



COMMONWEALTH of VIRGINIA
Office of the Governor

William A. Hazel, Jr., MD
Secretary of Health and Human Resources

October 26, 2012

The Honorable Robert F. McDonnell
Governor of Virginia
Third Floor, Patrick Henry Building
Post Office Box 1475
Richmond, VA 23218

Dear Governor McDonnell:

Pursuant to Item 273 B.1-3. of the 2012 *Appropriation Act*, I submit to you the enclosed report on current Sexually Violent Predator (SVP) cases and a six-year forecast of SVP eligibility, civil commitments, and SVP conditional releases, including projected bed space requirements. This report is done in collaboration with the Office of the Attorney General and the Secretary of Public Safety.

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

Sincerely,

A handwritten signature in black ink, appearing to read "William A. Hazel, Jr.", with a long, sweeping underline.

William A. Hazel, Jr., M.D.

Enc.

kb

Cc: Hon. Kenneth T. Cuccinelli, II
Hon. Marla Graff Decker
Mr. Harold W. Clarke
James W. Stewart, III



COMMONWEALTH of VIRGINIA
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William A. Hazel, Jr., MD
Secretary of Health and Human Resources

October 26, 2012

The Honorable Walter A. Stosch
Chair, Senate Finance Committee
10th Floor, General Assembly Building
910 Capitol Street
Richmond, VA 23219

Dear Senator Stosch:

Pursuant to Item 273 B.1-3. of the 2012 *Appropriation Act*, I submit to you the enclosed report on current Sexually Violent Predator (SVP) cases and a six-year forecast of SVP eligibility, civil commitments, and SVP conditional releases, including projected bed space requirements. This report is done in collaboration with the Office of the Attorney General and the Secretary of Public Safety.

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

Sincerely,

A handwritten signature in black ink, appearing to read "William A. Hazel, Jr.", written over a horizontal line.

William A. Hazel, Jr., M.D.

Enc.

kb

Cc: Hon. Kenneth T. Cuccinelli, II
Hon. Marla Graff Decker
Mr. Harold W. Clarke
Mr. James W. Stewart, III.
Ms. Jill Ryan
Mr. Dick Hickman
Mr. Joe Flores
Mr. Clyde Cristman



COMMONWEALTH of VIRGINIA
Office of the Governor

William A. Hazel, Jr., MD
Secretary of Health and Human Resources

October 26, 2012

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 273 B.1-3. of the 2012 *Appropriation Act*, I submit to you the enclosed report on current Sexually Violent Predator (SVP) cases and a six-year forecast of SVP eligibility, civil commitments, and SVP conditional releases, including projected bed space requirements. This report is done in collaboration with the Office of the Attorney General and the Secretary of Public Safety.

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

Sincerely,

A handwritten signature in black ink, appearing to read "W. Hazel, Jr.", written over a large, stylized "Z" or similar mark.

William A. Hazel, Jr., M.D.

Enc.

kb

Cc: Hon. Kenneth T. Cuccinelli, II
Hon. Marla Graff Decker
Mr. Harold W. Clarke
James W. Stewart, III
Ms. Jill Ryan
Mr. Paul Van Lenten, Jr.
Ms. Susan E. Massart
Mr. Anthony Maggio

**Sexually Violent Predator
Referrals, Commitments, and Bed Utilization
Forecast for FY2013 – FY2018**



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

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

October 26, 2012

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I. Executive Summary

This report is submitted in accordance with Item 282 C.1-3. of the 2012 *Appropriation Act*, which directs that:

B.1. The Secretary of Health and Human Resources, in collaboration with 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 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 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.

The commitment of individuals as Sexually Violent Predators (SVP) involves the court and three state agencies: the Department of Corrections (DOC), the Office of the Attorney General (OAG), and the Department of Behavioral Health and Developmental Services (DBHDS).

Persons civilly committed as Sexually Violent Predators (SVP) are housed in the Virginia Center for Behavioral Rehabilitation (VCBR) on the grounds of the Piedmont Geriatric Hospital (PGH) in Nottoway County. This facility was designed with a capacity in 2000 of 300 beds. The 2011 General Assembly directed that the facility be double-bunked to increase capacity to 450. When the facility opened in 2003, there were four SVP predicate crimes and the monthly gross admissions rate was below one per month. Anticipating an admission rate of two per month placed reaching maximum census over 12 years later to 2015. In 2006, the number of SVP predicate crimes was increased to 28. At the same time, the RRASOR risk assessment tool was replaced by the STATIC-99.¹ Combined, this increased the yearly admission rate to VCBR from 24 admissions in 2005 (2 per month) to 67 admissions in 2008 (5.58 per month).

Beginning in 2006, DBHDS has submitted an annual forecast of census growth at VCBR to the General Assembly as the *Sexually Violent Predator Referrals, Commitments, and Bed Utilization Forecast* report, most recently submitted as Report Document No. 378 (2011). The forecast predicts how many individuals will be:

- Found SVP during the forecast period;
- Civilly committed to VCBR;
- Placed on SVP conditional release directly from the DOC; and

¹ A comparison of the tools can be found in Report Document 80 (2005), Report of the Virginia State Crime Commission: Sex Offenders in Virginia, [http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/RD802006/\\$file/RD80.pdf](http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/RD802006/$file/RD80.pdf)

- Conditionally released from the VCBR.

The 2011 Forecast predicted that 73 individuals would be found to be SVP by the courts between July 1, 2011 and June 30, 2012. The last forecast estimated that 60 of these individuals would be committed to the VCBR. That rate projected the total census at the facility to 335 by June 30, 2012.

Since the 2011 Forecast was published, on 1 July 2012, the gross census was 310.² Of this number, 294 (net census) were residents at the facility on 1 July 2012. The remaining individuals not in residence were in jail for new criminal offenses or in hospital for treatment or medical tests. These issues and the six-year forecast are presented below.

II. Forecast and Discussion

In the year since the last DBHDS forecast (July 2011), the average monthly admission rate to VCBR was 5.42. During the present calendar year (January 2012 through September 2012), the admission rate has been 5.25 per month. The present forecast predicts an admission rate between 3.75 and 4.00 per month through the remainder of this measurement period (through June 2018). Much of this predicted rate can be explained by two primary factors:

1. There is an increase in the number of SVP cases being diverted from commitment at the VCBR to SVP conditional release in the community (going directly from DOC to the community); and
2. There is an increase in the number of residents at the VCBR being granted SVP conditional release from the facility. Since 2010, the number of individual residents released from the VCBR has been steadily increasing from 6 releases in 2010, to a total of 43 occurring between January 2011 and October 2012.

However, the actual impact of these factors often overlap and are shaped by other factors, such as the return to VCBR of persons previously placed on SVP conditional release (due to new offenses or technical violations) or, individuals returned to jail or prison as a result of acts committed while in the VCBR. Responding to the above rates of additions to and discharges from the VCBR, the attached forecast (see Table 1) shows anticipated census growth for the years 2013 to 2018.

² The terms gross and net are used in this document to differentiate between the total number of persons committed to VCBR (gross census) and the number actually residing at the facility (net census).

Table 1. Six-year Bed Use Forecast for VCBR: FY 2013 to 2018.*

	By Year	Adjustment**	2013	2014	2015	2016	2017	2018
1	SVP-eligible DOC inmates reviewed for SVP civil commitment, by year		670	676	679	681	686	690
2	Evaluated for CRC	22%	147	149	149	150	151	152
3	Found SVP and Civilly Committed to VCBR	43%	63	64	64	65	65	65
4	Projected VCBR GROSS Census on 1 July ³	310 ⁴	373	437	501	566	631	696
5	Projected yearly Releases From VCBR ⁵	-26	-28	-28	-28	-30	-30	-30
6	Projected SVP conditional releases revoked and detainees admitted to VCBR ⁶	+10	+10	+11	+12	+12	+12	+12
7	Projected Net Admissions to VCBR ⁷		45	47	48	47	47	47
8	NET Census Forecast for VCBR on 1 July⁸		339	386	434	481	528	575
9	Average Monthly Gross Admissions		5.25	5.33	5.33	5.33	5.33	5.33
10	Average Monthly Net Admissions (Adjusted for Releases)		3.75	3.92	4.00	3.92	3.92	3.92

* Definitions of this forecast table and terms used are included in Appendix A.

** This column indicates factors by which current data is multiplied, added to, or subtracted from to arrive at the current forecast.

Table 2. Releases from VCBR: 2003 to 2012

Year	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
	0	0	1	0	2	2	6	12	28	15

³ The GROSS value is calculated by adding Line 4 to the VCBR census value on 1 July of the previous year. For example: 1 July 2012 value = 292. Adding Line 4 (71) = 363.

⁴ VCBR actual census on 1 July 2012.

⁵ Includes conditional releases, residents unconditional released by courts, residents placed in jail or returned to DOC, deaths, and medical discharges.

⁶ Includes persons returned to VCBR upon revocation from conditional release, persons returned to VCBR pending revocation of conditional release hearings, and URIST admissions pending final commitment.

⁷ Projected NET Admissions is calculated by subtracting Line 8 from line 4; subtracting that amount from Line 3.

⁸ This figure represents the NET census increase during the identified fiscal year.

⁸ NET Census Forecast (Line 8) is calculated by adding Line 7 to Line 8 of the previous year.

Table 3. DOC Projections of Inmates becoming SVP-eligible: 2012 to 2018

SVP Forecast Report for	2012	2013	2014	2015	2016	2017	2018
2011 Six-Year Projection	629	509	567	493	546	526	
2012 Six-Year Projection		670	676	679	681	686	690

Discussion

Because this forecast deals with such small numbers, a small amount of error can have a significant effect. For example, under or over predicting the number of admissions by 3 cases, in a set of 45, represents a 7% variance. In this forecast, variance arises from at least five potential sources:

1. Variation in the percentage of cases being sent forward from DOC for SVP evaluation by DBHDS (though it should be noted that this has remained within a 2% range from 22-24%),
2. Variation in the percentage of cases found SVP by the courts and committed to VCBR,
3. Variation in the number of cases placed on conditional release directly from DOC, bypassing VCBR,
4. Variation in the number of cases being discharged for all reasons from VCBR, and
5. Variation in the number of cases placed on SVP conditional release and subsequently revoked and readmitted to VCBR.

Uncounted variance: Other uncounted sources of variation in the forecast include admission of persons found Unrestorably Incompetent to Stand Trial (URIST) and individuals found to be SVP who are female. Because the overall number of these types of cases is small, their effect on the census is not included in calculating the forecast.⁹

Another source of variance is the percentage of cases recommended for SVP civil commitment and ultimately found to be SVP by the court. Since 2010, that number has declined from 59% to 43%. To illustrate the impact of this variation, assume that for one year, 147 inmates are evaluated for SVP commitment. If 59% are found SVP this equals 87 individuals. If 43% are found SVP this equals 63 individuals. This is a difference of 24 individuals. The DBHDS Office of SVP Services, in cooperation with the DOC Office of Sex Offender Screening and Assessment (SOSA) and the Office of the Attorney General SVP unit, continue to collaborate to monitor and analyze the variation.

⁹ For example, since 2003, only three females have been committed as SVP. During any single year, the VCBR receives between 1 and 3 URIST admissions. There is no way to predict when either type of admission is likely to occur.

Reasons for discharges are more identifiable. For example, in the last several years the SVP program has matured and strengthened clinically. Over the past two years, the percentage of residents actively participating in treatment increased to approximately 98%. Partially as a result of new leadership, comprehensive clinical and vocational programs, and also the number of residents meeting criteria for consideration for SVP conditional release increased. At the same time, each year other residents are:

- Removed from VCBR and placed in jail or DOC for having committed new crimes while in the facility,
- Been placed in special hospitalization for chronic and serious physical illness, or
- Have been unconditionally released by the courts.

Of these cases, those that tend to be removed from the census count are those returned to jail or DOC. The increased use of conditional release from DOC lowers predicted bed census and slows growth by deflecting individuals who would have been admitted to the VCBR. Since the SVP program opened in 2003, 100 individuals have been granted conditional release (from DOC or VCBR). Of these, 16 individuals (23%) have been granted conditional release from the VCBR. (See Table 2 above.)

In 2011, the Virginia General Assembly instructed DBHDS to increase capacity at VCBR by up to 150 additional residents. In response, DBHDS modified 150 single-resident rooms for double occupancy, which raised the maximum census for the facility to 450.

Conclusion

Based on the forecast of admissions between 2013 and 2018, VCBR is predicted to reach its maximum capacity of 450 residents during the fall of 2015. By the end of this forecast period (June 30, 2018) the VCBR net census is predicted to be 575.

III. Appendices

Appendix A: Definitions

Definitions of Forecast table and terms used.

Each year, in cooperation and consultation with the Department of Corrections (DOC) the Office of the Attorney General (OAG), and the Department of Behavioral Health, and Developmental Services (DBHDS) prepares a forecast of the number of SVP admissions that can be expected to the VCBR. The elements of this process and the findings are described below and illustrated in the accompanying Table (Table 4). For the purposes of this forecast the lines and terms used in its preparation are defined as follows.

Statistics and Percentages: Estimates of the rates at which specific events will occur in each of the upcoming six fiscal years – 1 July to 30 June each year.

Line 1: SVP-eligible DOC inmates reviewed for SVP civil commitment, by year. As required by the Code of Virginia (COV) at §37.2-903, the DOC SOSA identifies and screens all inmates currently serving a sentence on conviction for a Sexually Violent Predator (SVP) predicate crime who will become eligible for release during each of the next six fiscal years. This figure is forecasted by the DOC based on the Secretary of Public Safety's State Responsible forecast model and provided to the DBHDS. It is the basis for developing the six year forecast.

Line 2: Evaluated for CRC (22%). As part of the screening process, the SOSA completes an actuarial risk for sexual recidivism instrument on each SVP-eligible inmate. Currently, the instrument used is the Static-99. Inmates scoring at or above the COV determined threshold are referred to the DBHDS OSVP for SVP evaluation. Reports of these SVP evaluations are sent to the DOC Commitment Review Committee (CRC). The CRC, established by COV §37.2-902, reviews the reports and other pertinent data relating to the inmate and makes recommendation to the OAG SVP Unit for either SVP civil commitment, SVP conditional release, or full release. These recommendations are non-binding on the OAG.

Line 3: Found SVP and Civilly Committed to VCBR (43%). In those cases referred for a full SVP evaluation, ultimately 43% were found to be SVP and committed to the VCBR.

Line 4: Projected VCBR GROSS Census on 1 July. As footnoted, this is a gross number, ignoring all releases and recommitments that will occur during the upcoming six fiscal years. This gross number is derived by adding the 43% of inmates committed to the VCBR to the VCBR census on 1 July of the previous year.

Line 5: Projected Yearly Releases from VCBR. It is expected that a certain number of VCBR residents will be released to the community. This will include:

- SVP conditional release of residents by the court to intensive community supervision,
- unconditional release by the court to the community without supervision,
- medical release to the community with or without supervision,
- transfer to jail or hospital, and
- Residents convicted of new crimes and placed with the DOC

During the present forecast period, it is estimated that this number will vary between about 26 and 30 each year. This number is subtracted from the Gross census estimate in Line 4.

Resident: Persons civilly committed to and residing in the VCBR.

SVP Conditional Release: COV §37.2-912, A and B, allows for some individuals to be placed in the community on intensive SVP supervision. Individuals considered for conditional release must have a viable and acceptable home plan before release. These plans are reviewed by the DOC office of Community Corrections/Probation and Parole against criteria established between the DOC, DBHDS and the OAG. Supervision follows a model of Community Containment used nationally with this and other sex offender populations. This approach uses routine polygraph examinations and close cooperation between community sex offender treatment providers and the probation officer. Regular progress and incident reports are provided to the OSVP, the OAG, and the courts.

Line 6: Projected SVP Conditional Releases Revoked and returned to VCBR and Detainees admitted to VCBR. It is expected that a small number of persons found SVP and placed on SVP conditional release, either directly from the DOC or later from VCBR, are revoked and returned to VCBR. During the present forecast period, it is estimated that this number will vary between about 10 and 12 each year. This number is added to the Gross census estimate in Line 4.

Line 7: Projected NET Admissions to VCBR. As footnoted, this is an adjustment to the 43% expected to be civilly committed as SVP to the VCBR. It is calculated by subtracting Line 8, NET Census Forecast, from Line 4, the Projected GROSS VCBR census. The resulting number is then subtracted from Line 3, number committed to VCBR. This number represents the number of admissions expected during the upcoming six years.

Line 8: NET Census Forecast for VCBR. This number is the expected actual census figure for 1 July of each of the upcoming six years. It is calculated by adding Line 7, NET admissions to VCBR, to Line 8 of the previous year.

Maximum VCBR Census. The total number of beds available in the present VCBR. At this time maximum census is 450.

Commitment Review Committee, CRC. The *Code of Virginia* established a SVP processing work group, including members from DOC, DMHMRSAS, and OAG.

Secretary of Public Safety State Responsible Forecast Model. Virginia's public safety annual forecasts are produced by three committees using a consensus method. A technical committee employs quantitative methods to make projections based upon past trends and

patterns. (For more information:
<http://www.vadoc.virginia.gov/about/facts/research/state.shtm>)

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 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.

URIST. Unrestorably Incompetent to Stand Trial, as defined by §19.2-169.1 and .3.

Appendix B: 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 a full-time SVP screening unit responsible for providing Static-99 scores on all SVP-eligible inmates. 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 identifies the number of SVP-eligible inmates pending release each month during the upcoming year, 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 reconciles these data sets to each other. From these data, rates of evaluation, probable cause, finding of SVP, and civil commitments are established. These percentages form the basis for calculating the 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, the DOC has forecasted the number of State Responsible Releases that have convictions for SVP predicate offenses for the next six fiscal years. For each year's forecast, DBHDS knows approximately how many inmates in DOC having convictions for SVP predicate crimes will enter the SVP-eligible pool each year. From the previous years experience it is possible to 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.

However, two factors contribute to forecast adjustments:

- the amount of time between commitment by the court and arrival at VCBR; and
- final disposition of a case (to full release, to SVP conditional release, or to VCBR).

After final disposition and before admission to VCBR, there are often appeals and other court continuances that push back final admission. In an extreme case, five years passed before one individual was admitted to VCBR. Further, at any given time, between 80 to 100 cases are pending final disposition. Cases may remain in this status for as little as a few hours (when inmates stipulate that they are SVP) or as long as five years (when individuals oppose commitment using all available legal means). Any or all of these cases could be committed to the VCBR on any day. These cases are factored into the overall forecast calculation and variance.