



COMMONWEALTH of VIRGINIA

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COMMISSIONER

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December 1, 2022

To: The Honorable Janet D. Howell, Chair, Senate Finance & Appropriations Committee
The Honorable John S. Edwards, Chair, Senate Judiciary Committee
The Honorable Barry D. Knight, Chair, House Appropriations Committee
The Honorable Robert B. Bell, Chair, House Courts of Justice Committee

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

Code of Virginia §37.2-903, section E requires the Department (DBHDS) to submit an annual report to the Chairmen of the House Committees on Appropriations and Courts of Justice, the Senate Committees on Courts of Justice and Finance, and the Crime Commission.

The Commissioner shall report annually by December 1 to the Chairmen of the House Committees on Appropriations and Courts of Justice, the Senate Committees on Courts of Justice and Finance, and the Crime Commission on (i) the assessment protocol approved by the Director and Commissioner to identify prisoners and defendants who appear to meet the definition of a sexually violent predator pursuant to subsections B and C, including the specific screening instrument adopted and the criteria used to determine whether a prisoner or defendant meets the definition of a sexually violent predator and (ii) the number of prisoners screened pursuant to subsection B and the number of prisoners identified as meeting the definition of a sexually violent predator and referred to the CRC for assessment pursuant to subsection D. Such report shall also include a comparison of the number of defendants identified as appearing to meet the definition of a sexually violent predator and referred to the CRC pursuant to subsection C in the previous year and five years immediately prior thereto.

In accordance with this item, please find enclosed the combined report for 2022. Staff are available should you wish to discuss this request.

CC:
The Honorable John Littel, Secretary, Health & Human Resources



Sexually Violent Predator Screening Protocol Report 2022 (Code of Virginia §37.2-903)

December 1, 2022

Sexually Violent Predator Screening Protocol Report 2022

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Preface

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Executive Summary

Pursuant to the Code of Virginia §37.2-903, staff from the Department of Behavioral Health and Developmental Services (DBHDS) and the Virginia Department of Corrections (DOC) have collaborated to develop a report that reviews data related to the screening of sexually violent predators (SVPs) in Virginia. This report includes data for calendar year 2022 and the six calendar years prior. The information included in this report is based on historical data collected by the Department of Corrections (DOC) Sex Offender Screening and Assessment (SOSA) Unit and reflects the number of inmates screened by the SOSA Unit, determined by the DOC to be SVP eligible, forwarded to the Commitment Review Committee (CRC) for further review and adjudicated as SVPs.

Overall, a review of the data for the past six years appears to show that the protocol has been successful in reducing the percentage of inmates who are referred to the CRC and has improved the DOC's accuracy in identifying individuals who may meet the criteria for SVP. This is evidenced by a decrease in the percentage of inmates referred to the CRC and an increase in the percentage of inmates evaluated who were ultimately adjudicated as SVPs when compared to the previous protocol. While there has been a reduction in the overall number of individuals who have been found to be SVPs, that appears to be due to a reduction in the number of SVP eligible individuals being released from the DOC and is not related to the protocol.

Background

On July 1, 2018, an updated screening protocol went into effect to identify DOC inmates who may be found by the court to SVP criteria. The screening protocol selected and approved by both the DBHDS commissioner and the DOC director (Appendix A) was developed to reflect current research in the field of sex inmate risk and recidivism. It utilizes both the Static 99R evidence based actuarial instrument (Appendix B) and the application of mitigating and/or aggravating risk factors supported by research as being related to an inmate’s risk of re-offense.

SVP Screening Summary

The data contained in this report uses the inmate’s release date to define the calendar year in which his or her case and disposition are counted. For example, in Table 1, below, 103 of 477 inmates with release dates in 2016 that were screened for SVP were subsequently referred to the CRC for full evaluation. Of those same 103 inmates referred for full evaluation, 52 were eventually found to meet the criteria as SVP.

Data regarding the SVP screening, assessment, and adjudication rates for 2022 and the past six calendar years is found in Table 1.

Table 1: Annual SVP Screening Data Summary

Calendar Year	2016	2017	2018	2019	2020	2021*	2022*
# of Inmates Screened	477	507	495	465	454	432	473
# of inmates referred to CRC for full evaluation	103	90	80	35	34	46	33
% of those screened who were referred to CRC	21%	17%	16%	7%	7%	11%	7%
# of Inmates referred to the CRC who were Adjudicated SVP	52	41	49	24	21	(19+12)*	2+19*
% of Inmates Evaluated who were Adjudicated SVP	50%	45%	61%	69%	62%	67%*	63%

** SVP cases may take years from the date an individual is screened to adjudication as an SVP by the court. Data for these years includes estimates (number of cases adjudicated + estimated number from those still in court) as not all cases have reached final disposition at this time. Result figures are estimates based on yearly averages for OAG filings and related adjudications (90% adjudication rate).*

Discussion

The current SVP protocol became law on July 1, 2018. Prior to this updated protocol going into effect, the DOC would begin the SVP screening process seven to nine months in advance of an inmate’s release date. Because of this, when the updated protocol went into effect, the DOC was already screening cases with release dates of January 2019 and later. Therefore, the current protocol was not used for the majority of cases with release dates in 2018. However, it was used for the majority of cases in 2019. The data for 2020 represents the first year in which all of the inmates in the data set, with release dates in 2020, were screened with the updated protocol.

Overall, the data suggests that the updated SVP screening protocol is more accurately identifying the high-risk sex inmates who are found by the court to meet SVP criteria than the previous protocol. This conclusion is supported by an overall decrease in the percentage of DOC-eligible inmates being referred for CRC evaluations in 2022 (seven percent) as opposed to previous years (21 percent in 2016).

It is important to note that the overall number of SVP-eligible DOC inmates being released has dropped in recent years (507 in 2017 to 473 in 2022) which has affected the overall number of inmates ultimately adjudicated SVP. These reductions are not related to the updated protocol. Rather, they appear to be related to recent SVP-eligible admissions having longer total imposed sentences and longer expected lengths of stay than earlier admissions. The average total imposed sentence for this population in 2017 SVP New Court Commitments (NCC) was 111 months (median=58) as opposed to an average imposed sentence of 150 months (median=83) for the FY 2021 SVP NCC. Due to these fluctuations and to avoid the appearance of artificial reductions in the number of screenings and adjudications, conclusions about the protocol are based on percentages instead of actual numbers.¹

The improved effectiveness of the updated protocol is also supported by an increase in the percentage of evaluated inmates who were found by the court to meet SVP criteria (from 45 percent in 2017 to an estimated 67 percent in 2021, with an anticipated 63 percent in 2022). These are indications that the current protocol has increased the Sex Offender Screening & Assessment (SOSA) Unit's accuracy in identifying individuals who will be found by the court to meet the criteria for SVP by approximately 20 percent. However, these numbers are based on estimates and cannot be confirmed until all 2020, 2021, and 2022 cases reach adjudication.

DBHDS and VADOC anticipate that future data will continue to show that the current SVP screening protocol is a more precise method of identifying high-risk inmates who are likely to meet the statutory definition of a SVP than its predecessor. DBHDS and VADOC will continue to collaborate to ensure Virginia is using the best practices and identifying the inmates at highest risk for sexually reoffending in the most efficient manner possible. Further, DBHDS, VADOC, and the Office of the Attorney General routinely discuss the SVP process, monitor the impact of the updated protocol and recommend adjustments to the DBHDS commissioner and DOC director as needed.

¹ For example, if we screen 30 individuals in one year and evaluate 3 (10%), then only screen 10 the next year and evaluate 1 (10%), it would be misleading to state that the updated protocol identified less individuals for evaluation. Although the number of evaluations dropped from 3 to 1, the protocol would still have identified the same percentage (10%) of the population for evaluation.

Appendices

Appendix A Copy of Signed SVP Screening Protocol



COMMONWEALTH of VIRGINIA

HAROLD W. CLARKE
DIRECTOR

Department of Corrections.

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June 29, 2018

In accordance with the *Code of Virginia 37.2-903(B)* of the Sexually Violent Predators Act, the following screening protocol is hereby agreed to between the Director of Virginia Department of Corrections and the Commissioner of Virginia Department of Behavioral Health and Developmental Service to be implemented on July 1, 2018.

Handwritten signature of Harold Clarke in black ink.

Harold Clarke
Director
Department of Corrections

Handwritten signature of S. Hughes Melton, MD in black ink.

S. Hughes Melton, MD
Commissioner
Department of Behavioral Health & Developmental Services

SEXUALLY VIOLENT PREDATOR SCREENING PROTOCOL

The Director shall collect all available information on the offender or defendant and calculate the offender/defendant's score on an actuarial measure agreed to by Director and Commissioner. The Director and Commissioner have agreed to use the Statc-99R actuarial instrument and the corresponding reference score of six as the foundation for the initial screening.

The Director shall forward cases scoring six and above directly to the Commitment Review Committee (CRC) unless the Director determines that mitigating factors warrant their referral to the Sex Offender Screening panel, in which case all available information on the offender shall be forwarded to the panel for review. The Director shall not forward cases scoring five and below unless the Director determines that aggravating factors warrant their referral to the Sex Offender Screening Panel, in which case all available information on the offender shall be forwarded to the panel for review.

Regarding whether to exclude or request a full Sexually Violent Predator evaluation of the case, the three-person Sex Offender Screening Panel shall consider the actuarial score along with evidenced based risk factors pertaining to sex offender recidivism before making their recommendation, by majority vote, to the Director.

The Sex Offender Screening Panel shall be comprised of three Virginia Department of Corrections staff who are skilled in the diagnosis and risk assessment of sex offenders and are knowledgeable about their treatment. The panel shall elect a chairperson from within its membership.

The three person sex offender screening panel will review cases referred to them in accordance with this protocol. They will make a recommendation to the Director to exclude or request a full Sexually Violent Predator evaluation by majority vote.

If the Director and the Commissioner agree that no specific scientifically validated actuarial instrument exists or can be completed due to insufficient available information, the offender/defendant 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 offender/defendant may meet the definition of a sexually violent predator. Upon any such determination, the offender/defendant shall be referred to the CRC for a full evaluation.

SEXUALLY VIOLENT PERPETRATOR SCREENING PROTOCOL

Aggravating Characteristics:

- Offense-supportive attitudes including self-report or evidence of intention to re-offend sexually
- Deviant sexual interests or sexual preoccupation
- Lifestyle impulsivity and/or general self-regulation problems
- Resistance to rules and supervision
- Institutional charges with violent or sexual component
- Self-report of past uncharged sex offenses
- Deficits in interpersonal functioning

Mitigating Characteristics:

- Health issues that limit the ability/risk to commit new sex offense
- Ten or more years in the community without a new sex offense or violation related to sex offense patterns
- History of continuous compliance with community supervision
- 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
- Offender current age relative to age at time of last sex offense
- Sex offender treatment completion

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SEXUALLY VIOLENT PREDATOR SCREENING PROTOCOL

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Appendix B Static99R Screening Form

Static-99R – TALLY SHEET

Assessment date: _____ Date of release from index sex offence: _____

Item #	Risk Factor	Codes		Score
1	Age at release from index sex offence	Aged 18 to 34.9 Aged 35 to 39.9 Aged 40 to 59.9 Aged 60 or older		1 0 -1 -3
2	Ever lived with a lover	Ever lived with lover for at least two years? Yes No		0 1
3	Index non-sexual violence - Any convictions	No Yes		0 1
4	Prior non-sexual violence - Any convictions	No Yes		0 1
5	Prior sex offences	<u>Charges</u> 0 1,2 3-5 6+	<u>Convictions</u> 0 1 2,3 4+	0 1 2 3
6	Four or more prior sentencing dates (excluding index)	3 or less 4 or more		0 1
7	Any convictions for non-contact sex offences	No Yes		0 1
8	Any unrelated victims	No Yes		0 1
9	Any stranger victims	No Yes		0 1
10	Any male victims	No Yes		0 1
	Total Score	Add up scores from individual risk factors		

Nominal Risk Levels (2016 version)	<u>Total</u>	<u>Risk Level</u>
	-3, -2,	I - Very Low Risk
	-1, 0,	II - Below Average Risk
	1, 2, 3	III - Average Risk
	4, 5	IVa - Above Average Risk
	6 and higher	IVb - Well Above Average Risk

There [was, was not] sufficient information available to complete the Static-99R score following the coding manual (2016 version). I believe that this score [fairly represents, does not fairly represent] the risk presented by Mr. XXXX at this time. Comments/Explanation: _____

(Evaluator name)

(Evaluator signature)

(Date)

Appendix C 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.

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

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