



COMMONWEALTH of VIRGINIA

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December 1, 2022

To: Governor Glenn A. Youngkin
The Honorable Janet Howell, Co-Chair, Senate Finance and Appropriations
Committee
The Honorable George Baker, Co-Chair, Senate Finance and Appropriations
The Honorable Barry Knight, Chair, House Appropriations Committee

From: Nelson Smith, Commissioner, Department of Behavioral Health and
Developmental Services

RE: Item 283 A.1, 2022 Appropriation Act

Item 283 A.1 of the 2022 Appropriation Act requires the Secretary of Health and Human Resources to submit an annual report to the Governor and the General Assembly. The language reads:

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.

Please find enclosed the report in accordance with Item 283 A.1. DBHDS staff are available should you wish to discuss this request.

cc: Secretary John Littel



Virginia Department of
Behavioral Health &
Developmental Services

Sexually Violent Predator Referrals, Commitments and Bed Utilization Forecast Report for FY 2023 to FY 2028

(Report on the SVP Referrals, Commitments and Bed Utilization)

December 1, 2022

DBHDS Vision: A Life of Possibilities for All Virginia

Item 283 A.1 SVP Referrals, Commitments and Bed Utilization Report

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Executive Summary

Pursuant to budget language, staff from the Department of Behavioral Health and Developmental Services (DBHDS) collaborate with staff from the Virginia Department of Corrections (DOC) and the Office of the Attorney General (OAG) to develop a forecast of the number of individuals who will be involved in Virginia's sexually violent predator (SVP) civil commitment and conditional release programs. This forecast is revised and adjusted each year based on changes in historical trends, new developments related to the SVP process and system changes that may affect the census of the Virginia Center for Behavioral Rehabilitation (VCBR). Reviewing this data annually provides an opportunity to learn from the comparison of prior forecasts with actual outcomes, anticipate potential changes in the system and prepare or respond to changes by allocating resources accordingly.

Several variables influence the projected VCBR census and are regularly reviewed for the purpose of this forecast. However, it is not possible to predict every variable that may either positively or negatively impact the SVP system and VCBR census outcomes with complete accuracy. An example of this is the COVID-19 pandemic which had a significant impact on the SVP system. This system includes the DOC, OAG and DBHDS. While all these agencies have seen improvement in the impact of COVID-19 on daily operations, the current impact on these agencies remains varied with some operating at closer to a pre-pandemic level than others. At this time, there is no way to know how long these issues will continue and what permanent effect, if any, there may be on future operations. This has led to concern regarding the data for fiscal years 2020 through 2021 and its use in attempting to interpret recent trends. As such, the DOC, DBHDS and the OAG are in agreement that the data provided in this report should still be interpreted with caution.

Based on this determination, this forecast suggests that the VCBR census may continue to grow over the upcoming six years but at a slower rate than anticipated in previous years. Changes in the state responsible (SR) population of DOC inmates and a sustained relatively high rate of individuals being approved for conditional release from VCBR has contributed to this slower growth. As of the date of this report, Virginia continues to have the highest rate of conditional releases from an SVP civil commitment facility in the country. Despite this, the lack of community resources and alternatives to secure confinement continue to contribute to the census and cost of VCBR. For more information, see the report submitted to the General Assembly dated October 1, 2020, "Program and Community Alternatives to Reduce SVP Civil Commitment." Investment in community-based resources would slow potential VCBR census growth, provide a continuum of treatment and supervision, and offer less costly alternatives to secure confinement.

Preface

Item 283 A.1. of the 2022 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.

Forecast

Table 1 summarizes the anticipated census at VCBR at the end of each of the upcoming six fiscal years.

Table 1. 2022 Forecast - Predicted Census Growth at VCBR between FY 2023 and FY 2028

Fiscal Year	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Census (As of 6/30)	412	416	420	422	423	424

Table 2 provides a detailed explanation of how the projected census estimates were calculated.

Table 2. Annual Six-Year VCBR Census Forecast

	Fiscal Year	FY23	FY24	FY25	FY26	FY27	FY28
1	Dept. of Corrections (DOC) Sex Offender Pool Forecast	870	841	848	793	768	727
2	Adjusted DOC SVP Eligible Pool (-18%)	713	690	695	650	630	596
3	SOSA ¹ Evaluation Request Rate (8%)	57	55	56	52	50	48
4	CRC referral to OAG (70%)	40	38	39	36	35	34
5	Found SVP at Trial (90%)	36	34	35	32	31	31
6	SVP Released by Court to Conditional Release Directly from DOC (16%)	6	5	6	5	5	5
7	VCBR New Admissions	30	29	29	27	26	26
8	Discharges to conditional release, Unconditional Release, Commissioner's Petition, Death	53	53	53	53	53	53
9	VCBR Revocation Admissions	28	28	28	28	28	28
10	Adjusted VCBR Admissions (net)	5	4	4	2	1	1
11	Projected VCBR Census at end of FY (as of June 30 th)	412 ²	416	420	422	423	424

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

² The actual census at VCBR on June 30, 2022 was 407. This was added to the adjusted net admissions which results in a projected census of 412 for June 30, 2023. It is unclear what the impact of COVID-19 may be on this number.

Methodology

Data regarding the number of VCBR admissions and discharges is the most significant information available to understand SVP census growth. Several 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 have their conditional release revoked and be recommitted to VCBR?

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

Ten variables are used to calculate the SVP forecast (Table 2). Each year, 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 accuracy. The nature and interaction of these variables are described below. The line numbers coincide with the forecast information shown in Table 2.

Forecast Variables

Line 1 – DOC Sex Offender Pool Forecast. This forecast is created by the 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, and it forms the basis for SVP forecast.

Line 2 – Adjusted DOC SVP Eligible Pool (-18 percent). 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 murdered in the commission of rape 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. These individuals are instead filtered out during the Code mandated screening process. To avoid artificial inflation of the SVP eligible pool, the DOC has reduced the pool by 18 percent to adjust for individuals who may be included but do not actually have SVP predicate offenses. This figure was selected based on historical data and has remained relatively stable.

Line 3 – Sex Offender Screen and Assessment Unit (SOSA) Request for Evaluation Rate (8 percent). Prior to 2019, this variable was anticipated to be approximately 12 percent. However, reviews of the screening protocol that went into effect on July 1, 2018 indicate that this rate may now be closer to eight percent. Therefore, these numbers reflect an estimate that eight percent of cases from Line 2 will meet the screening criteria and be referred for evaluation and review by the by the interagency Commitment Review Committee (CRC) for consideration of SVP civil commitment.

Line 4 – CRC Recommendations to the OAG (70 percent). This variable was added to the SVP Forecast in 2019 to reflect the percentage of evaluations for which the CRC will forward a non-binding recommendation to the OAG to pursue SVP proceedings. Both the DOC and DBHDS have agreed that 70 percent is a responsible estimate, given historical rates of referral.

Line 5 – Found SVP at Trial (90 percent). 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 to pursue SVP civil commitment. It is notable that not all cases referred to the OAG for review are taken forward for SVP civil commitment. Based on historical data, the DOC found that 90 percent of the cases recommended by the CRC as SVP (Line 4) ended with the individual being found by the courts to meet the statutory criteria of SVP.

Line 6 – SVP Release by Court from the DOC directly to SVP Conditional Release (16 percent). 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 an SVP but does not believe they require secure confinement and treatment, but instead can be safely managed on conditional release in the community. These cases do not go to VCBR but instead go directly from the DOC to the community under DOC supervision. While the value of this variable changes from year-to-year, the value adopted for current forecast is 16 percent based on the pre-pandemic average from FY 2017 to FY 2019.

Line 7 – 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 9). This number equals the value of Line 5 minus Line 6. It is important to note that a small number of individuals who are charged with SVP-qualifying crimes and found to be unrestorably incompetent to stand trial (URIST) have been civilly committed as sexually violent predators and ordered into DBHDS/VCBR custody. This is a very small number (one or two per year) but may have an impact on census projections in the long term.

Line 8 – 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, 53 discharges per year was estimated, as it was the average of the total number of annual discharges from VCBR for FY 2017 to FY 2019. Due to the potential impact of the pandemic on data from FY 2020 to FY 2022 and unusually high numbers of discharges (including deaths) for FY 2020 and FY 2021, this pre-pandemic average was also used for this forecast. VCBR’s ability to prepare individuals for successful release is a major factor in reducing census growth. The ability to release individuals is contingent on there being sufficient resources in the facility to provide quality care coupled with sufficient resources in the community to support individuals on release. Should either pool of resources become diminished, the ability to safely discharge individuals could significantly decrease, thus causing the overall VCBR census to balloon.

Line 9 – VCBR Revocation Admissions. The DBHDS Office of Sexually Violent Predator (OSVP) Services keeps data on discharges to SVP conditional release, revocations from conditional release, and subsequent admissions to VCBR. It is important to understand that Line 6 cases (individuals conditionally released directly from the DOC) may also be admitted to VCBR should they violate the conditions of their release and be deemed not 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. Lastly, some cases are returned to VCBR because they are unable to access the community resources necessary to establish a suitable release plan. 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 and 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. DBHDS had anticipated an average of 28 revocations (resulting in commitment to VCBR) each fiscal year based on data for FY 2017 to FY 2019. This pre-pandemic average was also used for the purpose of this report.

Line 10 – 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 8 (all discharges) from Line 7 (new admissions) and adding the result to Line 9 (revocation admissions). This line is subject to the same limits on accuracy addressed for Line 9.

Line 11 – 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 10 to the previous year’s June 30th census and, given several issues that are discussed in the section below, should be interpreted with caution.

Discussion

The VCBR census is influenced by several factors to include: the number of individuals in DOC custody who will be released each year who have an offense which mandates their review for SVP commitment, the rate by which these individuals are actually found to be SVPs, the rate that

individuals who are committed are rehabilitated to the degree their release is felt to no longer pose a significant public safety risk, and the rate at which individuals who are granted release are able to remain successful in the community and not require re-commitment. However as previously noted, it is not possible to predict every variable that may affect the SVP system in any given year. Based on this information, the DOC, DBHDS and the OAG agree that the data provided in this report should be interpreted with caution.

One example of a variable that is difficult to predict is the impact of COVID-19. The COVID-19 pandemic had a significant impact on all aspects of the SVP system. Initially, the judicial emergency led to all civil cases being continued. Although the courts eventually began using video testimony, and hearings have resumed, trials are still sometimes delayed due to COVID-19 outbreaks which are still causing temporary lockdowns and challenges with transferring individuals for jails, prisons and DBHDS facilities. The pandemic had also led to periods of time when supervising officers were unable to meet with conditionally released offenders as well as treatment and drug testing programs being placed on temporary hold. This past year, most supervision and treatment services resumed but are not necessarily operating in the same way they did pre-pandemic. Further, they are also still sometimes negatively affected by episodes of COVID-19 exposure, illness, and outbreaks.

Although the courts, jails, DOC and DBHDS have made accommodations and lifted many of the restrictions since the initial onset of the pandemic, there is no way to know how much longer these issues will continue and what permanent effect, if any, there may be on future operations. Continued court cases, limitations in transferring offenders and reduced supervision and monitoring may still potentially impact the number of individuals found SVP and civilly committed, the census of VCBR and the number of offenders found to be in violation of their conditions of supervision and detained on ECOs.

Another potential uncertainty is the population of state responsible DOC inmates. This forecast is based on numbers provided by the DOC. Any changes to the larger population of inmates may influence the numbers of SVP individuals. Between February 2020 and June 2022, the State Responsible (SR) DOC population fell by almost 6,500 inmates. This decline occurred while the courts were not operating at full capacity. Also, the 2022 Secretary of Public Safety and Homeland Security (SPSHS) Approved State Responsible (SR) Forecast calls for a continued decline in the SR population through the end of FY 2023 due to the retroactive nature of enhance earned sentence credits that went into effect on July 1, 2022. After FY 2023, The Approved SR Population Forecast calls for an average annual increase of 0.4 percent through the end of FY 2028. It is not clear at this time what impact this may have on the SVP population.

Changes in available community resources may also significantly impact the census of VCBR. When more resources are available, then more individuals can be maintained in the community. When resources are not available in the community, individuals can end up “stuck” at VCBR. In some cases, individuals who have been stable on conditional release in the community but started to need nursing home care, hospice, assisted living facilities, inpatient substance abuse treatment or became homeless through no fault of their own. Since it can be difficult for a registered sex offender to find appropriate housing and there are no nursing homes or inpatient substance abuse programs that accept sex offenders, courts find them unsuitable for conditional release and these individuals are instead civilly committed, not because of their risk of sexual

offending, but because there are no resources in the community to meet their needs. VCBR is then required to provide the substance abuse treatment or medical care the individual requires, often at a cost that is significantly higher than had the services been provided in the community. Further, VCBR is experiencing an increase in the number of individuals being detained there due to Emergency Custody Orders (ECOs). These individuals are being held at VCBR not due to increasing numbers of ECOs but instead due to jails not being able to hold individuals who may not have any criminal obligation such as a probation violation or criminal offense and instead are only being held on a civil detainer. All these variables can fluctuate over time and unexpectedly impact the VCBR census.

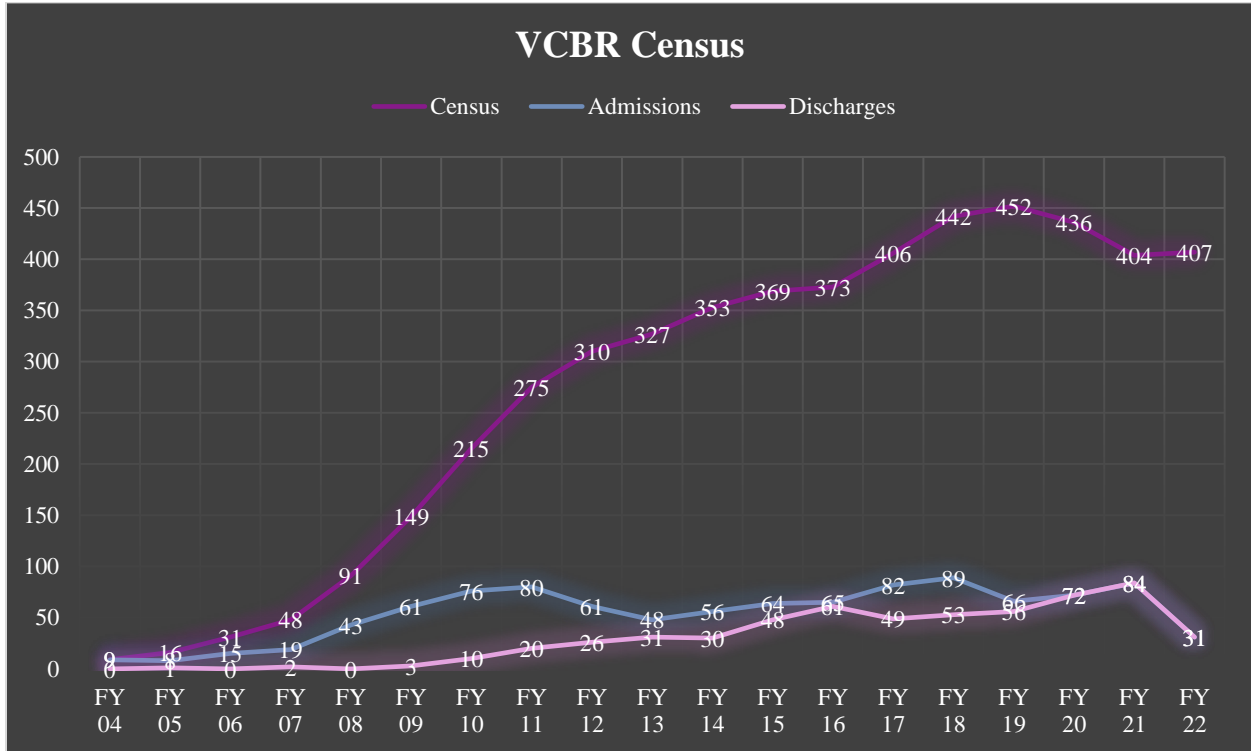
Based on this determination, this forecast suggests that the VCBR census may continue to grow over the upcoming six years but at a much slower rate than anticipated in previous years. The forecast anticipates that the census of VCBR may reach approximately 472 by June 30, 2027. There has been a sustained relatively high rate of individuals being approved for conditional release, and an improvement in the success rate of those individuals being released to conditional release (and not requiring recommitment to VCBR). However, the lack of community resources and alternatives to secure confinement continues to contribute to increases in the VCBR census and costs. Investment in community-based resources is necessary to sustain this slower growth, offer alternatives to secure confinement and provide less costly alternatives to civil commitment. It is recommended that funding be allocated to support the alternatives outlined in the report submitted to the General Assembly dated October 1, 2020, "Program and Community Alternatives to Reduce SVP Civil Commitment."

Conclusion

Overall, fluctuations in the SVP system in response to COVID-19, changes to the DOC SR population and other issues have led to variability in the data over the last three years and difficulty in predicting future trends with this population. DBHDS, the DOC and the OAG agree that the numbers provided in this report should be interpreted and used with caution. If the number of DOC releases continues at the predicted rate and there is no surge in conditional release revocations, then the census growth at VCBR may be relatively slow (net increase of approximately 1-3 residents each year) in the upcoming years. However, the lack of community resources for sex offenders continues to contribute to the VCBR census and costs. Community based services that will accept sex offenders such as nursing home and Assisted Living Facility beds, substance abuse inpatient programs and transitional housing programs would be beneficial in providing cost effective options to civil commitment.

Appendices

Appendix A - VCBR Census, Admissions and Discharges FY 2004 to FY 2022



Appendix B – Terminology

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

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.

VCBR: The Virginia Center for Behavioral Rehabilitation.