



COMMONWEALTH of VIRGINIA

Office of the Governor

Daniel Carey, MD
Secretary of Health and Human Resources

November 15, 2018

MEMORANDUM

TO: The Honorable Ralph S. Northam
Governor of Virginia

Senate Finance Committee

House Appropriations Committee

FROM: Daniel Carey, MD

A handwritten signature in cursive script that reads 'Daniel Carey'.

SUBJECT: Annual report pursuant to Item 281 A.1. of the 2018 Appropriation Act

Attached is the Report pursuant to Item 281 A.1. of the 2018 Appropriation Act which requires the Secretary of Health and Human Resources to submit an annual 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 the Senate Finance Committee and House Appropriations Committee.

Should you have any questions or need additional information, please feel free to contact me at (804) 786-7765.

DC/kb

Enclosure

**Sexually Violent Predator Referrals, Commitments
and Bed Utilization Forecast for FY 2019 to FY 2024
(Item 281 A.1.)**

November 15, 2018

Sexually Violent Predator Referrals, Commitments and Bed Utilization Forecast for FY 2019 to FY 2024

Preface

Item 281 A.1. of the 2018 Appropriation Act requires the Secretary of Health and Human Resources to submit an annual report to the Governor and the General Assembly.

The Secretary of Health and Human Resources, in collaboration with the Office of the Attorney General and the Secretary of Public Safety and Homeland Security, 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 November 15 of each year.

Sexually Violent Predator Referrals, Commitments and Bed Utilization Forecast for FY 2019 to FY 2024

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Executive Summary

The census at VCBR will outgrow existing space near the end of this calendar year. Construction has begun on the expansion of VCBR in June of 2018 which will increase bed capacity to 632 residents. It is anticipated that the expansion will be completed in 2020, however, VCBR will hit its maximum operational capacity well before 2020 thus the Department of Behavioral Health and Developmental Services (DBHDS) has made plans to address the census demands. Specifically modifications are being made to an existing wing of Piedmont Geriatric Hospital that will temporarily house medically compromised VCBR residents until the VCBR expansion is complete. Additionally, the expansion of VCBR is being done in phases, thus allowing housing units/wings to be brought on line incrementally during the construction allowing DBHDS to address growing census needs.

VCBR will also exceed its post-expansion capacity of 632 beds by late calendar year 2022 or early 2023. In response to a legislative mandate, DBHDS submitted a report to the General Assembly in November 2016 outlining alternatives to secure confinement that the General Assembly could implement to delay future needs to expand the VCBR and reduce costs. These proposals include options such as the purchase of nursing home beds and assisted living facility (ALF) placements, pre-SVP treatment programs and transitional housing programs. It is anticipated that implementing these strategies would slow the census growth over time, although it is unlikely that the interventions themselves (other than if the General Assembly were to amend the Code and remove certain offenses from the list of offenses which qualify an individual for commitment) would reverse the census growth and negate the need for the secured treatment program.

The information included in this forecast is based on historical data related to the civil commitment and conditional release of sexually violent predators (SVPs) in Virginia combined with data from the Virginia Department of Corrections (VADOC) on the number of inmates likely eligible for release in the upcoming six fiscal years who appear to meet the criteria for review for possible commitment as a sexually violent predator, as established by the Code of Virginia. This forecast is an attempt to predict how past patterns and current trends may impact future Virginia Center for Behavioral Rehabilitation (VCBR) census data. There are a number of variables that contribute significantly to the outcome predictions in this report including the current census of VCBR and the number of SVP individuals on conditional release status in the community. The data related to these variables is outlined in this report and described in further detail in the Forecast Variables section. It is important to note that it is not possible to predict every variable that may either positively or negatively impact the eventual census outcomes with complete accuracy. However, this forecast represents an informed approximation of how many SVP individuals will be residing at VCBR and on conditional release in the community for each of the next six years.

Forecast

Table 1 below summarizes the anticipated census at VCBR at the end of each of the upcoming six fiscal years. Of note is the fact VCBR will be well over its current operational capacity of 450 by the end of FY 2019 and is also predicted to exceed its expanded operational capacity of 632 (which will be completed in 2020) in FY 2023.

Table 1. 2018 Forecast - Predicted Census Growth at VCBR between FY 2019 and FY 2024

Fiscal Year	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Census (June 30th)	490	528	574	622	673	726

Table 2 provides a detailed explanation of how the projected census estimates were calculated for the next six fiscal years.

Table 2. Annual Six-Year VCBR Census Forecast

	Fiscal Year	FY19	FY20	FY21	FY22	FY23	FY24
1	Dept. of Corrections (DOC) Sex Offender Pool Forecast	733	606	711	743	765	787
2	Adjusted DOC SVP Eligible Pool (- 10%)	660	545	640	669	688	708
3	SOSA ¹ Evaluation Request Rate (12%)	79	65	77	80	83	85
4	Found SVP at Trial (90%)	71	59	69	72	75	77
5	SVP Released by Court to Conditional Release Directly from DOC (16%)	-11	-9	-11	-12	-12	-12
6	VCBR New Admissions	60	50	58	60	63	65
7	Discharges to conditional release, Unconditional Release, Commissioner's Petition, Death	-50	-50	-50	-50	-50	-50
8	VCBR Revocation Admissions	38	38	38	38	38	38
9	Adjusted VCBR Admissions (net)	48	38	46	48	51	53
10	Projected VCBR Census at end of FY (as of June 30 th)	490 **	528	574	622	673	726

** Actual Census at VCBR on June 30, 2018 was 442. Adding adjusted net admissions results in a projected census of 490 for June 30, 2019.

¹ The term "SOSA" refers to the DOC Sex Offender Screening and Assessment Unit.

Methodology

Data regarding the number of VCBR admissions and discharges is the most significant information available to understand SVP census growth. A number of questions must be considered to accurately calculate this information.

1. How many SVP-eligible inmates will be released from DOC during a specific period of time?
2. What percentage of these cases will meet criteria for further SVP review and evaluation?
3. Of those cases reviewed and evaluated, how many will be found to meet the criteria of SVP?
4. Of those found SVP, how many will be committed to VCBR?
5. How many individuals will progress in treatment to the level that they can be safely transitioned back into the community?
6. How many individuals will the court order to be conditionally released to the community?
7. How many individuals granted conditional release by the court will be unable or unwilling to comply with the conditions of their release and as a result will have their conditional release revoked and will be recommitted to VCBR?

For the purpose of this report, the term “discharge” includes individuals granted conditional release and individuals granted unconditional release. Discharge may also include deaths and individuals released from temporary holds such as emergency custody orders and individuals temporarily placed at VCBR due to their status as Unrestorably Incompetent to Stand Trial (URISTs).

Nine variables were used to calculate this year’s forecast (Table 2). During the development of each year’s SVP forecast, the impact of each variable is reassessed. Some variables may be dropped from consideration should they no longer contribute to the accuracy of the forecast. Other variables may be added as their influence is identified and they are shown to improve overall forecast accuracy. The nature and influence of these variables, and the influence of their various interactions, is described below. The line numbers coincide with those of the forecast information shown in Table 2.

Forecast Variables

Line 1 – DOC Sex Offender Pool Forecast. This forecast is created by DOC each year. It estimates the number of inmates who are currently serving sentences for a qualifying SVP crime (see Virginia Code §37.2-900) who will become eligible for release during each of the next six fiscal years. The DOC provides this data to DBHDS which forms the basis for DBHDS’ SVP forecast.

Line 2 – Adjusted DOC SVP Eligible Pool (-10%). Regarding predicate offenses that involve murder and abduction, the DOC data pool cannot differentiate between sub-categories that are considered predicate offenses and those that are not. For example, not every inmate convicted of murder is eligible for consideration for SVP commitment, rather it is only those individuals who killed in the commission of or attempt to commit rape, sodomy, or object sexual penetration. The DOC Sex Offender Pool Forecast is unable to automatically remove such individuals from the pool but instead this differentiation is completed as individuals are subjected to the Code mandated screening process. In order to avoid artificial inflation of the SVP eligible pool, the DOC pool is reduced by 10% to adjust for individuals who may be included but do not actually meet SVP criteria.

Line 3 – SOSA Evaluation and CRC review Rate (12%). It has been estimated (based on historical trends) that 12% percent of cases from Line 2 will meet the screening criteria and be reviewed by the interagency Commitment Review Committee (CRC) for consideration of SVP civil commitment.

Line 4 – Found SVP at Trial (90%). After cases are reviewed by the CRC, they are referred to the Office of the Attorney General (OAG) for final review and the decision whether or not to pursue SVP civil commitment. The current forecast is based on historical data. It is estimated that about 90% of the cases reviewed by the CRC will end up with the individual being found to meet the statutory criteria to be a Sexually Violent Predator. It is notable that not all cases referred to the OAG for review are taken forward for SVP civil commitment. In addition, some cases where the OAG has sought civil commitment as an SVP result in the judge/jury finding in fact the individual does not meet the statutory criteria for commitment.

Line 5 – SVP Release by Court from the DOC directly to SVP Conditional Release (16%). Of those cases found to be SVP, the courts may choose to release some inmates directly from the DOC to SVP conditional release status. This occurs when the court finds the individual to be a SVP but does not believe they require secure confinement and treatment but instead believes that they can be safely managed on conditional release in the community. These cases do not go to the VCBR but instead go directly from the DOC to the community. While the value of this variable changes from year-to-year, the value adopted for the FY 2019 forecast is 16% based on historical trends.

Line 6 – VCBR New Admissions. This is the number of individuals civilly committed to VCBR. It does not include individuals revoked from conditional release and admitted to VCBR (see Line 8). This number equals the value of Line 4 minus Line 5. It is important to note that a small number of individuals who are charged with SVP qualifying crimes but are found to be unrestorably incompetent to stand trial (URIST) ultimately are civilly committed as sexually violent predators and ordered into DBHDS/VCBR custody. This is a very small number (1 or 2 per year) but can impact on census projections in the long term.

Line 7 – All Discharges (SVP Conditional Release, Unconditional Release, Commissioner’s Petition, or Death). It is difficult to anticipate how many releases will take place from the VCBR each year since it is unknown if eligible individuals will have the required level of community support for the court to approve their conditional release plans. In this case, through consultation with the VCBR, estimates are made of how many individuals will become eligible

for discharge to SVP conditional release from VCBR during the upcoming year, how many individuals will be unconditionally discharged as “no longer SVP” by the courts, and how many VCBR residents will die each year. By comparing the available data with prior years, an estimate of this value is developed. The average of the past four years is 50. This excludes the FY 2016 outlier when a disproportionately high number of residents were released as part of a targeted measure to clear a backlog of individuals who were clinically ready to release but who in fact had not been released due to a lack of community resources.

Line 8 – VCBR Revocation Admissions. The DBHDS Office of Sexually Violent Predator (OSVP) Services keeps data on discharges to SVP conditional release, revocations from SVP conditional release, and subsequent admissions to VCBR. It is important to understand that Line 5 cases (individuals conditional released directly from the DOC) may also be admitted to VCBR should they violate the conditions of their release and be deemed no longer suitable to remain in the community. Others will be returned to the DOC or placed in jail on a new or reinstated sentence should their behavior constitute illegal activity and/or a violation of their release conditions. As the population of SVP individuals on conditional release in the community grows, so does the number of individuals who could potentially have their conditional release revoked and require commitment to VCBR. Revocations are highly individualized and dependent on a particular individual’s ability/willingness to comply with the conditions of their release. It is worth noting that very few individuals on SVP Conditional Release have re-offended sexually and in such cases often a new term of imprisonment is imposed and if/when they are again eligible for release from their prison term they likely would be recommitted to DBHDS/VCBR custody.

It is difficult to predict which individuals will struggle on conditional release and which will be successful, thus making generating an accurate forecast more challenging. In reviewing the numbers for FY 2018 and the projected trend for FY 2019, DBHDS anticipates an average of 38 revocations (resulting in commitment to VCBR) each fiscal year.

Line 9 – Adjusted VCBR Admissions (net). This line is an estimate of the final yearly admissions to the VCBR, adjusted for discharges. It represents the total admissions to the VCBR after subtracting Line 7 (all discharges) from Line 6 (new admissions) and adding the result to Line 8 (revocation admissions). This line is subject to the same limits on accuracy addressed for Line 7.

Line 10 – VCBR Census Forecast (Each Year on June 30th). This line represents the yearly VCBR census predicted for the end of each of the upcoming six fiscal years. It is calculated by adding Line 9 to the previous year’s June 30th census.

Conclusion

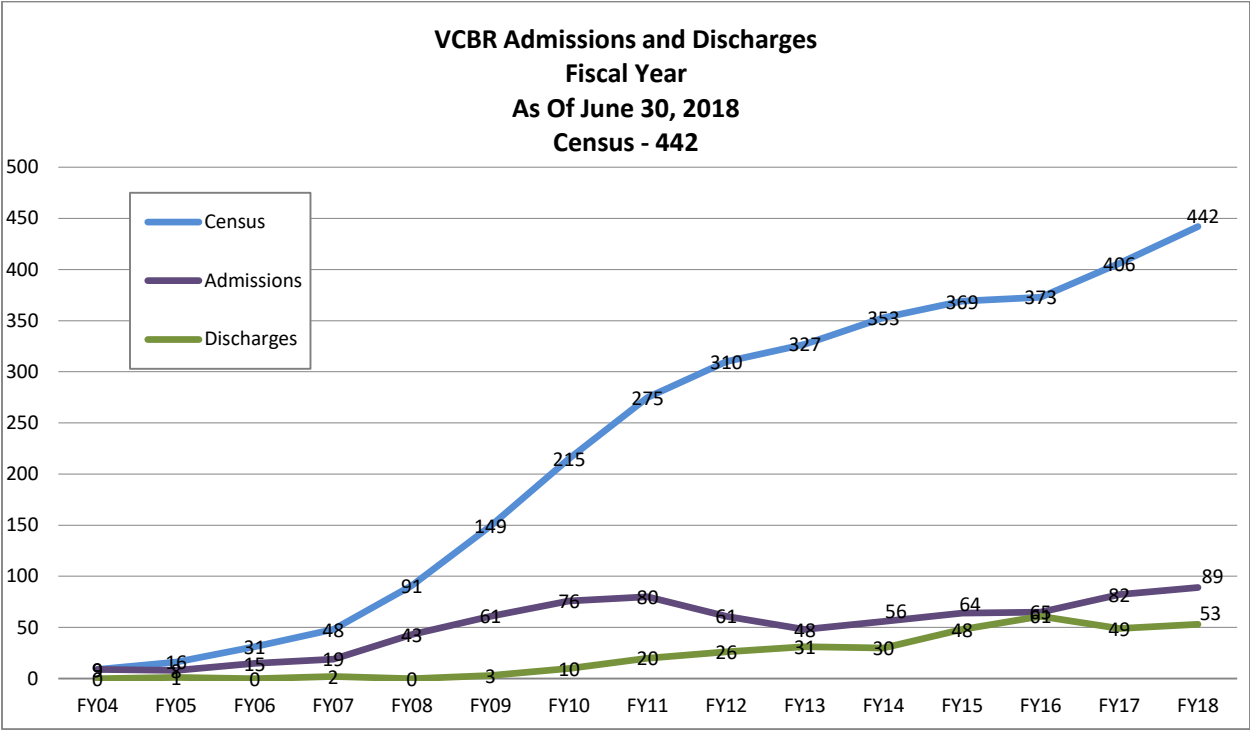
The current forecast predicts that VCBR will reach a maximum census capacity of 450 residents early in FY 2019. The number 450 represents the absolute maximum capacity and is premised on being able to use every available bed at VCBR. The reality is that there are many VCBR residents who can only be housed in a lower bunk (due to medical issues), can only be housed in

lower tiered rooms (due to medical issues), cannot live on certain units (due to gang issues, histories of violence, etc.), or cannot share a room (due to risk of sexual victimization or severe psychiatric symptoms which result in functional impairments that make sharing a room impossible, and/or risk for perpetrating significant violence). As such, for all practical purposes VCBR has already been operating at maximum functional capacity.

Predicting the SVP forecast has been historically challenging for a variety of reasons including higher than expected rates of release for the last four fiscal years, higher than anticipated revocation rates, and significant growth in the SVP eligible population secondary to Code changes enacted in 2006. While some had predicted the pool of SVP eligible individuals in DOC would drop over time due to stronger sentencing guidelines, no appreciable drop has been noted. As noted, it is anticipated that each year an additional 50-60 individuals will be committed to VCBR. Absent some intervention or change, VCBR will outgrow the soon to be newly constructed expansion within years of its completion in FY 2023. To avoid or delay this inevitability, it is recommended that the Commonwealth implement strategies outlined in the November 1, 2016 DBHDS report to the General Assembly, “Alternatives to Secure Confinement for Sexually Violent Predators: An Analysis of Cost-Effective Alternative Methods of Treatment & Monitoring (Item 331.D).”

Appendices

Appendix A - VCBR Census, Admissions and Discharges FY 2004 to FY 2018



Appendix B – Terminology

Commitment Review Committee (CRC): The Code established the CRC in §37.2-902 for the purpose of evaluating and making recommendations regarding inmates and defendants (URIST) relating to SVP civil commitment. The CRC is chaired by the DOC with members drawn from the DOC, OAG and DBHDS.

Maximum VCBR Design Census: The total number of beds available in the present VCBR. At this time, VCBR has 450 beds, 150 in double occupancy rooms.

OSVP: Office of Sexually Violent Predator Services (OSVP) established by the General Assembly in 2006 per §37.2-900.1.

Revocation from SVP Conditional Release: Since the SVP program opened in December 2003, there have been 141 cases (94 discharged/conditionally released from VCBR and 53 conditionally released directly from court to the community) revoked for various technical and criminal violations. The majority of these revocations are the result of three violation behaviors; GPS violations, alcohol and drug violations, and failure to follow the supervising probation officer's instructions. New criminal sexual behavior accounts for only about 3% of all violations.

SVP Conditional Release: §37.2-912 A-B, allows for some individuals to be placed in the community on intensive SVP supervision provided by the DOC's Office of Community Corrections – Probation and Parole. Regular progress and incident reports are provided to DBHDS, the OAG, and the courts.

SVP-eligible inmate: An individual who is presently serving a sentence in the DOC on conviction for one of the SVP qualifying crimes listed in COV at §37.2-900 and approaching his/her release date or being considered for parole.

SVP: Sexually Violent Predator, as defined in the Code of Virginia at §37.2-900.

URIST: Unrestorably Incompetent to Stand Trial, as defined by the CODE of Virginia at §19.2-169.1 and §19.2-169.3.

VCBR: The Virginia Center for Behavioral Rehabilitation.