



COMMONWEALTH of VIRGINIA

Office of the Governor

Marilyn B. Tavenner
Secretary of Health and Human Resources

October 20, 2008

The Honorable Timothy M. Kaine
Office of the Governor
Third Floor, Patrick Henry Building
P.O. Box 1475
Richmond, VA 23218

Dear Governor Kaine:

Pursuant to Item 282 B.1-3. of the 2008 *Appropriation Act*, I submit to you the enclosed report on current Sexually Violent Predator (SVP) cases and a forecast of SVP eligibility, civil commitments, and SVP conditional releases, including projected bed space requirements

If you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Marilyn B. Tavenner".

Marilyn B. Tavenner

Enclosure

Cc: Hon. Robert F. McDonnell
Mr. Gene M. Johnson
James S. Reinhard, M.D.
Mr. Steve Harms



COMMONWEALTH of VIRGINIA

Office of the Governor

Marilyn B. Tavenner
Secretary of Health and Human Resources

October 20, 2008

The Honorable Lacey E. Putney, Chair
House Appropriations Committee
General Assembly Building
P.O. Box 406
Richmond, VA 23218

Dear Delegate Putney:

Pursuant to Item 282 B.1-3. of the 2008 *Appropriation Act*, I submit to you the enclosed report on current Sexually Violent Predator (SVP) cases and a forecast of SVP eligibility, civil commitments, and SVP conditional releases, including projected bed space requirements

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Marilyn B. Tavenner

Enclosure

Cc: Hon. Robert F. McDonnell
Mr. Gene M. Johnson
James S. Reinhard, M.D.
Ms. Susan E. Massart



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Office of the Governor

Marilyn B. Tavenner
Secretary of Health and Human Resources

October 20, 2008

The Honorable Charles J. Colgan, Chair
Senate Finance Committee
10th Floor, General Assembly Building
910 Capitol Street
Richmond, VA 23219

Dear Senator Colgan:

Pursuant to Item 282 B.1-3. of the 2008 *Appropriation Act*, I submit to you the enclosed report on current Sexually Violent Predator (SVP) cases and a forecast of SVP eligibility, civil commitments, and SVP conditional releases, including projected bed space requirements

If you have any questions, please feel free to contact me.

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Marilyn B. Tavenner

Enclosure

Cc: Hon. Robert F. McDonnell
Mr. Gene M. Johnson
James S. Reinhard, M.D.
Mr. Joe Flores

**SEXUALLY VIOLENT PREDATOR
REFERRAL, COMMITMENT, AND BED UTILIZATION
FORECAST FOR FY2009 – FY2014**

**To the Governor
and
House Appropriations and Senate Finance Committees
of the General Assembly**

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

OCTOBER 1, 2008

TABLE OF CONTENTS

I. Executive Summary	2
II. Background	4
III. Definitions	5
IV. Methodology	6
V. Forecast	8
• Table 1. SVP referrals, recommendations, and commitments for 2008 through 2013	10
• Table 2. CRC evaluations and recommendations by year and month...	11
• Figure 1. Civil commitments by month to VCBR; January 06 to July 08	12

I. Executive Summary

This report is submitted in accordance with Item 282 B.1-3. of the 2008 Appropriation Act, which directs 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."

In Virginia, persons civilly committed as SVP are housed in the Virginia Center for Behavioral Rehabilitation (VCBR) in Nottoway County. This facility, designed in 2000 under the existing state law, has a maximum capacity of 300 residents. At that time, maximum occupancy was not anticipated until after 2016.

However, changes to the *Code of Virginia* regarding the SVP population made during the 2006 General Assembly more than tripled the number of persons becoming eligible for SVP civil commitment. These same changes also created a new sub-population of SVP - seriously mentally ill and intellectually disabled (ID) individuals, charged with an SVP qualifying offense and found to be unrestorably incompetent to stand trial (URIST) under §19.2-169.3 and §37.2-900 et seq.

As a result, the Virginia Center for Behavioral Rehabilitation (VCBR) census will grow by approximately 56 residents each year. At this rate, maximum census will be reached no later than July 2012 (forecast date is mid-April 2012). Once VCBR reaches capacity, new resources

will have to be created to safely house individuals civilly committed as sexually violent predators (SVP).

To accommodate outgrowing the capacity of VCBR, the Commonwealth must resolve the capacity demands in the very near future. The two most obvious choices seem to be constructing additional SVP housing or finding a way to reduce the rate of commitments to VCBR. It seems the most reasonable and least costly alternative for slowing SVP commitments is to increase the use of SVP conditional release to the community.

The Department's experience with SVP conditional release suggests that it is a safe and viable alternative to secure civil commitment for some individuals. To date, no individual on SVP conditional release has been accused or charged with a new sex crime. A few individuals have had their conditional release revoked for technical violations such as refusing treatment or unauthorized use of alcohol.

The Department is currently examining how other SVP states have used this approach. Housing is the single greatest impediment to placing persons found SVP on conditional release. Housing alternatives will need to be developed to facilitate an expanded use of SVP conditional release in Virginia.

II. Background

In 1997 the Commonwealth took steps to protect 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 making it possible for employers to screen sex offenders out of certain jobs by providing access to the sex offender registry. The Commonwealth has also enacted stiffer sentences for all types of sexual crimes, thereby keeping these individuals out of the community for longer terms.

In 1999 the final piece of this legislative agenda was put in place when the General Assembly passed, and the Governor signed, legislation making it possible to civilly commit sexually violent predators (SVP).

In April 2003, the Governor signed legislation enacting the SVP civil commitment statutes, mandating that DMHMRSAS provide and operate a secure civil commitment program for individuals found to be sexually violent predators. In October of 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 July 1, 2006. The 2006 General Assembly also expanded the list of SVP predicate crimes. This provision went into effect on January 1, 2007. These changes increased the number of inmates becoming eligible for SVP civil commitment by approximately 350 percent.

The Department initially operated a secure SVP program on the campus of Central State Hospital in Dinwiddie County. The program was in housing originally designed to serve persons with mental retardation. It was generally unsuited for use as a SVP facility, having many spaces that were difficult to monitor. Additional staff was required to make this facility safe for staff and residents. This facility had an ultimate capacity of about 96 beds.

A new, secure SVP facility, designed specifically to serve the SVP population, has been constructed on the grounds of the Piedmont Geriatric Hospital in Nottoway County and began receiving residents on March 1, 2008. This facility has an ultimate capacity of 300 beds. The efficiency of this design allows fewer staff to provide greater monitoring than the Dinwiddie facility.

III. Definitions

Commitment Review Committee, CRC. The *Code* established a work group including members from DOC, DMHMRSAS, and 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 sentences on conviction for one of the SVP predicate crimes, or having been charged with an SVP predicate crime and found 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.

VCBR. The Virginia Center for Behavioral Rehabilitation.

IV. Methodology and Limits on the Reliability of Prediction

Methodology. Over the past two years, each of the agencies involved in developing the SVP Forecast –DMHMRSAS, DOC, and OAG – has developed more precise data management and tracking systems. DOC has implemented a full-time SVP screening unit responsible for developing Static-99 scores on all SVP-eligible inmates and has implemented more precise case-tracking software. OAG has implemented an SVP tracking database. DMHMRSAS has implemented a tracking database for SVP, the SVPTracker system. Information from each of these systems is brought together to calculate the SVP forecast. Specifically:

- DOC documents the number of SVP-eligible inmates eligible for release each month during the upcoming year, and the upcoming 6 years, and identifies how many could be expected to reach or surpass the Static-99 threshold and continue forward to SVP evaluation and CRC consideration. These "input" data form the basis for identifying the monthly and yearly SVP evaluation and CRC review rates. The DOC also documents the percentage of cases recommended by the CRC for full release, civil commitment, and conditional release.
- OAG provides monthly case updates documenting where each case is in the SVP civil commitment process. These "output" data document the actual rate of full release, civil commitment, and conditional release. This is the basis for forecasting civil commitment and conditional release rates.
- DMHMRSAS tracks cases as they enter the CRC process, documenting SVP evaluations, CRC recommendations, and rates of commitment to VCBR, conditional release, or full release. These data are the basis for making the final forecast calculations.

Limits on Reliability. All forecasts operate at some degree below perfect accuracy. Often, missing data will skew the direction of a forecast toward over- or under- predicting actual outcomes. In the present case, the work group knows with increased certainty how many inmates in DOC having convictions for SVP predicate crimes will enter the SVP-eligible pool each month and each year. The work group can predict with good accuracy the Static-99 hit-rate, and CRC evaluation rate for any given month. It is known, on average for each year, the rates at which the CRC will recommend civil commitment, conditional release, or full release. And, the work group can predict with fair accuracy, how many cases will ultimately be civilly committed to the VCBR.

What has been more difficult to do is reliably predict the pace at which cases will roll forward from the CRC to final court disposition. For example, in 2006 the predicted monthly commitment rate was 4.36; the actual rate was .89. Last year's forecast predicted VCBR census would increase by 7 each month and reach 98 by July 2008. The actual rate was closer to 4 per month, on average, with a census on July 1, 2008 of 88. This discrepancy resulted from using CRC recommendation data as opposed to final disposition data. The CRC data was used because sufficient final disposition data was lacking and because legislative changes taking effect only a few months prior to the development of the forecast so dramatically increased the number of cases being processed.

However, this is improving. Stakeholders have made good advances in data precision over the past year, significantly improving the ability to accurately predict SVP census growth. Further, more months of data are available since enactment of the last SVP Code changes. This greatly improves the forecast accuracy.

While the previous forecast overestimated the commitment rate to VCBR - the actual commitment rate from July 1, 2007 to August 1, 2008 was 3.85 per month – the data from April, May, June, and July 2008 averaged 6.75 per month. This is much closer to the last forecast (of 7 per month) than in previous years.

FY2008 also saw the commitment of the first female SVP-eligible inmate (who was placed on SVP conditional release). There were 19 total female SVP-eligible inmates who became, or will become, eligible for release between 2007 and 2009:

- 2007 = 2 female SVP-eligible inmates. One was found SVP and placed on Conditional Release.
- 2008 = 7. As of August 2008, one has been recommended for SVP civil commitment.
- 2009 = 10.

Currently, any females found SVP and placed at VCBR will be housed in the infirmary/isolation living unit until other accommodations are identified or constructed.

V. The 2009-2014 Forecast

What can be predicted. Department of Corrections data indicates how many inmates, currently incarcerated in DOC, will become SVP-eligible in the six fiscal years - between 2009 and 2014. Specifically:

- FY2009 = 4,586 inmates are serving a sentence for conviction for a SVP-predicate crime.
- FY2010 = 4,692
- FY2011 = 4,865
- FY2012 = 5,037
- FY2013 = 5,273
- FY2014 = 5,596

Of these cases, based on CRC and OAG data gathered between July 1, 2007 and June 30, 2008:

- 16.24% of these inmates will be eligible for release each year.
- 18.39% of these cases will reach or exceed the Static-99 screening threshold and undergo a CRC SVP evaluation.
- 49.64% of these cases will be found SVP at trial.
- 82.35% of these cases will be civilly committed as SVP to the VCBR.
- 17.65% of these cases found SVP at trial will be placed on conditional release.

Commitment Review Committee recommendations 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 VCBR.
- A few cases recommended for civil commitment are assigned to conditional release by the court.
- Some cases recommended for SVP civil commitment or conditional release are not filed on by OAG or are released by the courts.

This year's forecast data are presented in two tables depicting the input flow of inmates through the SVP system and their output rates to SPV civil commitment and SVP conditional release.

Table 1 illustrates the operation of the SVP screening, review, commitment, and disposition process for each fiscal year.

- Row 1, displays for each year, the total number of inmates 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 during that year.
- Row 3 displays the number of these SVP-eligible inmates who reach or exceed the screening threshold on the Static-99 and undergo Commissioner appointed evaluations for the CRC.

- Row 4 displays the number of SVP-eligible inmates found SVP at trial.
- Row 5 displays the number of persons found SVP and committed to VCBR.
- Row 6 displays the number of persons found SVP and placed on conditional release.
- Row 7 depicts the yearly census growth at VCBR.
- Row 8 depicts the yearly census growth of SVP conditional release.
- Row 9 displays the projected commitments to VCBR, by month.
- Row 10 displays the projected releases from the VCBR, by year.

Table 2 describes CRC recommendation rates for each fiscal year.

- Row 11 shows the average monthly size of the SVP-eligible pool.
- Row 12 shows the average monthly rate of CRC evaluations.
- Row 13 shows the average monthly rate of cases recommended for SVP civil commitment.
- Row 14 shows the average monthly rate of cases recommended for SVP conditional release.

Exceeding census capacity. Construction of the VCBR facility in Nottoway, with a capacity of 300 beds (306 beds, using the medical isolation unit), was completed in early August 2008. This was approximately 6 months ahead of schedule. If the present forecast holds, by July 1, 2009, the VCBR census will be about 137 beds. All 300 beds will be filled by approximately mid-2012. This will be exacerbated if any female SVP are committed to the facility. Any single female SVP civil commitment will immediately 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. Once the female census exceeds six beds, other accommodations will need to be made.

Table 1. SVP Forecast for FY2009 to FY2014, Including VCBR Bed Census

Row		FY 2009 ¹	FY2010	FY2011	FY2012	FY2013	FY2014
1	DOC SVP-Eligible inmates	4586 ²	4692	4865	5037	5273	5596
2	SVP-eligible to be released by year (16.24%)	745	762	790	818	856	909
3	CRC evaluation (Static-99) (18.39%)	137	140	145	150	157	167
4	Found SVP at trial (49.64%)	68	70	72	75	78	83
5	Disposition = Civil Commitment to VCBR (82.35%) ³	56	58	59	62	64	68
6	Disposition = Conditional Release (17.65%) ⁴	12	12	13	13	14	15
7	Projected VCBR population ⁵ (81)	137	195	254	316	380	448
8	Projected Conditional Release population ⁶ (17)	29	41	54	67	81	96
9	Projected Commitments to VCBR, by month ⁷	4.67	4.83	4.92	5.17	5.33	5.67
10	Projected releases from VCBR, by year ⁸	2	2	3	3	5	5

¹ Beginning on July 1, 2008.

² As of June 30, 2009.

³ Based on final disposition rates.

⁴ Based on final disposition rates.

⁵ Population bases of 81 as of July 1, 2008.

⁶ Population bases of 17 as of July 1, 2008.

⁷ Monthly commitments to VCBR during May, June, and July 2008 were between 5 and 8. This increase coincides with an artificial expansion of cases being handled by the CRC. The figures quoted above represent a projected long-term average of commitments.

⁸ To date, there have been no releases from VCBR. Two cases are presently under consideration for release. The projected figures quoted above represent a rough estimation from conversations with the VCBR clinical team.

Table 2. Average Monthly CRC Recommendations for FY2009 to FY 2014

Row	Fiscal Year Ending June 30th	2009	2010	2011	2012	2013	2014
11	Monthly SVP-eligible pool	62	64	66	68	71	76
12	Monthly CRC evaluation rate	11	12	12	13	13	14
13	Monthly SVP civil commitment recommendation rate (59.17%)	6.51	7.10	7.10	7.70	7.70	8.28
14	Monthly SVP conditional release recommendation rate (4.73%)	.52	.57	.52	.62	.62	.66

SVP Civil Comments to VCBR by Month

