



COMMONWEALTH of VIRGINIA

Office of the Governor

Marilyn B. Tavenner
Secretary of Health and Human Resources

November 18, 2009

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 2009 *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 black ink that reads "Marilyn Tavenner".

Marilyn B. Tavenner

Enc.

Cc: Hon. William C. Mims
Hon. John Marshall
Mr. Gene M. Johnson
James S. Reinhard, M.D.
Ms. Pamela Sargeant
Mr. Dick Hickman
Mr. Joe Flores



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Marilyn B. Tavenner
Secretary of Health and Human Resources

November 18, 2009

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

Dear Delegate Putney:

Pursuant to Item 282 B.1-3. of the 2009 *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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Ms. Pamela Sargeant
Paul Van Lenten, Jr.
Ms. Susan E. Massart

**Sexually Violent Predator
Referrals, Commitments, and Bed Utilization
Forecast for FY2010 – FY2015**



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

**Prepared by the
Secretary of Health and Human Resources**

November 15, 2009

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I. Mandate

This report is submitted in accordance with Item 282 B.1-3. of the *2009 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.

II. Executive Summary

Persons civilly committed as SVP are housed in the Virginia Center for Behavioral Rehabilitation (VCBR) on the grounds of the Piedmont Geriatric Hospital in Nottoway County.

The Nottoway facility was designed during 2000 when there were only four qualifying SVP crimes listed in Code. In 2006, the General Assembly recommended and the Governor signed expansions to the SVP qualifying crimes list bringing the number to a total of 28. This change generated a net increase in SVP eligibility among inmates in the Virginia Department of Corrections of approximately 350%. This ultimately increased the yearly projected commitment rate from between 1 and 2 per month (12 to 24 per year) to between 4 and 5 per month (48 to 60 per year).

Based on a current projected annual commitment rate of at least 76 persons per year (6.33 per month), this facility will reach maximum capacity sometime during mid-calendar year 2012.

III. 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 made it possible to civilly commit persons found to be sexually violent predators (SVP).

In April 2003, the Governor signed legislation enacting the SVP civil commitment statutes, mandating that the then-named Department of Mental Health, Mental Retardation, Substance Abuse Services (now, Department of Behavioral Health and Developmental Services) open and operate a secure civil commitment program for individuals found to be sexually violent predators. In October 2003, the Department opened in temporary quarters to house and treat SVP in Dinwiddie County; the Virginia Center for Behavioral Rehabilitation. 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 from 4 to 28. This provision went into effect on January 1, 2007. In combination, these changes increased the number of inmates becoming eligible for SVP civil commitment by approximately 350 percent.

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

This new facility was designed to meet needs anticipated under the prevailing SVP Code consisting of four SVP qualifying crimes. The expansion of these qualifying crimes by the 2006 General Assembly from four to 28 means that the facility will reach maximum capacity sooner than planned.

IV. Definitions

Commitment Review Committee (CRC). The *Code* established a work group including members from DOC, DBHDS (formerly DMHMRSAS), and the Office of the Attorney General (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.

SVP-ineligible rate. Individuals screened for SVP civil commitment for which it is found that they are not eligible for further SVP consideration.

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.

V. Methodology and Limits on Forecast Reliability

Methodology. Each of the agencies involved in developing the SVP Forecast –DBHDS, DOC, and OAG – has developed data management and tracking systems. The DOC has implemented a full-time SVP screening unit responsible for providing Static-99 scores on all SVP-eligible inmates, and has implemented case-tracking software. The OAG has expanded its SVP unit and maintains a SVP tracking database. The DBHDS maintains a tracking database for SVP, the SVPTracker system. Information from each of these systems is brought together in the DBHDS Office of SVP Services (OSVP) to develop the SVP forecast. Specifically:

- DOC documents the number of SVP-eligible inmates pending 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.
- 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 data is combined by the OSVP is the basis for forecasting civil commitment and conditional release rates.

- DBHDS rationalizes these data to each other and 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 combined data are the basis for the final forecast.

Limits on Reliability and Forecast Accuracy. All forecasts operate below perfect accuracy. Often, missing data will skew the direction of a forecast toward over- or under- predicting actual outcomes. In the present case, for each year's forecast staff know exactly how many inmates in DOC having convictions for SVP predicate crimes will enter the SVP-eligible pool each year and can predict with high accuracy the Static-99 hit-rate and CRC evaluation rate for any given month. It is also known, on average for each year, the rates at which cases will ultimately be civilly committed to the VCBR, conditionally released to the community, or released without conditions.

What remains difficult to reliably predict is the pace at which cases will roll forward from the CRC to final placement. For example, in 2006 the predicted monthly commitment rate was 4.36; the actual rate was .89. The forecast for 2007 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 originally because sufficient final disposition data was lacking and, legislative changes taking effect only a few months prior to the development of the forecast, which dramatically increased the number of cases being processed.

More experience with the SVP process has increased the accuracy of the forecast. For example, last year's forecast predicted that the July 1, 2010 census at the VCBR would be 137. The actual census on that date was 142.

In FY2008 the first female was found SVP. There have been 19 total female inmates who became, or will become, eligible for release between calendar years 2007 and 2010:

- 2007 = 2 female SVP-eligible inmates. One was found SVP and placed on Conditional Release. She has violated the conditions of her SVP release and may be committed to the VCBR.
- 2008 = 7. None committed or placed on SVP conditional release
- 2010 = 10. One found SVP and committed to the VCBR.

From these limited data it is not possible to accurately predict how many females will be committed as SVP over the next six years.

Currently, any females found SVP and placed at VCBR will be housed separate from male residents. Due to the need to house females and males separately, the commitment of one female to the VCBR, removes one unit of 25 beds from availability for use by males.

VI. The 2010-2015 Forecast

Department of Corrections data indicates how many inmates, currently incarcerated in DOC, will become SVP-eligible in each of the six fiscal years between 2010 and 2015.

- FY2010 = 4,629 SVP-eligible inmates.
- FY2011 = 5,214 SVP-eligible inmates.
- FY2012 = 5,275 SVP-eligible inmates.
- FY2013 = 5,366 SVP-eligible inmates.
- FY2014 = 5,451 SVP-eligible inmates.
- FY2015 = 5,548 SVP-eligible inmates.

Commitment Review Committee recommendations are advisory and a recommendation does not predict an outcome. Other factors occurring after the CRC review can cause cases to be dropped from further consideration or otherwise diverted from the course recommended by the CRC:

- Cases recommended for conditional release sometimes are committed by the court to VCBR.
- A few cases recommended for civil commitment are ordered by the court to conditional release.
- Some cases recommended for SVP civil commitment or conditional release are not filed by OAG or are released by the courts.

CRC and OAG data gathered between July 1, 2008 and June 30, 2009 predict that:

- 18% of these inmates will be eligible for release each year.^[1]
- 27% of these cases will be found ineligible and dropped from further SVP consideration.
- 21% of the remaining cases will reach or exceed the Static-99 screening threshold and undergo a CRC SVP evaluation.
- 89% of these cases will be found SVP at trial.
- 85% of cases found SVP will be civilly committed as SVP to the VCBR.
- 15% of cases found SVP will be placed on 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 inmates remaining SVP-eligible after those who are found to not meet the statutory criterion for SVP-eligibility and are excluded from further consideration.

^[1] This percentage, while stable from year to year does show some minor fluctuation across a 12 month span. As such, the numbers presented each year will vary from those of the year before.

- **Row 4** displays the number of SVP-eligible inmates who reach or exceed the screening threshold on the Static-99 and undergo Commissioner appointed evaluations for the CRC.
- **Row 5** displays the number of persons on who petitions to civilly commit as SVP are or will be filed.
- **Row 6** displays the number of SVP-eligible inmates found SVP at trial.
- **Row 7** displays the number of individuals found SVP and committed to the VCBR.
- **Row 8** displays the number of persons found SVP and placed on conditional release.
- **Row 9** depicts the projected yearly census growth at the VCBR.
- **Row 10** depicts the yearly census growth of SVP conditional release.
- **Row 11** displays the projected average commitments to the VCBR, by month.
- **Row 12** displays the projected releases from the VCBR, by year.

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 January 2008. This was approximately six months ahead of schedule. If the present forecast holds, by July 1, 2010, the VCBR census will be about 213 beds. All 300 beds will be filled by mid-2012. This is exacerbated by the commitment of female SVP. Any single female SVP civil commitment, because she will have to be housed separate from the male residents, will immediately remove one, 25 bed living unit from the total census.

Table 1. SVP Forecast for FY2010 to FY2015, Including VCBR Bed Census^[2]							
Row		FY 2010^[3]	FY2011	FY2012	FY2013	FY2014	FY2015
1	DOC SVP-Eligible inmates	4,629 ^[4]	5,214	5,275	5,366	5,451	5,548
2	SVP-eligible to be released by year (18%)	833	939	950	966	981	999
3	Found SVP-ineligible (-27%)	608	685	693	705	716	729
4	CRC evaluation (Static-99) (21%)	128	143	146	149	150	153
5	SVP Petition filed by OAG ^[5] (66%)	85	94	96	98	99	101
6	Found SVP at trial (89%)	76	84	85	87	88	90
7	Disposition = Civil Commitment to VCBR (85%) ^[6]	66	71	72	74	75	77
8	Disposition = Conditional Release (15%) ^[7]	10	13	13	13	13	14
9	Projected VCBR population ^[8] (147)	213	284	356	430	505	582
10	Projected Conditional Release population ^[9] (25)	35	48	61	74	87	101
11	Projected Commitments to VCBR, by month	5.50	5.92	6.00	6.17	6.25	6.42
12	Projected releases from VCBR, by year ^[10]	3	3	4	4	5	5

^[2] Percentages for each row are based on observed outcomes for the past 12 months.

^[3] Beginning on July 1, 2009.

^[4] DOC data as of June 30, 2009.

^[5] Rows 5, 6, 7, and 8 are based on OAG data.

^[6] Based on court final disposition rates.

^[7] Based on court final disposition rates.

^[8] Population bases of 147 as of 30 June 2009.

^[9] Population bases of 25 as of 30 June 2009.

^[10] To date, there have been 4 releases from VCBR. This is too little data upon which to model a release rate. The projected figures quoted above represent a rough estimation based upon conversations with the VCBR clinical team.