

**REPORT OF THE
VIRGINIA DEPARTMENT OF CORRECTIONS**

**Report on the Development of
Sexually Violent Predator
Protocols for Initial Screening
per § 37.2-903
(SB314/HB1271, 2012)**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



HOUSE DOCUMENT NO. 16

**COMMONWEALTH OF VIRGINIA
RICHMOND
2012**



COMMONWEALTH of VIRGINIA

Department of Corrections

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November 30, 2012

MEMORANDUM

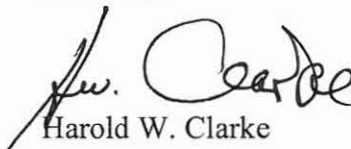
TO: The Honorable Robert F. McDonnell, Governor
and
Members, Virginia General Assembly

FROM: Harold Clarke, Director, Department of Corrections

SUBJECT: Report on the Development of Sexually Violent Predator Protocols for Initial Screening
per §37.2-903

In 2012, the Virginia General Assembly passed Senate Bill 314 and House Bill 1271 with an enactment clause directing the Department of Corrections (DOC), in conjunction with the Department of Behavioral Health and Developmental Services (DBHDS), to develop draft protocols for consideration by the 2013 General Assembly. Additionally, the Director for the Department of Corrections was to provide a report to the Governor and the General Assembly by January 1, 2013 regarding this protocol. In accordance with that language, please find attached the "*Report on the Development of Sexually Violent Predator Protocols for Initial Screening per §37.2-903.*"

Sincerely,



Harold W. Clarke

Cc:

The Honorable Marla Graff Decker, Secretary of Public Safety
The Honorable William A. Hazel, Jr., M.D., Secretary of Health and Human Resources
Harold W. Clarke, Director, Department of Corrections
James W. Stewart, III, Commissioner, Department of Behavioral Health and Developmental Services

VIRGINIA DEPARTMENT OF CORRECTIONS



**Report on the Development of
Sexually Violent Predator Protocols
for Initial Screening per § 37.2-903
(SB314/HB1271, 2012)**

To the Governor and General Assembly

Developed in Conjunction with the
Virginia Department of Behavioral Health and Developmental Services

January 1, 2013

Report on the Sexually Violent Predator Protocols for Initial Screening per § 37.2-903

Preface

In 2012, the Virginia General Assembly passed Senate Bill 314 and House Bill 1271 with an enactment clause directing the Department of Corrections (DOC), in conjunction with the Department of Behavioral Health and Developmental Services (DBHDS), to develop draft protocols for consideration by the 2013 General Assembly. Specifically, the second enactment clause of the legislation provides that DOC shall:

“...develop protocols to assess whether the individual meets the definition of a sexually violent predator and shall report to the General Assembly on protocol objectives, design, methodology, statistical considerations, embedded assumptions, risk assessments, and organization of the full assessment process. All measures shall be consistent with evidenced-based best practices. The primary tool of the protocols shall be a risk assessment instrument and corresponding reference score designated by the Commissioner. The Director shall submit the report to the Governor and the General Assembly by January 1, 2013.”

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I. Background

In 1999, the Commonwealth passed legislation making it possible to civilly commit persons found to be sexually violent predators (SVP). In April 2003, legislation enacting the SVP civil commitment statutes took effect, mandating that the Department of Behavioral Health and Developmental Services (DBHDS) open and operate a secure civil commitment program for individuals found to be sexually violent predators. The first civilly committed SVP resident arrived at the program during the first week of December 2003. Section § 37.2-903 of the *Code of Virginia* details the process by which offenders and defendants are initially screened to determine their eligibility for additional evaluation and review under Chapter 9 of Title 37.2. Currently, this Code section mandates the use of a specific actuarial instrument and corresponding threshold score.

With rare exceptions, Virginia uses the Static-99 for purposes of the initial screening. The individual must score a four or more on this actuarial instrument for some predicate offenses when victim(s) are under age of 13 or score a five or more for any predicate offense regardless of the age of the victim in order to be referred for a more in-depth, sexually violent predator evaluation. The Static is an actuarial risk instrument designed to identify the level of risk for sex offender recidivism. It is a 10-item measure that can be completed from a file review. It is widely used and is considered to be a moderate predictor of recidivism. Scores range from 0-12. A score of either a four or a five is considered moderate high risk. Scores equal to or greater than six are considered high risk.

In the 2012 Session of the General Assembly, the legislature specifically requested the Administration develop “protocols to assess whether the individual meets the definition of a sexually violent predator and shall report to the General Assembly on protocol objectives, design, methodology, statistical considerations, embedded assumptions, risk assessments, and organization of the full assessment process. All measures shall be consistent with evidenced-based best practices.” Additionally, the Director for the Department of Corrections must provide a report to the Governor and the General Assembly by January 1, 2013, regarding this protocol.

A protocol would serve as a set of rules to conduct initial screenings under the sexually violent predator act. This protocol would result from a collaborative agreement between the DOC and DBHDS. Evidenced based practices in the field of sex offender risk assessment suggest the use of an actuarial measure in conjunction with structured clinical judgment. Current mandates in the code inhibit the use of evidence based practice with regards to sex offender risk assessment. The mandated use of threshold scores both includes and excludes a small number of offenders who otherwise should be excluded or included in the SVP evaluation process. A protocol would serve as consistent guidelines

to direct the initial screening process while keeping pace with prevailing understanding and best practices in the field of sex offender risk assessment.

II. Primary Tool: Risk Assessment Instrument and Corresponding Reference Score

Current law (effective January 1, 2013) addresses the use of the Static-99 under §37.2-903;B.

Each month, the Director shall review the database and identify all such prisoners who are scheduled for release from prison within 10 months from the date of such review *or have been referred to the Director by the Virginia Parole Board under rules adopted by the Board* who (i) receive a score of five or more on the Static-99 or a similar score on a comparable, scientifically validated instrument designated by the Commissioner, ~~or~~ (ii) *who receive* a score of four on the Static-99 or a similar score on a comparable, scientifically validated instrument if the sexually violent offense mandating the prisoner's evaluation under this section was a violation of § 18.2-61, 18.2-67.1, 18.2-67.2, or 18.2-67.3 where the victim was under the age of 13 ~~and suffered physical bodily injury and any of the following where the victim was under the age of 13: § 18.2-61, 18.2-67.1, or 18.2-67.2~~ *or* (iii) *whose records reflect such aggravating circumstances that the Director determines the offender appears to meet the definition of a sexually violent predator. The Director may exclude from referral prisoners who are so incapacitated by a permanent and debilitating medical condition or a terminal illness so as to represent no threat to public safety.*

The *Code* does allow for substitution if the Static-99 is not considered a valid instrument for that individual. However, practice has found only two applications for such an exception, female offenders and offenders whose last sex offense was committed when they were under the age of 16.

C. If the Director and the Commissioner agree that no specific scientifically validated instrument exists to measure the risk assessment of a prisoner, the prisoner may instead be screened by a licensed psychiatrist, licensed clinical psychologist, or a licensed mental health professional certified by the Board of Psychology as a sex offender treatment provider pursuant to § 54.1-3600 for an initial determination of whether or not the prisoner may meet the definition of a sexually violent predator.

The field of sex offender risk assessment is rapidly evolving and the Static-99 remains one of the most widely used and validated risk measures available. The Static-99 has recently been revised (Static-99r) to incorporate the effect of aging on risk. While this is a promising development, the quantity of published validation studies for the Static-99r is substantially limited at this time relative to the original Static-99. However, there are significant limitations to the use of the Static-99 in estimating an individual's risk. Best

practices warn against using actuarial measures in isolation. Rather, they prescribe the use of an actuarial as one part of a comprehensive assessment process which accounts for dynamic risk factors not captured by static actuarial measures alone.

III. Protocol Objective

Researchers and practitioners in the field of sex offender risk assessment agree that there is no one risk factor that is uniquely related to recidivism. A protocol approach provides numerous advantages, primarily allowing for the initial screening process to incorporate the totality of information available on the individual when making preliminary determinations of risk of re-offense. The protocol provides a consistent framework that allows for the consideration of both static and dynamic risk factors. “Static risk factors are features of the offenders’ histories that predict recidivism but are not amenable to deliberate intervention, such as prior offences. In contrast, dynamic risk factors are potentially changeable factors, such as substance abuse and negative peer associations. Given that dynamic risk factors are considered responsible for the increased risk, they have also been called criminogenic needs.” (Mann, 2010) The best measures of risk of re-offense consider both static and dynamic factors.

In compliance with the second enactment clause of SB314 and HB 1271, two different protocol options were developed by the DOC and DBHDS to enhance the initial screening process and bring it in line with evidence-based best practices. These draft protocols incorporate the latest research and understanding in the field of sex offender risk assessment and would provide flexibility in the initial screening process to adapt and evolve with the rapidly changing field of sex offender risk assessment. Finally, they also include some of the key findings and recommendations of the 2011 Joint Legislative Audit and Review (JLARC) study, *Review of the Civil Commitment of Sexually Violent Predators* (House Document No. 5), and would maximize the utilization of valuable state resources by improving the focus of the initial screening process.

IV. Design Methodology

Two protocols were designed for this research; both protocols represent a multi-tiered process to serve as a sophisticated filter and initial screening process that can be completed from a file review. A review of current literature and research regarding sex offender risk assessment was done as well as a review of the initial screening process of all other available states with SVP legislation. DOC and DBHDS collaborated in the development and research for the proposed protocols.

The two protocols were studied utilizing two separate small groups comprised of staff from DBHDS and DOC who were knowledgeable in the field of sex offender risk assessment. Each group was assigned a specific protocol. They were asked to review a

random selection of cases previously reviewed under Chapter 9 of Title 37.2. Using the score on the actuarial instrument and following the outline of the protocol, the groups would vote on a recommendation for each case. Recommendations were either to refer the case for a full sexually violent predator evaluation or not. These recommendations were then compared to known outcomes (found to be sexually violent predator or not) for each of the cases. The results are described in the Statistical Considerations section of this report.

The initial screening process begins when the Director gathers all available information on the offender/defendant and the offender/defendant is scored on the risk assessment instrument. The instrument currently in use is the Static-99. The actuarial score derived from this instrument provides the foundation of the initial screening process. The protocol supplements the score through facilitating an understanding of individual characteristics related to sex offender risk and provides greater focus on actual risk levels by accounting for both static and dynamic risk factors.

Cross-Agency Team

The collected information and actuarial score are then made available to a three person cross-agency team (CAT). The CAT would consist of individuals knowledgeable in the field of mental health and sex offender risk assessment. The CAT would be established with representatives from DOC and DBHDS who are not currently serving as members of the Commitment Review Committee ('CRC', § 37.2-902). A chairperson would be elected from within its ranks. Protocol A calls for all cases to be reviewed under § 37.2-903 by the CAT, and Protocol B calls for cases to be reviewed only when the Director determines that an individual's actuarial score may be impacted by aggravating or mitigating circumstances. The details of the two protocols are listed below.

PROTOCOL A

DOC and DBHDS shall agree to both an actuarial instrument and a corresponding reference score to be used as the foundation for the initial screening.

The DOC Director shall collect all available information on the offender or defendant and calculate the offender or defendant's score on the actuarial measure agreed to by DOC and DBHDS. Along with the actuarial score, the Director shall forward all available information on the offender to the CAT.

- a. The CAT will be responsible to review each case identified under § 37.2-903.

- b. The CAT shall consider the actuarial score along with empirically validated risk factors which pertain to sex offender recidivism in making their determination. Such factors shall include but not be limited to:
 - Criminal history;
 - Institutional adjustment;
 - Risk for re-offense as determined using actuarial risk measures of sexual recidivism;
 - Presence or significant suggestion of sexual deviance;
 - The number, date and nature of prior offenses;
 - The number and demographics of victims for convicted and otherwise reported offenses;
 - Physical conditions that minimize risk of re-offense, including but not limited to advanced age or debilitating illness;
 - Evidence that offender has been reviewed previously under SVPA without finding of SVP nor any introduction of new risk factors; and,
 - Length of time in the community without a new sex offense.

- c. A majority vote will be required to recommend a case be forwarded to the Director for further review and assessment by the CRC.

PROTOCOL B

DOC and DBHDS shall agree to both an actuarial instrument and a corresponding reference score to be used as the foundation for the initial screening.

The DOC Director shall collect all available information on the offender or defendant and calculate the offender or defendant's score on the actuarial measure agreed to by DOC and DBHDS. Those cases which score equal to or greater than the reference score shall be forwarded to the CRC for a full evaluation. However, if the Director determines that a particular individual's case involves aggravating factors or mitigating circumstances which may increase or decrease his risk relative to the reference score, the case shall be referred to a cross-agency team (CAT). Along with the actuarial score, the Director shall forward all available information on the offender to the CAT. The CAT shall consider the actuarial score along with empirically validated risk factors which pertain to sex offender recidivism in making their determination. Such factors shall include but not be limited to:

- a. Aggravating Characteristics:
 - i. Score on actuarial measure is below the reference score:
 1. Persistence of sex offending
 2. Evidence of deviant sexual interests
 3. Self-report of intention to re-offend sexually
 4. Self-report of past uncharged sex offenses

5. Sexual preoccupation and difficulties with sexual self-regulation.
6. Criminal behavior
7. Lack of Cooperation with supervision

b. Mitigating Characteristics:

- i. Score on actuarial measure is above the reference score:
 1. Significant health issues
 2. Extensive time in community without a new sex offense or violation related to sex offense patterns
 3. Prior review under Chapter 9 of Title 37.2 which did not result in identifying individual as an SVP nor introduction of any new risk factors

V. **Literature Review**

The science of sex offender risk assessment is relatively new but has been rapidly evolving. An in-depth review of current literature was conducted in order to determine what are considered the most current evidenced-based best practices in the field of sex offender risk assessment. It is a widely accepted position that no one actuarial measure is adequate to consistently identify individuals who will re-offend. “There is no one risk factor that is strongly related to recidivism. Evaluators must consider a range of risk factors.” (Mann, Hanson and Thornton, 2010)

There are a number of published studies that examine the accuracy of actuarial measures. Many studies conclude that there is incremental validity of predictions when multiple instruments are used together. (Doren, 2010) There has yet to be developed an actuarial measure that accounts for all known empirically validated risk factors pertaining to recidivism. (Looman and Abracen, 2009) Current research literature indicates that risk factors for recidivism include both static and dynamic characteristics. “The statistical benefit of combining static and dynamic considerations into one model is that it then accounts for more of the total variance of sexual recidivism. Put another way, our predictive accuracy increases.” (Doren, 2010)

In order to make informed decisions on risk for re-offense for any one particular individual, one must examine all of these risk factors together. “...the solitary application of the Static-99 or Static-99r recidivism rates to the exclusion of salient clinical factors for identifying sexual dangerousness can have serious consequences for public safety.” (Sreenivasan, 2010) The development of these actuarial tools and the base rates associated are of paramount importance for appropriate applications. (Looman and Abracen, 2009; Knight and Thornton, 2007) . “To be clear, best practices in risk assessment must allow for evaluators to judiciously consider dynamic factors that alter a static risk estimate.” (Murrie, 2010) Hanson, Harris, Scott, and Helmus (2007) also

found that “stable dynamic characteristics significantly contributed information to the prediction of recidivism above that given by established, static actuarial measures.”

An actuarial is only able to identify a person’s risk relative to other persons in a group, not the specific individual. For this reason, professionals must examine the totality of information on each specific individual in order to make an informed decision that is evidenced based, best practices: “...indeed, best practices in SVP evaluation would almost always involve administering a well-researched actuarial measure. But, these limits do mean evaluators must be extremely careful about the inferences they draw from actuarial results.” (Murrie, 2010) Further, best practices caution against using an actuarial as a stand-alone measure. “Given that they are not designed to capture change, purely static instruments may have some important limitations when used as stand-alone tools to assess risk.” (Olver, Wong, 2010)

In conclusion, a review of existing literature in the field of sex offender risk assessment supports the consideration of a number of factors, to include scores on actuarial instruments when making determinations, and decisions regarding an individual’s risk to re-offend. This research was incorporated in the development of the proposed protocols.

VI. Other State’s SVP Legislation

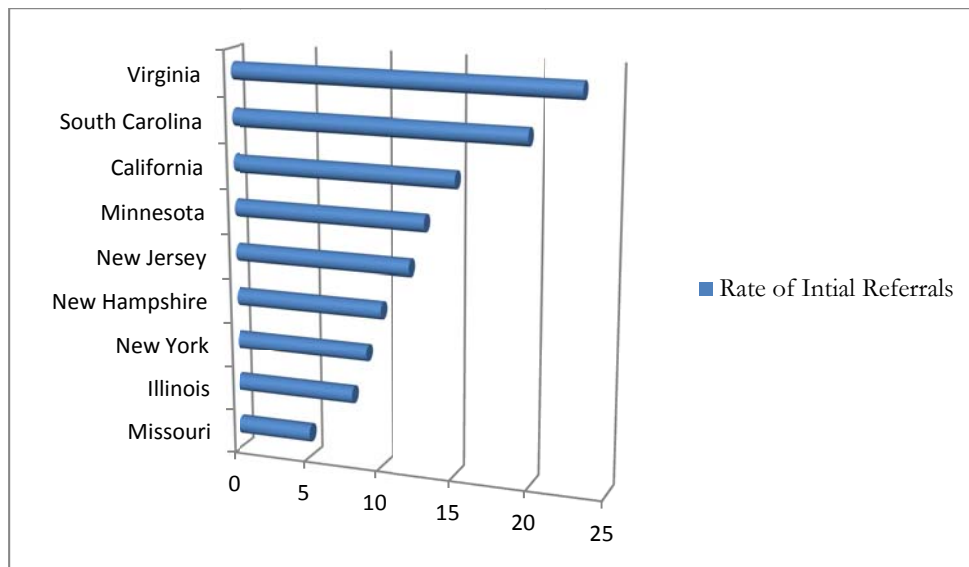
Virginia is one of 20 states which have some type of sexually violent predator legislation. A formal request was made to each state for information on their SVP legislation. A review of those laws was utilized as a reference for this report and is included in Appendix E. Many states appear to have adopted similar protocol language and processes as presented here. Although most states use actuarial measures in their process, Virginia is the only state that mandates in state law that a specific actuarial instrument be used exclusively, and includes specific corresponding threshold scores. The JLARC reported that “officials in other states cited the need for flexibility and discretion in which Actuarial Risk Assessment Instrument (ARAI) to use and whether to proceed with further risk assessment.”

Three states (Arizona Nebraska and Wisconsin) defer the screening process to the county attorneys in the district in which the offender was originally convicted of the predicate offense. Five states (Florida, Illinois, Minnesota, New Jersey and North Dakota) delegate the “agency with jurisdiction” to opine whether an offender “appears to meet” the definition of a sexually violent predator as the basis for their initial screening. Florida and Illinois both use a multi-tiered approach in their screening process. The remaining 10 states (Iowa, Kansas, Massachusetts, Missouri, New Hampshire, New York, Pennsylvania, South Carolina, Texas and Washington) utilize a committee or series of committees in the screening process.

In discussions with some of these states, staff experts typically reported a systemic approach involving the use of actuarial measures in conjunction with structured clinical judgment. Some states have variations in state law which influence the definition of predicate cases, i.e., number of or types of victims, number of separate convictions.

Several states that replied to the formal request for information reported a rate of referrals for evaluations noticeably less than Virginia.

Rate of Initial Referrals Compared to Other States



VII. Statistical Considerations

The Static-99 is perhaps the most widely used and researched actuarial measure within the field of sex offender risk assessment. (Jackson & Hess, 2007) As such, it manifests moderate predictive accuracy. The Static-99 score is considered better than chance and better than clinical judgment alone for predicting recidivism.

Actuarial instruments such as the Static-99 provide scores for an individual that can be compared with the groups of sex offenders (normative sample) who were used to develop and validate these instruments. The actuarial risk assessment measures provide tables that indicate a probability range that a sex offender in the original groups would be re-arrested or reconvicted for another sexual offense. *An actuarial probability score cannot indicate whether the individual who received the score will or will not sexually reoffend;* the instrument compares the person to other persons with the same score and similar characteristics in the developmental samples. *The probability score can be used to place the person in a risk category, but it is not an individual prediction.* To supplement actuarial findings, ‘dynamic risk factors’ are considered. Dynamic risk factors allow for

closer consideration of individual characteristics in making risk determinations beyond what actuarial findings alone can provide.

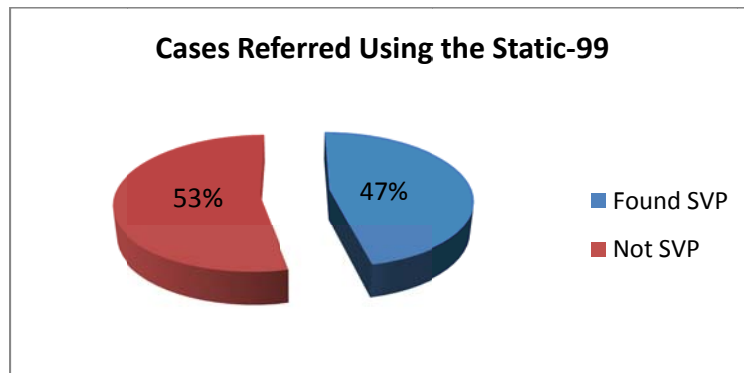
Virginia screens approximately 615 predicate cases each year. Of those, an average of 22% is considered to meet statutory criteria to be referred for additional review via a comprehensive evaluation.

After a case has been screened for further review, a comprehensive evaluation is performed by a licensed clinical psychologist contracted by DBHDS and subsequently reviewed by the Commitment Review Committee (CRC). The CRC is tasked to review these evaluations in concert with all other available information on the offender and provide a non-binding recommendation to the Office of the Attorney General (OAG). A review of cases from 2008-2010 indicates that the CRC recommended civil commitment in 48% of cases.

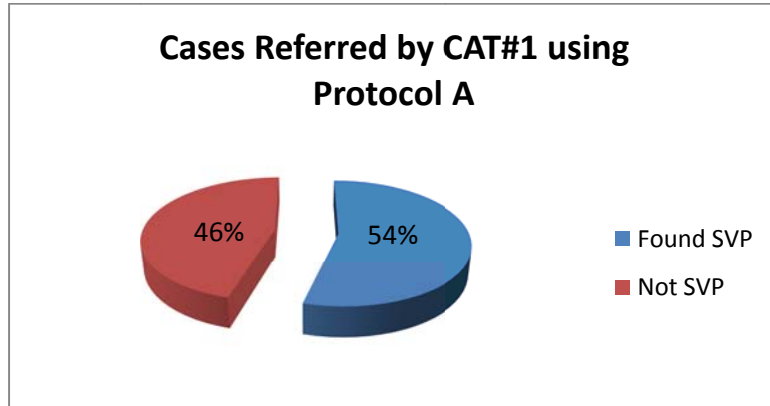
The OAG reviews all cases and evaluations with consideration to CRC recommendations and determines whether to file a petition for SVP on a case by case basis. A review of cases from 2008-2010 indicates that 43% of cases were ultimately civilly committed under the sexually violent predator act.

In order to evaluate the proposed protocols, an internal study was conducted. Using cases completed from 2009, a random sample was chosen for offenders who scored four or higher on the Static-99. Two separate Cross-Agency Teams (CATs) were established and given instructions to review these cases in accordance with either Protocol A or Protocol B. The teams were blind to the case outcomes.

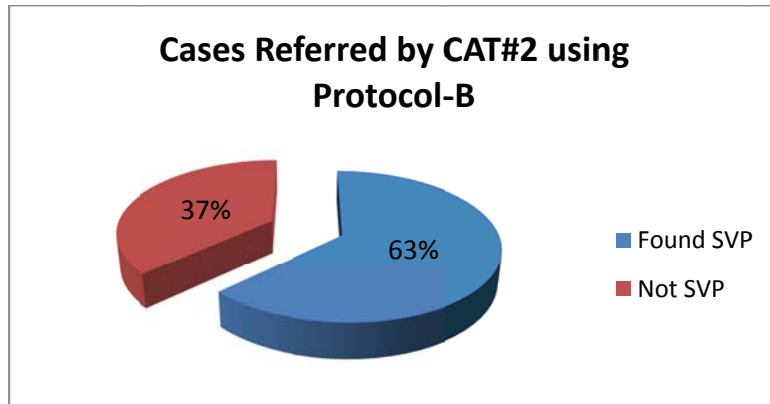
From this sample, the Static-99, in accordance to the existing statutes, identified 43 cases to be referred for further review and a comprehensive evaluation. Of those referred, slightly less than half, 47% (20) were ultimately found to meet definition of a sexually violent predator by the court.



From this sample, CAT#1 using Protocol A, identified 35 cases to be referred for further review and a comprehensive evaluation. Of those referred, 54% (19) were ultimately found to meet definition of a Sexually Violent Predator by the court.

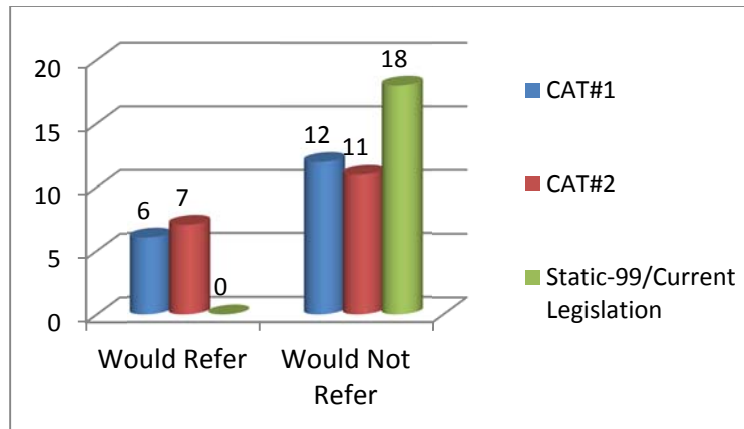


From this sample, CAT#2 using Protocol B, identified 27 cases to be referred for further review and a comprehensive evaluation. Of those referred, 63% (17) were ultimately found to meet definition of a Sexually Violent Predator by the court.



From this sample the Static-99, in accordance to the existing statutes, provided for the release of 18 sex offenders without any further review or evaluation. These are cases that scored a four on the Static-99 but did not meet one or more of the contingencies outlined in existing statutes. From those 18 cases, one or both teams recommended evaluation for seven (39%) cases. More simply stated, if a protocol process was in place at the time, between 6-7 additional cases would have been referred for a full evaluation. Hence, subjecting them to closer scrutiny of their potential risk for re-offense prior to release.

Referral Rates from Sample: Protocols vs. Current Code



VIII. Embedded Assumptions

1. The research supports, and the design of these protocols assumes, that an individual has been appropriately identified under § 37.2-903 to be screened under either protocol.
2. Staff involved in this process are knowledgeable in the field of sex offender risk assessment.
3. The initial screening process outlined in either protocol does not determine the final disposition of whether an offender/defendant is a sexually violent predator or not.
4. An individual score on an actuarial measure is an invaluable asset to clinicians making assessments of risk for recidivism.
5. Actuarial instruments demonstrate a moderate degree of predictive accuracy and best practices account for the consideration of dynamic risk factors when executing decisions regarding individuals, such as those in the civil commitment process.

IX. Full Assessment Process using a Protocol

Regardless of which protocol is chosen, the full assessment process will follow the format below:

1. DOC and DBHDS shall agree to both an actuarial instrument and a corresponding reference score to be used as the foundation for the initial screening under the Sexually Violent Predators Act.
2. The Director shall collect all available information on the offender or defendant and calculate the offender or defendant's score on the actuarial measure agreed to under Section 1. Along with the actuarial score, the Director shall forward all available information on the offender to the CAT.

3. A 3-person multidisciplinary team (CAT) consisting of persons knowledgeable in the field of mental health and sex offender risk assessment will be established with representatives from DOC and DBHDS who are not currently serving as members of the CRC. The CAT shall elect a chairperson from within its ranks.
 - a. The CAT will be responsible to review each case referred (via Protocol A or B). A majority vote will be required to recommend a case be forwarded to the Director for further review and assessment by the CRC.
4. Any case which scores equal to or above the reference score on the chosen actuarial instrument, not subjected to provisions in the protocol, will be forwarded to the Director for further review and assessment by the CRC.
5. Consistent with § 37.2-904 the CRC will complete its assessment of the individual within 180 days and forward their non-binding recommendation to the Office of the Attorney General (OAG).
6. OAG will review the totality of information available, including the initial screening, the recommendation of the CAT (where appropriate) the recommendation of the CRC, criminal record, etc. etc. etc.

X. Conclusion

The intent of the SVP civil commitment statutes is to identify those offenders and defendants who demonstrate a high risk of committing a new violent sex offense. The process of identification involves several steps which overlap and work together to achieve this goal. However, current law in Virginia regarding the initial screening process is out of step with evidenced-based, best practices. The Static-99 is considered an objective actuarial measure and has proven itself through research and application as an invaluable tool in sex offender risk assessment. However, it boasts only moderate predictive accuracy and is not recommended to be used in isolation. The nature of its objectivity is clearly impacted by the quantity and quality of information available on each individual case, the scorer's skill level, interpretation and application of coding rules. "Sometimes decisions may remain difficult even when following scoring rules, perhaps because case information is ambiguous." (Murrie, 2010) Further, the science employed is rapidly evolving, bringing forward new and better understanding of what constitutes risk in sex offenders and how we can best measure it.

Existing literature on sex offender risk assessment clearly supports consideration of collaborative data, particularly dynamic risk factors in concert with actuarial measure(s) when making determinations of risk. Virginia's current process for initial screening of SVP cases differs from all 19 other states with similar programs in that it offers little to

compensate for dynamic risk factors. Mandating a specific risk measure in the *Code* inhibits the initial screening from being responsive to changes in the standards of the industry with regards to what are evidenced-based, best practices.

Either protocol A or B, as proposed, would improve the efficiency and more importantly, the accuracy of the initial screening process by better identifying the most dangerous offenders and closing loopholes created by threshold scores used in current statutes. Both protocols utilize the advantages of a small group of experts in this critical decision process rather than an individual staff person or single agency head. A protocol has the additional advantage of being more receptive for revision and upgrading as recommended in accordance with evidenced based, best practices.

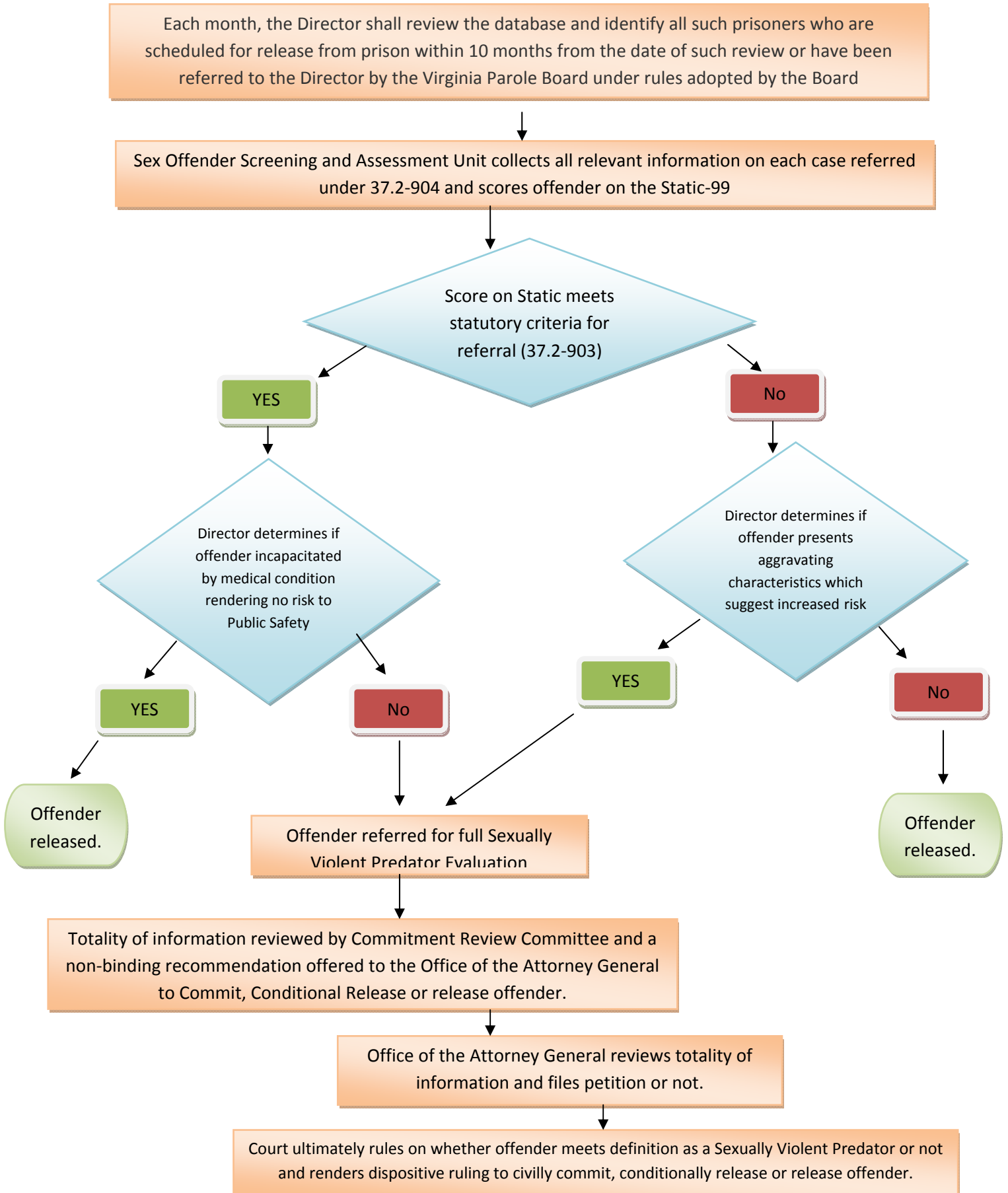
Protocol B is recommended for its ability to effectively and efficiently discriminate high risk cases. Through targeted analysis and a systematic approach, Protocol B maintains evidenced based best practices while maximizing proficiency.

The totality of information presented in this report suggests that a protocol process would serve to provide a necessary update to Virginia's SVP civil commitment process and bring it in line with widely accepted evidenced based, best practices regarding sex offender risk assessment.

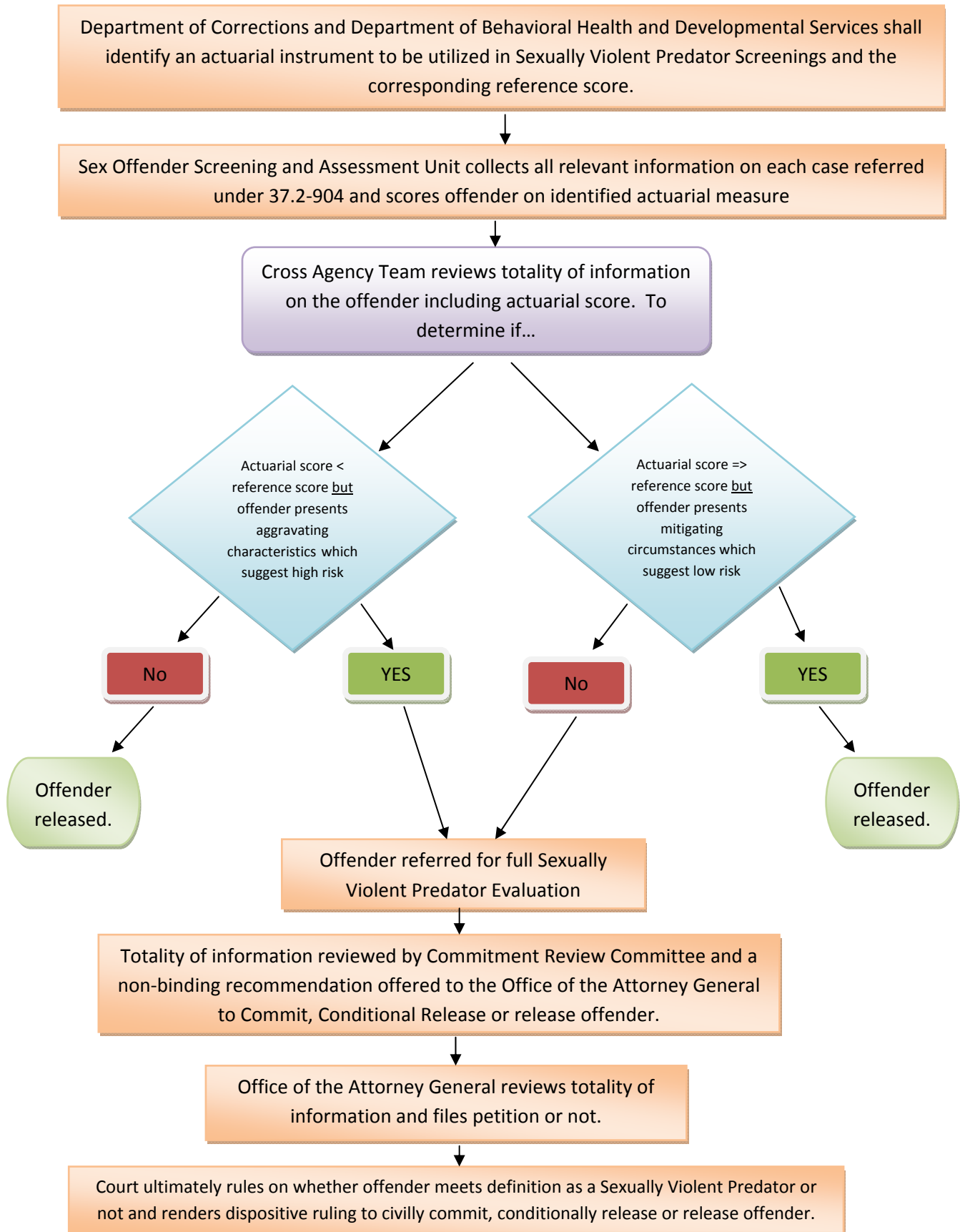
Appendix A: References

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Appendix B: Flow Chart of Current Process



Appendix C: Flow Chart of Protocol A



Appendix D: Flow Chart of Protocol B

Department of Corrections and Department of Behavioral Health and Developmental Services shall identify an actuarial instrument to be utilized in Sexually Violent Predator Screenings and the corresponding reference score.

Sex Offender Screening and Assessment Unit collects all relevant information on each case referred under 37.2-904 and scores offender on identified actuarial measure.

Director determines if actuarial score is a comprehensive and accurate assessment of risk.

YES

Cross Agency Team reviews totality of information on the offender including actuarial score. To determine if...

No

Actuarial score is => reference score

Actuarial score < reference score but offender presents aggravating characteristics which suggest high risk

Actuarial score => reference score but offender presents mitigating circumstances which suggest low risk

YES

No

YES

No

YES

Offender released.

Offender referred for full Sexually Violent Predator Evaluation

Offender released.

Totality of information reviewed by Commitment Review Committee and a non-binding recommendation offered to the Office of the Attorney General to Commit, Conditional Release or release offender.

Office of the Attorney General reviews totality of information and files petition or not.

Court ultimately rules on whether offender meets definition as a Sexually Violent Predator or not and renders dispositive ruling to civilly commit, conditionally release or release offender.

Appendix E: Summary of Legislation and Practices in Other States

State	Initial Screening Process as summarized from State Law
Arizona	Agency with jurisdiction notifies County attorney who then reviews the case and decides whether or not to petition the court for SVP.
California	DMH reviews case individual psychologist or psychiatrist using standard tools makes assessment, refers to 2-independent evaluators who then recommend yes, no or if differing opinions, they request another 2-person evaluation.
Florida	When it appears that a person may meet the criteria of a sexually violent predator, the agency with jurisdiction shall give written notice of such to the attorney general and the multidisciplinary team
Illinois	The agency with jurisdiction has control or custody over a person who may meet the criteria for commitment as a sexually violent person, the agency with jurisdiction shall inform the Attorney General and the State's Attorney in a position to file a petition.
Iowa	The Director's Review Committee (DRC) refers offenders who appear to meet the criteria to the Multidisciplinary Team (MDT) for further assessment prior to a referral to the Attorney General's office to determine whether civil commitment proceedings will be pursued.
Kansas	The Director of DOC appoints multi-disciplinary team who reviews each case then sends on to prosecutor's review committee who looks for probable cause and then files or not.
Massachusetts	A sex offender registry board, members appointed by the Governor, classifies sex offenders to 3 levels, highest with option to refer for SVP in highest level. Board has its own attorney to defend its recommendations.
Minnesota	Based on his/her review, the Commissioner of Corrections forwards the names of sex offenders that the agency believes meet the commitment standard to county attorneys for their consideration. County attorneys may choose to file a civil commitment petition on an offender who has not been referred by DOC.
Missouri	When it appears that a person may meet the criteria of a sexually violent predator, the agency with jurisdiction shall give written notice of such to the attorney general and the multidisciplinary team; DOC maintains initial review process involving psychiatrist or psychologist. About 5% of all cases are referred for further review.
Nebraska	Evaluation ordered within 150 days of offender release, results sent to attorney general and county attorney

State	Initial Screening Process as Summarized from State Law
New Hampshire	9 months prior to release, if there is "an articulable basis" to believe the person is likely to engage in acts of sexual violence, a multidisciplinary team can assess and evaluate the offender.
New Jersey	Chief executive officer will notify attorney general and county of opinion that offender may be in need of commitment, attached to reports, records and assessments used to formulate said opinion.
New York	A multi-disciplinary team looks at the case and makes recommendations to a case review panel who then makes recommendations to attorney general and county attorney. Case review recommendations are binding. Sex offender panel uses general guidelines established in NY code.
North Dakota	State's attorney can file and/or file from referrals from DOC. DOC shall complete assessment of inmate based on actuarial and clinical evaluations or other information as determined by the Director of Corrections to be relevant.
Pennsylvania	Sex offender assessment board submits to attorney's their recommendations. This process is for juveniles only.
South Carolina	Director of DOC appoints multi-disciplinary team who reviews each case then sends on to prosecutor's review committee who looks for probable cause and then files or not
Texas	A multi disciplinary team reviews records and determines need for more evaluation. An expert is contracted with to do full report, then if behavioral abnormality is found, goes to special prosecutor, two more evaluators take a look. Unanimous jury decision required
Washington	Reviewed by committee, categorized by risk and if offender "potentially meets the legal definition of SVP" he is then referred for prosecution.
Wisconsin	An agency with jurisdiction who has control or custody over person who "may meet the criteria" required to notify district attorney and DOJ. The district attorney reviews the case and decides to file or not.
Virginia	Screening based on offender's score on the Static-99 score with consideration of statutory thresholds. Females and offenders whose last sex offense was before age of 16 are subject to comprehensive clinical review.

Appendix F: Senate Bill 314 and House Bill 1271

CHAPTER 668

An Act to amend and reenact §§ [19.2-169.3](#), [37.2-903](#), and [37.2-904](#) of the Code of Virginia, relating to assessment of certain sexually violent predators; penalty.

[S 314]

Approved April 6, 2012

CHAPTER 800

An Act to amend and reenact §§ [19.2-169.3](#), [37.2-903](#), and [37.2-904](#) of the Code of Virginia, relating to assessment of certain sexually violent predators; penalty.

[H 1271]

Approved April 18, 2012

Be it enacted by the General Assembly of Virginia:

1. That §§ [19.2-169.3](#), [37.2-903](#), and [37.2-904](#) of the Code of Virginia are amended and reenacted as follows:

§ [19.2-169.3](#). Disposition of the unrestorably incompetent defendant; capital murder charge; sexually violent offense charge.

A. If, at any time after the defendant is ordered to undergo treatment pursuant to subsection A of § [19.2-169.2](#), the director of the community services board or behavioral health authority or his designee or the director of the treating inpatient facility or his designee concludes that the defendant is likely to remain incompetent for the foreseeable future, he shall send a report to the court so stating. The report shall also indicate whether, in the board, authority, or inpatient facility director's or his designee's opinion, the defendant should be released, committed pursuant to Article 5 (§ [37.2-814](#) et seq.) of Chapter 8 of Title 37.2, committed pursuant to Chapter 9 (§ [37.2-900](#) et seq.) of Title 37.2, or certified pursuant to § [37.2-806](#) in the event he is found to be unrestorably incompetent. Upon receipt of the report, the court shall make a competency determination according to the procedures specified in subsection E of § [19.2-169.1](#). If the court finds that the defendant is incompetent and is likely to remain so for the foreseeable future, it shall order that he be (i) released, (ii) committed pursuant to Article 5 (§ [37.2-814](#) et seq.) of Chapter 8 of Title 37.2, or (iii) certified pursuant to § [37.2-806](#). However, if the court finds that the defendant is incompetent and is likely to remain so for the foreseeable future and the defendant has been charged with a sexually violent offense, as defined in § [37.2-900](#), he shall be reviewed for commitment ~~screened~~ pursuant to Chapter 9 (§ [37.2-900](#) et seq.) of Title 37.2 ~~the procedures set forth in §§ [37.2-903](#) and [37.2-904](#)~~. If the court finds the defendant incompetent but restorable to competency in the foreseeable future, it may order treatment continued until six months have elapsed from the date of the defendant's initial admission under subsection A of § [19.2-169.2](#).

B. At the end of six months from the date of the defendant's initial admission under subsection A of § [19.2-169.2](#) if the defendant remains incompetent in the opinion of the board, authority, or inpatient facility director or his designee, the director or his designee shall so notify the court and make recommendations concerning disposition of the defendant as described in subsection A. The court shall hold a hearing according to the procedures specified in subsection E of § [19.2-169.1](#) and, if it finds the defendant unrestorably incompetent, shall order one of the dispositions described in subsection A. If the court finds the defendant incompetent but restorable to competency, it may order continued treatment under subsection A of § [19.2-169.2](#) for additional six-month periods, provided a hearing pursuant to subsection E of § [19.2-169.1](#) is held at the completion of each such period and the defendant continues to be incompetent but restorable to competency in the foreseeable future.

C. If any defendant has been charged with a misdemeanor in violation of Article 3 (§ [18.2-95](#) et seq.) of Chapter 5 of Title 18.2 or Article 5 (§ [18.2-119](#) et seq.) of Chapter 5 of Title 18.2, other than a misdemeanor charge pursuant to § [18.2-130](#) or Article 2 (§ [18.2-415](#) et seq.) of Chapter 9 of Title 18.2, and is being treated pursuant to subsection A of § [19.2-169.2](#), and after 45 days has not been restored to competency, the director of the community service board, behavioral health authority, or the director of the treating inpatient facility, or any of their designees, shall send a report indicating the defendant's status to the court. The report shall also indicate whether the defendant should be released or committed pursuant to § [37.2-817](#) or certified pursuant to § [37.2-806](#). Upon receipt of the report, if the court determines that the defendant is still incompetent, the court shall order that the defendant be released, committed, or certified, and may dismiss the charges against the defendant.

D. Unless an incompetent defendant is charged with capital murder or the charges against an incompetent criminal defendant have been previously dismissed, charges against an unrestorably incompetent defendant shall be dismissed on the date upon which his sentence would

have expired had he been convicted and received the maximum sentence for the crime charged, or on the date five years from the date of his arrest for such charges, whichever is sooner.

E. If the court orders an unrestorably incompetent defendant to be reviewed for commitment pursuant to § ~~19.2-169.3~~ *screened pursuant to the procedures set forth in §§ [37.2-903](#) and [37.2-904](#)*, it shall order the attorney for the Commonwealth in the jurisdiction wherein the defendant was charged and the Commissioner of Behavioral Health and Developmental Services to provide the Commitment Review Committee established pursuant to § [37.2-902](#) Director of the Department of Corrections with any information relevant to the review, including, but not limited to: (i) a copy of the warrant or indictment, (ii) a copy of the defendant's criminal record, (iii) information about the alleged crime, (iv) a copy of the competency report completed pursuant to § [19.2-169.1](#), and (v) a copy of the report prepared by the director of the defendant's community services board, behavioral health authority, or treating inpatient facility or his designee pursuant to this section. The court shall further order that the defendant be held in the custody of the Department of Behavioral Health and Developmental Services for secure confinement and treatment until the Commitment Review Committee's and Attorney General's review and any subsequent hearing or trial are completed. If the court receives notice that the Attorney General has declined to file a petition for the commitment of an unrestorably incompetent defendant as a sexually violent predator after conducting a review pursuant to § [37.2-905](#), the court shall order that the defendant be released, committed pursuant to Article 5 (§ [37.2-814](#) et seq.) of Chapter 8 of Title 37.2, or certified pursuant to § [37.2-806](#).

F. In any case when an incompetent defendant is charged with capital murder, notwithstanding any other provision of this section, the charge shall not be dismissed and the court having jurisdiction over the capital murder case may order that the defendant receive continued treatment under subsection A of § [19.2-169.2](#) for additional six-month periods without limitation, provided that (i) a hearing pursuant to subsection E of § [19.2-169.1](#) is held at the completion of each such period, (ii) the defendant remains incompetent, (iii) the court finds continued treatment to be medically appropriate, and (iv) the defendant presents a danger to himself or others.

G. The attorney for the Commonwealth may bring charges that have been dismissed against the defendant when he is restored to competency.

§ [37.2-903](#). Database of prisoners convicted of sexually violent offenses; maintained by Department of Corrections; notice of pending release to CRC.

A. The Director shall establish and maintain a database of each prisoner in his custody who is (i) incarcerated for a sexually violent offense or (ii) serving or will serve concurrent or consecutive time for another offense in addition to time for a sexually violent offense. The database shall include the following information regarding each prisoner: (a) the prisoner's criminal record and (b) the prisoner's sentences and scheduled date of release. A prisoner who is serving or will serve concurrent or consecutive time for other offenses in addition to his time for a sexually violent offense, shall remain in the database until such time as he is released from the custody or supervision of the Department of Corrections or Virginia Parole Board for all of his charges. Prior to the initial assessment of a prisoner under subsection C, the Director shall order a national criminal history records check to be conducted on the prisoner.

B. Each month, the Director shall review the database and identify all such prisoners who are scheduled for release from prison within 10 months from the date of such review *or have been referred to the Director by the Virginia Parole Board under rules adopted by the Board who (i) receive a score of five or more on the Static-99 or a similar score on a comparable, scientifically validated instrument designated by the Commissioner, or (ii) who receive a score of four on the Static-99 or a similar score on a comparable, scientifically validated instrument if the sexually violent offense mandating the prisoner's evaluation under this section was a violation of § [18.2-61](#), [18.2-67.1](#), [18.2-67.2](#), or [18.2-67.3](#) where the victim was under the age of 13 and suffered physical bodily injury and any of the following where the victim was under the age of 13: § [18.2-61](#), [18.2-67.1](#), or [18.2-67.2](#), or (iii) whose records reflect such aggravating circumstances that the Director determines the offender appears to meet the definition of a sexually violent predator. The Director may exclude from referral prisoners who are so incapacitated by a permanent and debilitating medical condition or a terminal illness so as to represent no threat to public safety.*

C. If the Director and the Commissioner agree that no specific scientifically validated instrument exists to measure the risk assessment of a prisoner, the prisoner may instead be screened by a licensed psychiatrist, licensed clinical psychologist, or a licensed mental health professional certified by the Board of Psychology as a sex offender treatment provider pursuant to § [54.1-3600](#) for an initial determination of whether or not the prisoner may meet the definition of a sexually violent predator.

D. The Commissioner shall forward to the Director the records of all defendants who have been charged with a sexually violent offense and found unrestorably incompetent to stand trial, and ordered to be screened pursuant to § [19.2-169.3](#). The Director, applying the procedure identified in subsection B, shall identify those defendants who shall be referred to the CRC for assessment.

D. E. Upon the identification of such prisoners and defendants screened pursuant to subsections B, C, and D, the Director shall forward their names, their scheduled dates of release, court orders finding the defendants unrestorably incompetent, and copies of their files to the CRC for assessment.

§ [37.2-904](#). CRC assessment of prisoners or defendants eligible for commitment as sexually violent predators; mental health examination; recommendation.

A. Within 120 ~~180~~ days of receiving notice from the Director *the name of a prisoner or defendant who has been assessed by the Director pursuant to § [37.2-903](#) regarding a prisoner who is in the database, or from a court referring a defendant pursuant to § [19.2-169.3](#)*, the CRC shall (i) complete its assessment of the prisoner or defendant for possible commitment pursuant to subsection B and (ii) forward its written recommendation regarding the prisoner or defendant to the Attorney General pursuant to subsection C.

B. CRC assessments of eligible prisoners or defendants shall include a mental health examination, including a personal interview, of the prisoner or defendant by a licensed psychiatrist or a licensed clinical psychologist who is designated by the Commissioner, skilled in the diagnosis and risk assessment of sex offenders, knowledgeable about the treatment of sex offenders, and not a member of the CRC. If the prisoner's or defendant's name was forwarded to the CRC based upon an evaluation by a licensed psychiatrist or licensed clinical psychologist, a different licensed psychiatrist or licensed clinical psychologist shall perform the examination for the CRC. The licensed psychiatrist or licensed clinical psychologist shall determine whether the prisoner or defendant is a sexually violent predator, as defined in [§ 37.2-900](#), and forward the results of this evaluation and any supporting documents to the CRC for its review.

The CRC assessment may be based on:

An actuarial evaluation, clinical evaluation, or any other information or evaluation determined by the CRC to be relevant, including but not limited to a review of (i) the prisoner's or defendant's institutional history and treatment record, if any; (ii) his criminal background; and (iii) any other factor that is relevant to the determination of whether he is a sexually violent predator.

C. Following the examination and review conducted pursuant to subsection B, the CRC shall recommend that the prisoner or defendant (i) be committed as a sexually violent predator pursuant to this chapter; (ii) not be committed, but be placed in a conditional release program as a less restrictive alternative; or (iii) not be committed because he does not meet the definition of a sexually violent predator. To assist the Attorney General in his review, the Department of Corrections, the CRC, and the psychiatrist or psychologist who conducts the mental health examination pursuant to this section shall provide the Attorney General with all evaluation reports, prisoner records, criminal records, medical files, and any other documentation relevant to determining whether a prisoner or defendant is a sexually violent predator.

D. Pursuant to clause (ii) of subsection C, the CRC may recommend that a prisoner or defendant enter a conditional release program if it finds that (i) he does not need inpatient treatment, but needs outpatient treatment and monitoring to prevent his condition from deteriorating to a degree that he would need inpatient treatment; (ii) appropriate outpatient supervision and treatment are reasonably available; (iii) there is significant reason to believe that, if conditionally released, he would comply with the conditions specified; and (iv) conditional release will not present an undue risk to public safety.

E. Notwithstanding any other provision of law, any mental health professional employed or appointed pursuant to subsection B or [§ 37.2-907](#) shall be permitted to copy and possess any presentence or postsentence reports and victim impact statements. The mental health professional shall not disseminate the contents of the reports or the actual reports to any person or entity and shall only utilize the reports for use in examinations, creating reports, and testifying in any proceedings pursuant to this article.

F. If the CRC deems it necessary to have the services of additional experts in order to complete its review of the prisoner or defendant, the Commissioner shall appoint such qualified experts as are needed.

2. That the Director, in coordination with the Department, shall develop protocols to assess whether the individual meets the definition of a sexually violent predator and shall report to the General Assembly on protocol objectives, design, methodology, statistical considerations, embedded assumptions, risk assessments, and organization of the full assessment process. All measures shall be consistent with evidenced-based best practices. The primary tool of the protocols shall be a risk assessment instrument and corresponding reference score designated by the Commissioner. The Director shall submit the report to the Governor and the General Assembly by January 1, 2013.

3. That the provisions of this act shall become effective on January 1, 2013.

