Post Office Box 396
Richmond, Virginia 23218

Dear Chairman Chichester:

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Marilyn B. Tavenner
Secretary of Health and Human Resources

October 3, 2007

The Honorable Vincent F. Callahan, Jr., Chairman
House Appropriations Committee
Post Office Box 1173
Richmond, Virginia 22101

Dear Chairman Callahan:

Chapter Three of the 2007 Appropriations Act, Item 278.B1, B2, and B3, requires that the "Secretary of Health and Human Resources 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" each year.

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Marilyn B. Tavenner

**SEXUALLY VIOLENT PREDATOR
REFERRAL, COMMITMENT, AND BED
UTILIZATION
FORECAST FOR 2007 – 2013**

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

OCTOBER 1, 2007

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I. Executive Summary

This forecast projects, for each of the next six years¹, the rate of:

- Full release of those inmates found not to be Sexually Violent Predators (SVP),
- Civil commitment of those inmates found to be SVP,
- Conditional release of those inmates found to be SVP but judged suitable for community containment, and
- The rate of census growth at the Virginia Center for Behavioral Rehabilitation (VCBR).

The findings of this forecast reflect a 350% increase over the 2005 rate in the number of cases entering the SVP-eligible pool and being screened for SPV civil commitment each of these six years. This growth results from changes made by the 2006 session of the Virginia General Assembly to the Code of Virginia. The first change, effective on July 1, 2006, replaced the "RRASOR" with the "Static-99" as the Commonwealth's screening tool. The second change, effective January 1, 2007, expanded the number and of SVP qualifying crimes.

This growth is reflected in the activity load on all parts of the SVP civil commitment system.

- The number of cases examined by the DOC SVP screening unit has increased from 30 per month to about 60 per month.
- The number of cases evaluated by the DMHMRSAS, reviewed by the CRC, and prosecuted by the OAG for civil commitment has increased from 5 per month to 12 per month.

These changes have increased the number of cases post CRC review and recommendation but pending final disposition - the so-called "bubble" - from about 30 to about 60 at any given time.

In response to this growth in case rates, the SVP unit of the OAG has increased the number of attorneys handling SVP civil commitments. As these attorneys acquire experience and improve their effectiveness, the rate of cases reaching final disposition increases, the bubble shrinks, and the SVP resident census at the VCBR increases.

Resident census will exceed capacity at the new VCBR Nottoway sometime during fiscal year 2012.

¹ The numbers described in this year's forecast are somewhat below those of the 2006 forecast. The 2006 forecast was based on only two months data. The current forecast includes data for 12 months. During this period, while the number of cases entering the SVP-eligible pool (input data) was as predicted, the system's ability to process cases (output data) was below that predicted. As a result of this prediction error, current census growth at the VCBR lags behind that predicted last year by about 17% for 2008. By 2012, this error is down to 2%.

II. Mandate

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

Commitment Review Committee, CRC. The Code established work group including members from the DOC, the DMHMRSAS, and the OAG.

Input data. Information relating to SVP cases between identification as SVP eligible and CRC recommendation.

Output data. Information relating to SVP cases at and beyond the date of final court disposition.

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. This includes individuals found not guilty by reason of insanity (NGRI) and unrestorably incompetent to stand trial (URIST).

STATIC-99 hit rate. The percentage of inmates in the SVP-eligible pool, who scored at or above the inclusion threshold on the STATIC-99.

SVP commitment rate. The percentage of inmates in the CRC-evaluation pool who were ultimately civilly committed to VCBR.

SVP conditional release rate. The percentage of inmates in the CRC-evaluation pool who were ultimately civilly committed as an SVP to conditional release.

SVP full release rate. The percentage of inmates screened and evaluated by the CRC that are either found non-eligible or otherwise are dropped from further consideration for SVP civil commitment.

VCBR. The Virginia Center for Behavioral Rehabilitation.

V. Methodology and Limits on the Reliability of Prediction

Methodology. Over the past year each of the stakeholders involved in developing the SVP Forecast – the DMHMRSAS, the DOC, and the OAG – has developed more precise data management and tracking systems. The DOC has developed a full-time SVP screening unit responsible for completing Static-99 scores on all SVP-eligible inmates. The OAG has created an SVP tracking database. The DMHMRSAS has completed and implemented a specialized tracking database for SVP, the SVPTracker system. Information from each of these systems was brought together to calculate this year's SVP forecast. Specifically:

- The DOC documented the number of SVP-eligible inmates who would become eligible for release each month for the upcoming year and identified which how many would reach or surpass the Static-99 threshold and continue forward to SVP evaluation and CRC consideration. These "input" data formed the basis for identifying the monthly SVP evaluation and CRC review rate. The DOC also documented the percentage of cases recommended for full release, civil commitment, and conditional release.
- The OAG provided monthly case updates documenting where each case was in the SVP civil commitment process. These "output" data formed the basis for calculating the time between CRC and final disposition as well as document the actual rate of full release, civil commitment, and conditional release. This in turn provided a basis for estimating the actual civil commitment and conditional release rates
- The DMHMRSAS tracked cases as they entered the CRC process, documenting SVP evaluations, CRC reviews, and commitment to the VCBR, conditional release, or full release. These data form the basis for both a quality management process, comparing and checking its own data against that provided by the DOC and the OAG, as well as the basis for making the final forecast calculations about commitments, releases, and census growth at the VCBR.

Each of these participant agencies supports the operation of the Commitment Review Committee by supplying information and various resources.

Limits on Reliability. All forecasts operate at some degree less than perfect accuracy. Accuracy is affected by various unknowns in the data used to calculate the forecast. Often, missing data skew the direction of a forecast toward over or under predicting the targeted outcome. In the present case, for example, we know with a high degree of certainty how many inmates in the DOC with convictions for SVP predicate crimes will enter the SVP-eligible pool each month. We can predict with good accuracy the Static-99 hit-rate, leading to CRC evaluations for any given month. We know, on average for each year, the rates at which the CRC will recommend civil commitment, conditional release, or full release. We can predict with fair accuracy, how many cases will ultimately be civilly committed to the VCBR.

What we have not been able to do is reliably predict is the pace at which cases will roll forward from the CRC to the OAG and to final court disposition. As a result, we cannot

predict with good accuracy at all, the rate at which SVP civilly committed individuals will arrive at the VCBR.

Case variance. This variance has historically arisen from two sources:

- The regular expansions to the SVP screening and qualifying criteria by the General Assembly, and
- The growth of what we call the "bubble"; those cases active between CRC review and final disposition (commitment, release, or conditional release).

For example, in 2005, the General Assembly replaced the SVP screening instrument, the RRASOR, with the Static-99. It also expanded the list of qualifying crimes from four to about 21. These two changes increased the rate at which inmates became eligible for consideration for SVP civil commitment by 350 percent, with most of this growth attributable to the Static-99.

Effect of expanding SVP criteria on the OAG SVP unit and predicting time for final disposition. The growth of the SVP unit of the Attorney General's Office did not initially keep pace with this dramatic increase in cases processed by the CRC. The result was that cases entered the "bubble" much faster than they were processed out (final disposition). As a result, the bubble grew from about 26 cases in June 2005 to over 60 cases as of 1 July 2007. As a result of this lag between expanding the qualifying window, the hiring of new OAG attorneys, and various continuances, the amount of time between CRC review and final disposition reached, on average, 373 days. This disposition lag caused a significant over-prediction of how many individuals would be civilly committed to the VCBR over the next year.

Decrease in time between CRC recommendation and final disposition. However, the OAG SVP unit has been adding and training new attorneys and their efficiency has begun to affect the bubble. By July 2007, the average time in days between CRC review and final disposition had decreased to about 303 days, a 19% reduction.

Impact on commitment rates. The impact of this improved efficiency is now being felt at the VCBR. The average monthly commitment rate for arrivals at the VCBR has increased from less than one per month to between three and four per month (average for May through August 2007). When the OAG achieves case processing parity with the CRC, we can expect monthly commitments to reach 6 or 7 per month. Gauging the growth in personnel in the OAG SVP unit, and the time it takes to bring a new attorney up to full efficiency, this year's forecast predicts that the commitment arrivals will reach four per month by November this year; five per month by 2009; and 6 per month by 2012. Please recall that this prediction is the least reliable.

Female SVP. Finally, this year saw our first female SVP-eligible inmate processed for civil commitment. There are 19 total female inmates who will be eligible for release between 2007 and 2009:

- 2007 = 2 female SVP-eligible inmates
- 2008 = 7
- 2009 = 10

Because we have no prior data upon which to predict outcomes, it is impossible to know how many of these women will be found SVP and civilly committed to the Department.

While this report was being prepared, the first female has been found an SVP and has a disposition date of 2 October this year. At that hearing the judge will decide if she will be civilly committed to the DMHMRSAS or place her on conditional release. If she is committed, we plan to place her temporarily in the secure female civil commitment program at Central State Hospital, under conditions similar to those at the VCBR. She would be transported to the VCBR for treatment. This is a true temporary placement, dependent upon available bed space at Central.

After the program moves to the new Nottoway facility, females will be housed in the infirmary/isolation living unit until other accommodations are constructed. This unit is similar to the regular SVP living units. Females committed to the Department as SVP will receive treatment as a separate unit and participate in educational and work activities separate from the men.

VI. The 2007-2013 Forecast

What we can predict. Our most reliable data, based on the last 12 months, tells us how many inmates, currently incarcerated in Virginia's Department of Corrections, will become SVP-eligible in the six fiscal years between now and 2013. Specifically:

- FY2008 = 4,012 inmates will become SVP-eligible.
- FY2009 = 4,427
- FY2010 = 4,346
- FY2011 = 4,257
- FY2012 = 4,205
- FY2013 = 4,200

Of these cases, based on CRC data gathered between 1 July 2006 and 30 June 2007:

- 23.8% of these cases will reach or exceed the Static-99 screening threshold and undergo a CRC SVP evaluation.
- 30% of these cases will be found to not meet the statutory criteria for SVP civil commitment and will be released.
- 65% of these cases will be recommended for SVP civil commitment.
- 5% of these cases will be recommended for SVP conditional release.

What we cannot predict. Commitment Review Committee recommendations, as described above, are advisory and a recommendation does not predict an outcome. Other factors occurring after the CRC review cause cases to be dropped from further consideration or otherwise diverted from the recommended course; cases recommended for conditional release sometimes are committed by the court to the VCBR; an occasional case recommended for civil commitment is given conditional release by the court. These occurrences cannot be predicted.

This year's forecast predicts that capacity will be reached at the new VCBR facility in Nottoway sometime during 2012.

This year's forecast is presented in the following two tables and Figures 1 and 2, depicting the input flow of inmates through the SVP system and their output rates to full release, SPV civil commitment, and SVP conditional release.

Table 1 illustrates the operation of the SVP screening, review, commitment, and disposition process.

- Row 1, displays the total number of inmates, in the years identified, incarcerated in the Virginia DOC who are currently serving time for an SVP qualifying crime, making them eligible for SVP civil commitment.
- Row 2 displays the number of those SVP-eligible inmates who are within 10 months of release.

- Row 3 displays the number of these SVP-eligible inmates who reach or exceed the screening threshold on the Static-99 and are evaluated by Commissioner appointed evaluators for the CRC.
- Row 4 shows the number of these inmates who, after further examination, are found to not meet the statutory qualifying threshold for consideration for SVP civil commitment.
- Row 5 displays the number of inmates who, after examination by the CRC, are recommended for SVP civil commitment.
- Row 6 shows the number of inmates who, after examination by the CRC, are recommended for SVP conditional release.
- Row 7 depicts the yearly census growth at the VCBR.
- Row 8 depicts the yearly growth rate of persons found SVP and placed on conditional release.

Table 2 breaks these figures down for each fiscal year into monthly rates.

- Row 9 shows the average monthly rate of CRC evaluations and reviews.
- Row 10 shows the average monthly rate of cases recommended for SVP civil commitment.
- Row 11 shows the average monthly rate of cases recommended for SVP conditional release.
- Row 12 shows the average monthly rate of cases found not to be SVP eligible and fully released.

As noted in the Methodology section, Row 7, *total VCBR bed census*, reflects an estimated prediction of actual output SVP commitment rates.

Rows 10, 11, and 12 describe the direction and scope of CRC recommendations made to the OAG. They do not depict the actual output rates of these conditions at final case disposition.

Figure 1 shows the pattern of census growth and bed utilization at the VCBR from January 2006 through August 2007. Of note is the stable trend upward starting in January 2007. As noted in the previous section and above in the discussion of Row 7 in Table 1, this trend reflects (a) growth in the qualifying crimes, (b) an expansion of the screening criterion resulting in more inmates becoming eligible for SVP civil commitment, as well as (c) an increase in the size and efficiency of the OAG SVP unit in processing cases to final output disposition.

Figure 2 shows the relationship between VCBR census growth and construction of the new VCBR facility. The dates are based on the Fiscal Year of July 1 to June 30th. Based on this forecast, it appears that, while it is possible that adequate bed construction will stay ahead of census growth, it will be close at best.

Exceeding census capacity. If the present forecast holds, by July 1 2008, the VCBR census will be at about 98 beds, with a capacity of 112 beds.² The next 200 beds are scheduled to come on-line sometime during the winter of 2009. By January 2009, census could reach 122, exceeding the existing capacity of the facility. Other accommodations would need to be found for this overage. Use of the current VCBR plant seems most quickly available. Contingency plans should be made to respond to this possibility.

This will be exacerbated if a female SVP is committed to the facility. Any single female SVP civil commitment will remove six beds from the total census. Because she will have to be housed separate from the male residents, and because the smallest living unit in the new facility is 6 beds, one female will occupy that space alone.

² The first phase of the VCBR Nottoway construction plan is to have 100 beds in a four living unit pod and 12 beds in the medical/isolation unit completed and on-line by mid March 2008.

VI. Table 1: SVP FORECAST FOR FY2008 TO FY 2013, INCLUDING VCBR BED CENSUS³

	Fiscal Year ending June 30th	2008	2009	2010	2011	2012	2013
1	SVP-eligible population	4,012	4,427	4,346	4,257	4,205	4,200
2	SVP-eligible yearly release rate	550	573	555	523	492	493
3	CRC evaluation rate (Static-99) (23.8%)	131	136	132	125	117	117
4	Found non-SVP and released rate (30%)	39	41	40	38	35	35
5	SVP civil commitment rate (65%)	85	88	86	81	76	76
6	SVP conditional release rate (5%) ⁸	7	7	7	6	6	6
7	Total VCBR bed census ⁴	(4pm) 98	(5pm) 158	(5pm) 218	(5pm) 278	(6pm) 338	(6pm) 398
8	Total conditional release census by end of period ⁵	11	18	25	31	37	43

Table 2: AVERAGE MONTHLY SVP FORECAST FOR FY2008 TO FY 2013⁶

	Fiscal Year ending June 30th	2008	2009	2010	2011	2012	2013
9	Monthly CRC evaluation rate (Static-99)	10.92	11.33	11.00	10.42	9.75	9.75
10	Monthly SVP civil commitment rate (60%) ⁷	7.08	7.33	7.17	6.75	6.33	6.33
11	Monthly SVP conditional release rate (05%) ⁸	.58	.58	.58	.50	.50	.50
12	Found non-SVP and released rate (30%) ⁹	3.33	3.42	2.67	3.17	2.92	2.92

³ Numbers in this table are rounded up or down to nearest whole number .

⁴ Prior to Code changes enacted on July 1, 2006, the average monthly commitment rate to VCBR was about .89. The impact of the July 1, 06 and January 1, 07 changes began to appear in January 2007. The impact of additional attorney's in the OAG SVP unit began to impact commitments in June 2007. The latter can be measured in the average number of days between CRC and final disposition (commitment or release). In July 2006, the average was about 373 days. By July 2007, this had dropped to about 303 days. This increase in efficiency is reflected in the number of cases being committed to the VCBR each month. Current commitments are between 3 and 4 per month. We can anticipate that this will increase to between 4 and 5 per month during 2008. This increase is reflected in the calculations above.

⁵ Rate of monthly CRC recommendation.

⁶ Numbers in this table are rounded up or down to nearest two decimal places.

⁷ Rate of monthly CRC recommendation.

⁸ Ibid.

⁹ Ibid.

Figure 1

SVP Civil Commitments by Month January 06 to August 07

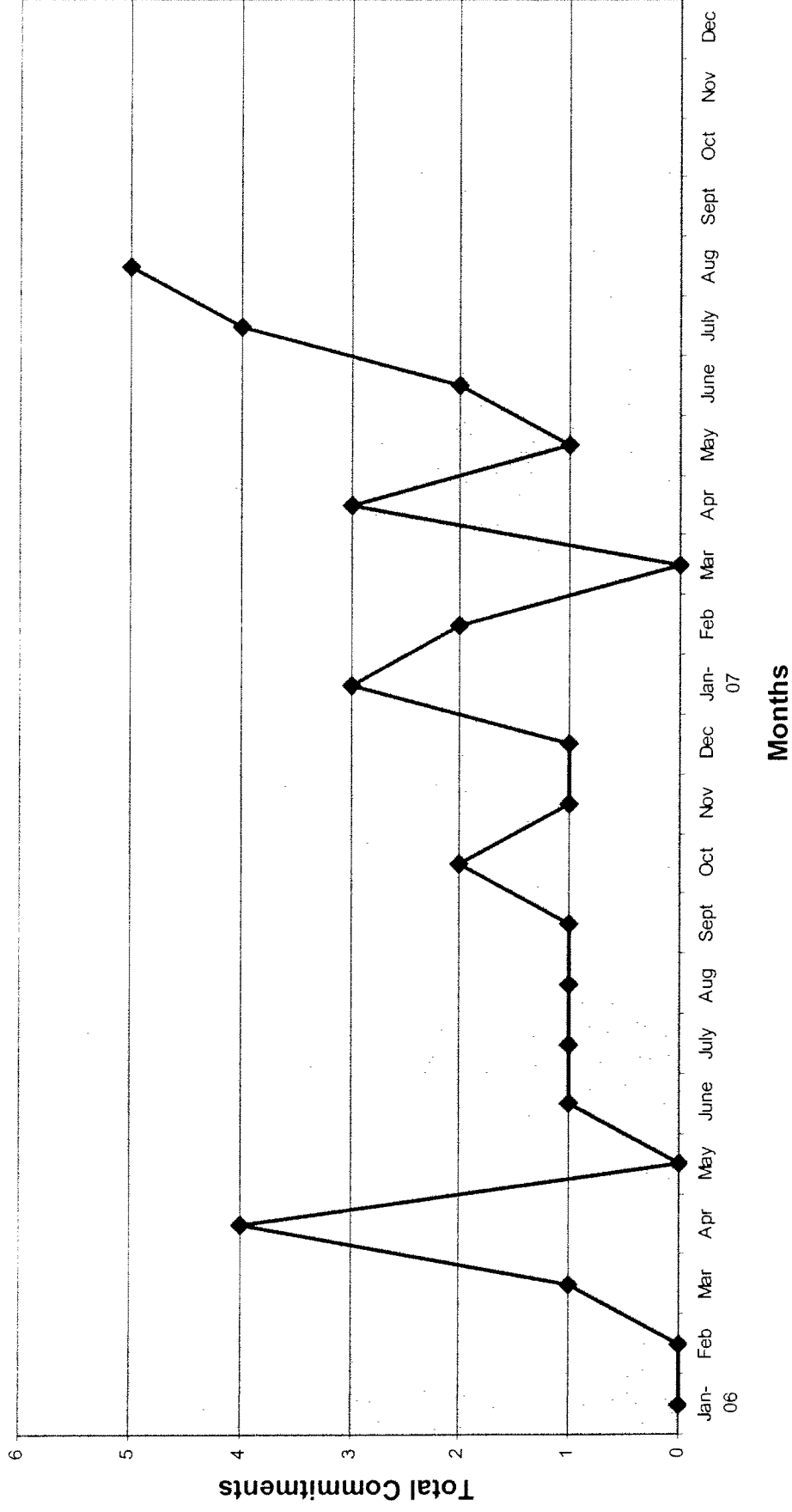


Figure 2. SVP Census and Facility Projections

	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	Jan-13
New commitments		8	8	26	27	26	27	27	27	28	28	29	29	30	
2006 Forecast	22	30	38	64	91	117	144	171	198	226	254	283	312	342	
2007 Forecast				50		98		158	218			278	338	398	
PPEA Facility															
					New Facility on line - 100 beds										
							Phase 2 of New Facility on line - total 300 beds								
VCBR Petersburg															
Option 1*															
Option 2**															

VCBR Notaway overflow to VCBR Petersburg

VCBR Notaway overflow - up to 44

Planning-2nd Facility

* Option 1: VCBR Petersburg remains on line

**Option 2: Construct 2nd SVP facility

